

Special Report

EU support for the rule of law in the Western Balkans:

despite efforts, fundamental problems persist



EUROPEAN
COURT
OF AUDITORS

Contents

	Paragraph
Executive summary	I-VIII
Introduction	01-17
The Western Balkans	04-08
EU support for the rule of law in the Western Balkans	09-17
Audit scope and approach	18-23
Observations	24-70
The EU's priorities for the rule of law in the Western Balkans are clear, but key risks remain insufficiently addressed	24-45
IPA II support reflects the EU's political priorities, but the key role of civil society in rule of law has been only partly addressed	25-31
The Commission does not systematically mitigate key risks to the sustainable impact of EU action	32-45
EU action has contributed to reforms, but has had little overall impact on progress in the rule of law	46-70
Project's planned outputs have mostly been achieved, but outcomes are technical and operational	47-51
Project monitoring sometimes failed to measure outcomes, and few projects are likely to be sustainable	52-56
Despite many years of EU support to reforms in the Western Balkans, fundamental problems persist	57-70
Conclusions and recommendations	71-80
Annexes	
Annex I – Audited projects – Outputs and outcomes	
Annex II – List of interviewed stakeholders (via video-conference)	
Glossary and abbreviations	
Replies of the Commission and the EEAS	

Timeline

Audit team

Executive summary

I The Council of Europe has defined the rule of law as a multi-dimensional concept in which, among other things, all public acts are within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. The EU has adopted this definition and has enshrined the rule of law in Article 2 of the Treaty of the European Union as one of the common values of its Member States. It is a guiding principle of its foreign policy. It is also an essential and necessary condition for EU membership.

II The six Western Balkan countries outside the EU (Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, North Macedonia and Serbia) receive financing from several sources, but the EU is the region's biggest donor. EU financial assistance is mainly channelled to these countries through the Instrument for Pre-accession (currently IPA II). The rule of law is one of nine IPA II priority sectors. As such, it is supported from a dedicated budgetary allocation that was €700 million for the 2014-2020 period.

III We audited whether EU support for the rule of law in the Western Balkans during 2014-2020 has been effective. We covered the rule of law components of justice and the judiciary, anti-corruption and human rights, namely access to justice and freedom of expression. In particular, we assessed whether support was well designed and achieved the planned results. We set out to provide an independent assessment on the topic, in the light of the February 2018 EU Western Balkans strategy and on the changes arising in 2020 from the new methodology for accession negotiations.

IV Overall, we found that, while EU action has contributed to reforms in technical and operational areas, such as improving the efficiency of the judiciary and the development of relevant legislation, it has had little overall impact on fundamental rule of law reforms in the region. A key reason for this is the insufficient domestic political will to drive the necessary reforms.

V The Commission's rule of law priorities are shared by other international organisations, think tanks and civil society organisations. Despite this, the EU's in-country support for civil society action on the rule of law is insufficient in meeting the needs of the sector and its impact is not thoroughly monitored. A healthy media and civil society environment is necessary to promote democratic principles and promote

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

the need for change along the path to EU membership. Yet freedom of expression is the area that has progressed the least in all six countries. In some, public support for the reforms necessary for accession is declining.

VI Apart from lack of political will and reform ownership, IPA II projects can also be stalled due to limited administrative capacity. The Commission, however, does not systematically use effective tools to mitigate this risk. The rules for applying political conditionality are not clear, and IPA II lacks strict conditionality clauses that would directly link stalled rule of law reforms to restricted funding in other sectors.

VII The methodology for accession negotiations in place since 2020 is a step in the right direction, since the clustering of negotiation chapters enables the Commission to tackle all areas related to the rule of law simultaneously during accession negotiations. However, the new methodology is too recent for any visible results.

VIII On the basis of these conclusions, we recommend that the Commission and the EEAS:

- strengthen the mechanism for promoting rule of law reforms in the enlargement process;
- intensify support for civil society engaged in rule of law reforms and media independence;
- reinforce the use of conditionality in IPA III;
- strengthen project reporting and monitoring.

Introduction

01 The Commission has called the rule of law “the backbone of any modern constitutional democracy”¹. According to Article 2 of the Treaty on European Union, the rule of law is one of the fundamental values on which the EU is founded; and rule of law is also a guiding principle for the Union’s external action². It is strongly anchored in the accession process and represents an essential and necessary condition for EU membership³. Accession negotiations focus on the adoption and implementation of the EU body of law. Known as the *acquis*, this consists of 35 legislative ‘chapters’ that form the rules to which all EU Member States are expected to adhere.

02 The ‘rule of law’ refers to the EU value enshrined in Article 2 Treaty of the European Union. It includes the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law⁴. The rule of law includes six basic principles⁵ (see [Figure 1](#)), which have been recognised by the European Court of Justice and the European Court of Human Rights.

¹ Proposal for a Regulation of the European Parliament and the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, COM(2018) 324 final, 2.5.2018; p. 1.

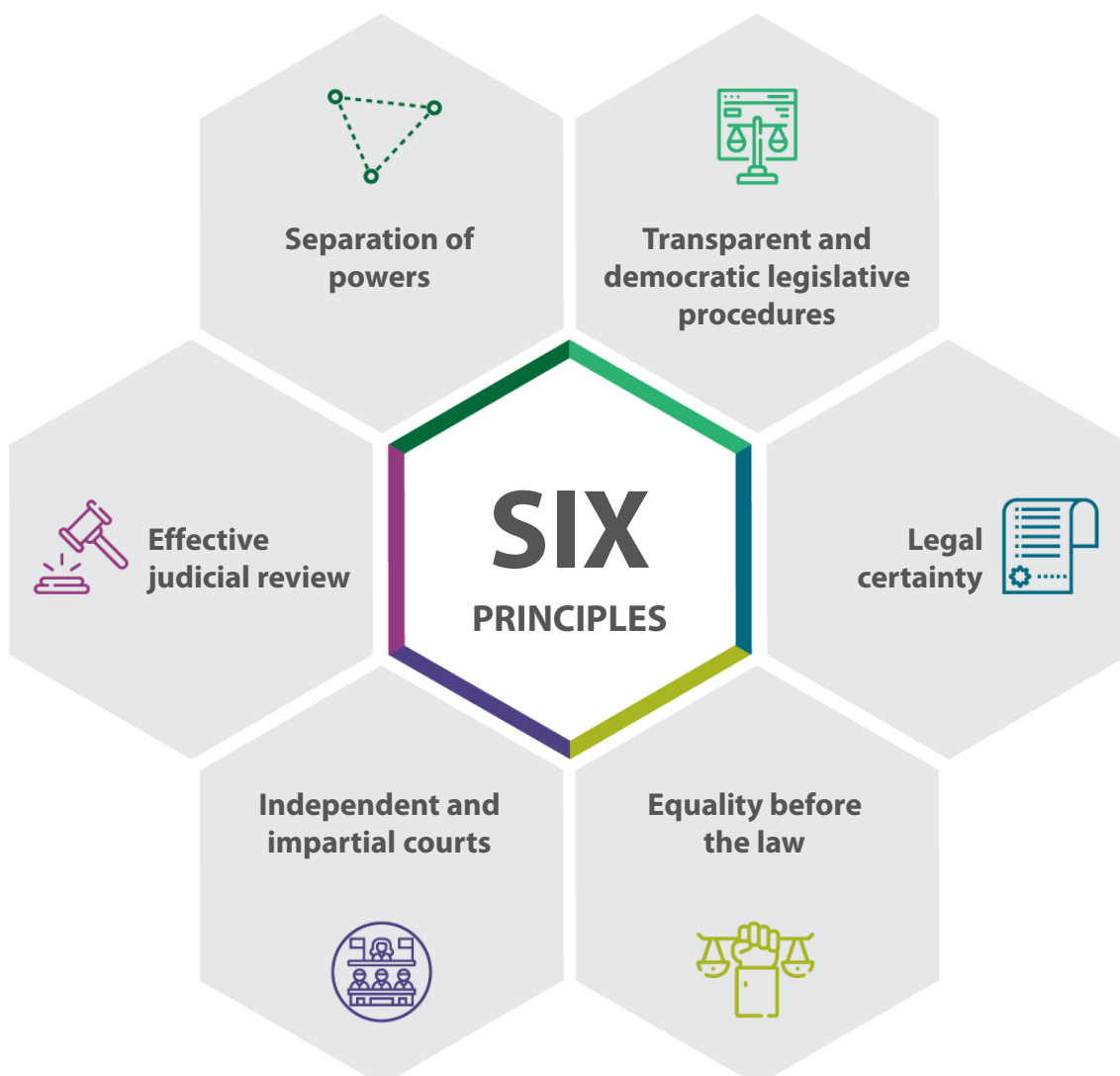
² Article 21 of the [Treaty on European Union](#).

³ See [political criteria for accession](#), as defined in the 1993 at the European Council in Copenhagen; Article 49 of the Treaty on European Union.

⁴ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

⁵ European Commission, [Communication from the Commission: Further strengthening the Rule of Law within the Union State of play and possible next steps](#), 3.4.2019; p. 1.

Figure 1 – The principles of rule of law



Source: ECA.

03 One of the key features of the functional rule of law is the ability to control the powers of the political and economic elites.⁶ In this regard, strengthening the rule of law is also intrinsically linked with the fight against corruption⁷, which is one of its major threats. Corruption leads to arbitrariness and abuse of powers, and it negatively affects the principles of legality and legal certainty, thereby undermining citizens' trust in their institutions. The rule of law is also a key factor for economic growth. While the

⁶ Marko Kmezić, "Rule of law and democracy in the Western Balkans: addressing the gap between policies and practice", *Southeast European and Black Sea Studies*, 2020, p. 3.

⁷ [EU action against corruption – Exchange of views](#), Council of the EU, 12276/19, 27.9.2019; p. 3.

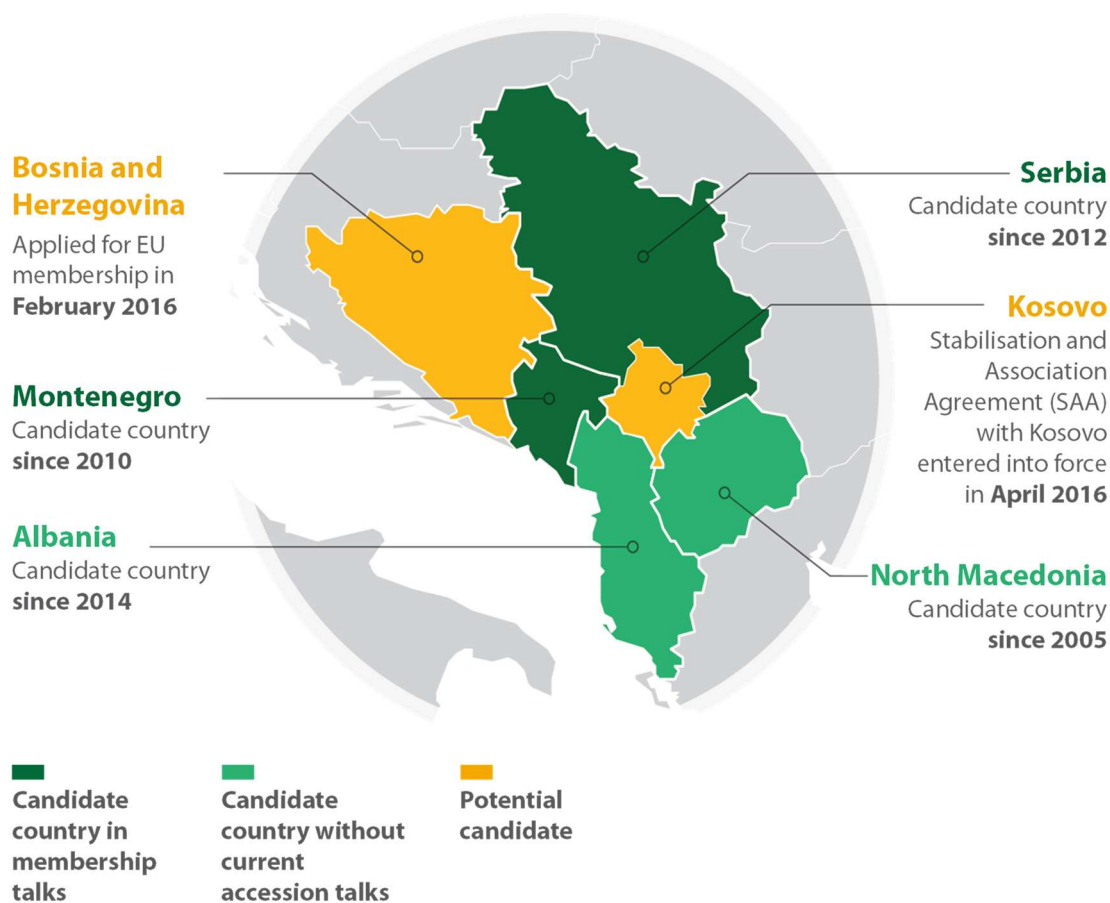
Western Balkan countries have significant economic potential, rule of law weaknesses, poorly functioning institutions and state over-reach hamper economic development⁸.

The Western Balkans

04 The economic and political crisis of the 1980s, coupled with the resurgence of nationalism, caused the break-up of Yugoslavia in the 1990s along the borders of its constituent republics, generally preceded by armed conflict. Five independent countries were formed, and were joined later by Montenegro (2006) and Kosovo (2008). As for Albania, it was a completely isolated communist dictatorship until 1991, when it had to rebuild its public administration from scratch. Slovenia (2004) and Croatia (2013) are now EU Member States. The remaining six Western Balkan countries have historically been affected by serious ethnic, political and economic conflicts, but all aspire to join the EU, and all six are candidates or potential candidates for membership (see [Figure 2](#)).

⁸ COM(2018) 65 final, 6.2.2018; p. 6.

Figure 2 – Candidate countries and potential candidates for EU membership in the Western Balkans region



Source: ECA

05 However, the current enlargement round is taking far longer than any previous negotiations. For example, Montenegro has been negotiating since 2012 and Serbia since 2014, having provisionally closed only three and two chapters respectively. In its 2018 communication⁹ on enlargement and the Western Balkans, the Commission clearly acknowledged the serious rule of law situation in the region, stating that there were “clear elements of state capture, including links with organised crime and corruption at all levels of government and administration, as well as a strong entanglement of public and private interests”.

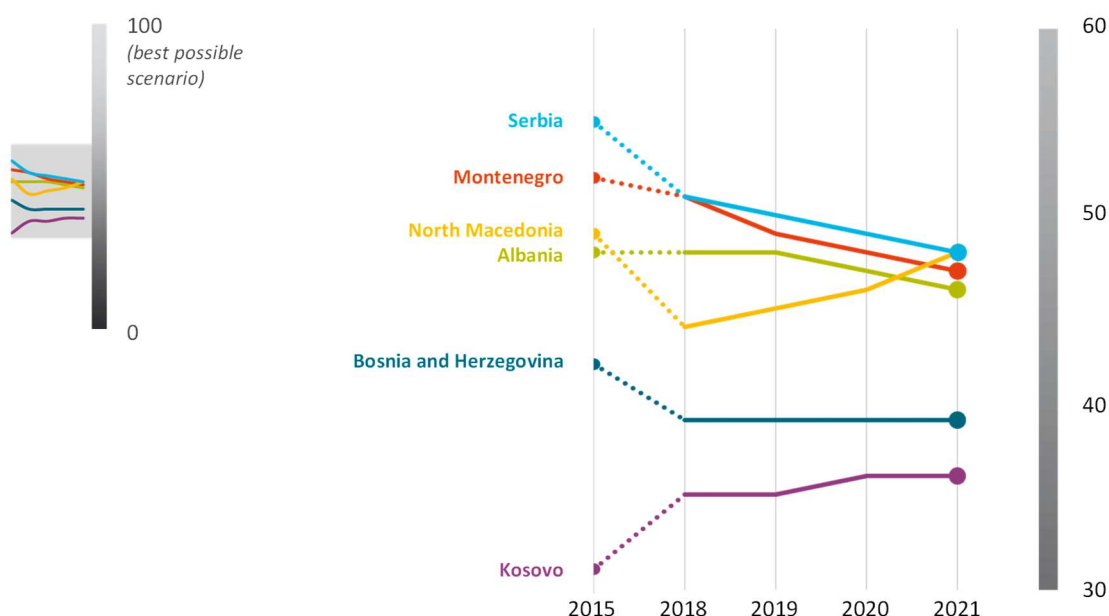
06 Several studies have observed that most governments in the region have become more authoritarian over the past decade, despite making formal progress towards EU

⁹ COM(2018) 65 final, 6.2.2018.

membership¹⁰. They consider that governments in the Western Balkans have managed to combine a formal commitment to democracy and European integration with informal authoritarian practices. In fact, Freedom House in its annual report of the status of democracy, considers all six western Balkan countries transitional or hybrid regimes¹¹ and with the exception of North Macedonia, on a stable or even declining trend (see [Figure 3](#))¹².

Figure 3 – Democracy score in the Western Balkans

Freedom House
Democracy score



Source: ECA, based on Freedom House data.

07 Corruption remains a cause of concern in all countries in the region. Transparency International reports that criminal justice systems often fail to investigate, prosecute and sanction high-level corruption cases effectively. Those who are convicted often receive disproportionately light sentences. Governments in the region have passed

¹⁰ Florian Bieber (2020), “The Rise of Authoritarianism in the Western Balkans”, p. 139; Jelena Džankić, Soeren Keil and Marko Kmezić (2018), “The Europeanisation of the Western Balkans: A Failure of EU Conditionality?”, p. 89; Marko Kmezić (2020): “Rule of law and democracy in the Western Balkans: addressing the gap between policies and practice”, in *Southeast European and Black Sea Studies*, pp. 1-2.

¹¹ Freedom House, [Democracy status](#).

¹² Freedom House, [Change in democracy status](#).

many laws favouring cronyism, with impacts including the award of privileged contracts, industry monopolies and the employment of poorly qualified public officials who will enable corruption¹³.

08 Nonetheless, recent elections in the region have often challenged ruling elites. In Montenegro, after more than 30 years in power the ruling party lost the August 2020 parliamentary elections to a wide-ranging opposition coalition. In the November 2020 municipal elections in Bosnia and Herzegovina, citizens abandoned candidates from the three main ethnic parties and supported political outsiders. Kosovar voters withheld their vote from established parties, so a former opposition movement emerged as the relative main winner of the February 2021 Kosovo elections¹⁴. In Albania, the May 2021 elections saw the return to the ballot of all parties, the first time this had occurred since 2017. While observers reported concerns relating to the misuse of state resources or functions by the ruling party and other public figures¹⁵, the General Prosecutor's office launched investigations into several reported cases.

EU support for the rule of law in the Western Balkans

09 In February 2018, the Commission adopted a strategy for “A credible enlargement perspective for an enhanced EU engagement with the Western Balkans”. The strategy sets out an action plan consisting of six flagship initiatives targeting specific areas of common interest, among them the rule of law, which were to be implemented between 2018 and 2020.

10 In 2020, a change in the methodology for accession negotiations brought the ‘clustering’ of negotiation chapters¹⁶. The thematic cluster on ‘fundamentals’ (rule of law, economic criteria and public administration reform) has a central role. The

¹³ Transparency International: [Captured states in the Western Balkans and Turkey](#).

¹⁴ Tena Prelec and Jovana Marović, “No longer voting for the devil you know? Why the Balkans’ collective action problem might be easier to break than we think”, BiEPAG, January 2021.

¹⁵ Joint statement by High Representative/Vice President Josep Borrell and Commissioner for Neighbourhood and Enlargement Oliver Varhely on the parliamentary elections; United States mission to the Organisation for Security and Cooperation in Europe.

¹⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, “[Enhancing the accession process – A credible EU perspective for the Western Balkans](#)”, COM(2020) 57 final.

chapters in this cluster are opened first and closed last, and sufficient progress is required in this area before other clusters can be opened. The new accession methodology reconfirms, among other things, the systematic use of specific peer-review missions, the extension of rule of law advisory missions to all countries, and the setting-up of detailed rule of law action plans.

11 The EU targets a broad spectrum of areas related to the rule of law (see [Figure 4](#)).

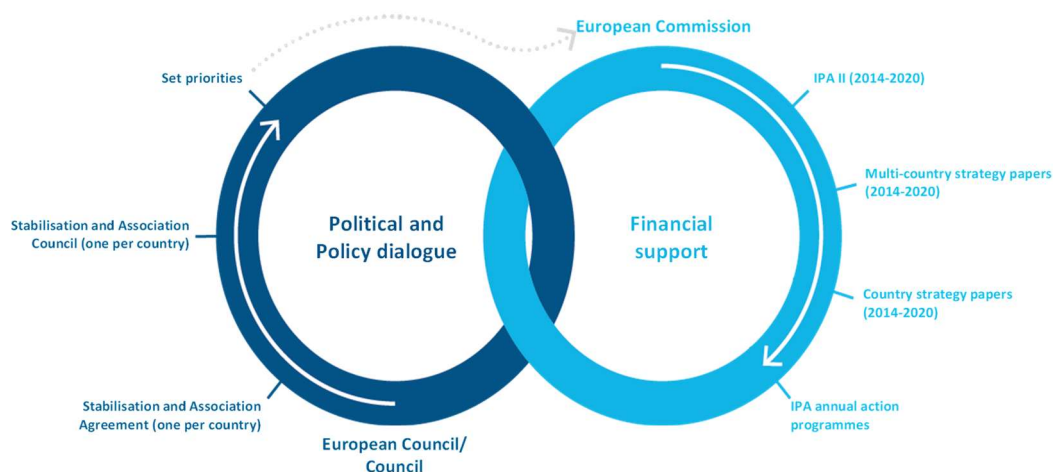
Figure 4 – Rule of law – areas of EU assistance



Source: ECA.

12 Assistance is built around two intertwining streams of action: (i) political and policy dialogue, and (ii) financial support, mainly through IPA II (see [Figure 5](#)).

Figure 5 – EU and the Western Balkans: from political and policy dialogue to financial support



Source: ECA.

13 The Council, the European External Action Service (EEAS) and the European Commission (hereafter, the Commission) are engaged in political and policy dialogue in the framework of the EU's wider stabilisation and association process and its policy towards the Western Balkans, which includes the aim of accession negotiations and eventual EU membership. The Commission also sets objectives and priorities for reform in multiannual strategy papers and provides guidance through communications (see paragraphs [14-16](#)).

14 The Western Balkans receive financing from several sources (United States, Organisation for Economic Co-operation and Development, EU Member States), but the EU is the region's biggest donor¹⁷. EU financial assistance is mainly channelled through the Instrument for Pre-accession (currently IPA II)¹⁸, which supports the adoption and implementation of the reforms required for EU membership. Assistance takes a variety of forms, including grants, budget support, capacity-building, twinning, technical assistance and information exchange.

15 The rule of law is one of nine IPA II priority sectors, supported by a dedicated budgetary allocation for each country. During 2014-2020, about €0.7 billion was allocated to the Western Balkans to support the rule of law and fundamental rights, representing about 16 % of all EU bilateral assistance to these countries (see [Table 1](#))¹⁹.

¹⁷ How much has the EU invested already in the Western Balkans? "[Questions and Answers: Economic and Investment Plan for the Western Balkans](#)".

¹⁸ [Regulation No 231/2014](#) of the European Parliament and of the Council of 11.3.2014.

¹⁹ As well as bilateral support, the EU provides cross-border and multi-country assistance, including horizontal and regional programmes on the rule of law. However, there is no specific financial allocation solely for the rule of law.

Table 1 – IPA II bilateral financial allocation for the rule of law and fundamental rights

		In million euros							
Budget Line	Country	2014	2015	2016	2017	2018	2019	2020	Total
22 02 01 01	Albania	4	13	23	0	59	13	23	134
	Bosnia and Herzegovina	2	23	3	30		60		117
	Kosovo	21	23	8	3	16	6	18	94
	North Macedonia	20	0	15	0	1	1	20	57
	Montenegro	7	21	0	0	15	0	0	42
	Serbia	28	28	46	72	29	0	44	246
	Total Western Balkans	82	108	95	105	180	20	105	690

Source: ECA, on the basis of each country's revised indicative strategy papers for 2014-2020, accessible at [DG NEAR enlargement webpage](#).

16 Important decisions in the accession process, from the granting of candidate status to the opening and closing of negotiation chapters, are taken by the Council, acting unanimously. In practice, the General Affairs Council supervises the EU enlargement process and accession negotiations and takes stock of the situation once a year. Discussions and any resulting decisions are based on the Commission's annual communication on enlargement and individual country progress reports.

17 At the May 2018 EU-Western Balkans summit in Sofia, the EU and the Member States agreed to a list of actions to support the strengthening of the rule of law and good governance in the Western Balkans. This is referred to as the “Sofia Priority Agenda”:

- Enhance support for judicial reform and efforts to fight corruption and organised crime, including capacity-building for corruption prevention;
- Extend rule of law advisory missions with increased support from Member States and the EU;
- Enhance monitoring of reforms through more systematic, case-based peer-review missions;
- Introduce trial monitoring in the field of serious corruption and organised crime;
- Work towards better measurement of results in justice reform;
- Roll out support for the Western Balkans through the European Endowment for Democracy in the area of independent and pluralistic media and civil society.

Audit scope and approach

18 The objective of our audit was to assess whether EU²⁰ support for the rule of law in the Western Balkans has been effective. We set out to provide an independent assessment on that topic, in the light of the February 2018 EU enlargement strategy and on the changes arising in 2020 from the new clustering methodology.

19 To answer the main audit question, we considered two subsidiary questions:

- Has EU support for the rule of law in the Western Balkans been well designed?
- Has EU support for the rule of law in the Western Balkans delivered the expected results?

20 We audited the Commission and the EEAS activities in the Western Balkans. Looking individually at the six Western Balkan countries (see [Figure 2](#)), we focused on (a) IPA II, which is the main instrument supporting the rule of law in the region; and (b) the EU's political and policy dialogue with national authorities.

21 We limited our audit to the provision of assistance to core state institutions and other key stakeholders, such as civil society organisations (CSOs), in the following areas:

- Justice and the judiciary, including independence and impartiality, accountability, professionalism and competence, quality of justice and efficiency;
- Anti-corruption measures, preventive and investigative aspects of criminal justice and the fight against organised crime;
- Human rights – both those directly concerned with the rule of law, such as the right to a fair trial and access to justice, and those with rule of law implications, such as freedom of expression (in particular media independence)²¹.

²⁰ The term “EU” refers to various Commission Directorates-General (DGs), EU delegations and the EEAS, but not the Member States.

²¹ “[...] attempts to diminish pluralism and weaken essential watchdogs such as civil society and independent media are warning signs for threats to the rule of law”; COM(2019) 343 final “[Strengthening the rule of law within the Union – A blueprint for action](#)”, p. 2.

22 Our work included a review of all EU enlargement documentation, management reports, Council and stabilisation and association committees conclusions, national strategy papers and action plans. We made a detailed analysis of 20 rule of law projects funded by IPA II in the six Western Balkan countries during the 2014-2020 programming period. These projects mainly focused on the strengthening of judiciary capacity or the fight against corruption or organised crime, generally through technical assistance; we also audited two construction projects and one project supporting CSOs. For a full list of projects, see [Annex I](#).

23 To complement our analysis, we interviewed representatives of the Commission, the EEAS and leading implementing partners in Albania, Serbia and Bosnia and Herzegovina. We also interviewed the main state institutions concerned with the rule of law in Albania and Serbia, as well as other major stakeholders – such as the Council of Europe, other international donors and CSOs (see also [Annex I](#)). Lastly, we were assisted by a panel of three external academics specialising in the rule of law in the Western Balkans.

Observations

The EU's priorities for the rule of law in the Western Balkans are clear, but key risks remain insufficiently addressed

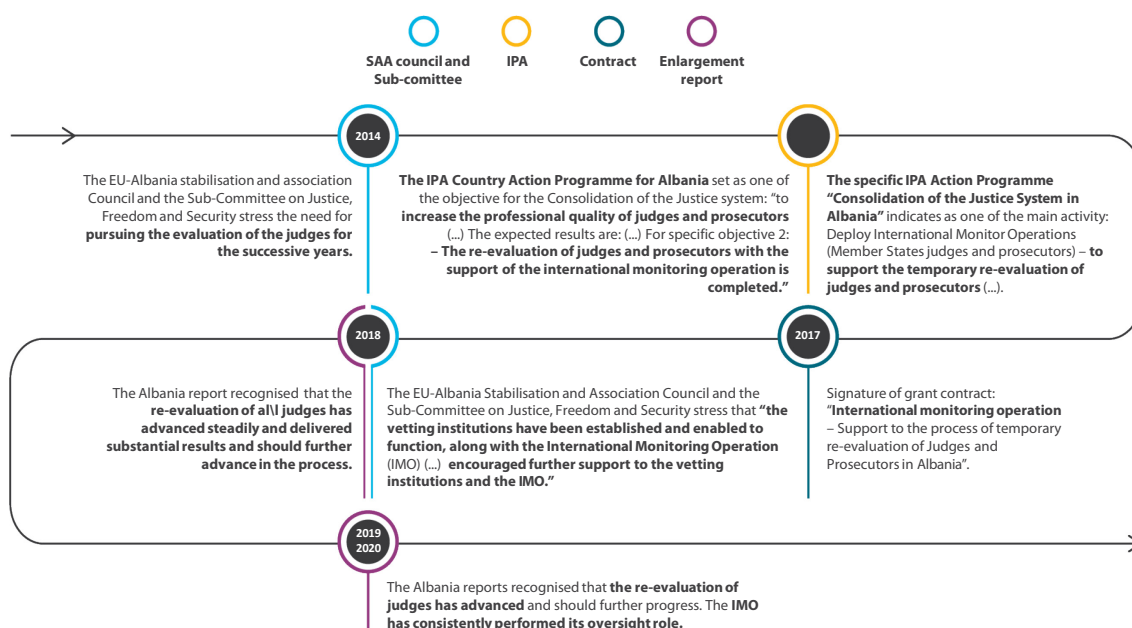
24 In this section, we examine the design of EU support for the rule of law in the Western Balkans. In particular, we assess whether the Commission and the EEAS have identified and addressed the key rule of law priorities in the region, and whether those priorities are consistent with the EU's political statements and the priorities identified by other international organisations, experts and think tanks. We examine how well political and policy dialogue on the rule of law was reflected in the indicative strategy papers drawn up by the Commission with each of the six countries, and how it subsequently translated into concrete action. We also assess whether, when planning EU action, the Commission has included concrete measures to mitigate the risks to effectiveness and impact.

IPA II support reflects the EU's political priorities, but the key role of civil society in rule of law has been only partly addressed

25 EU support must be aligned with the political priorities agreed between the EU and the candidate countries and respond to their specific needs. This requires the Commission to develop its political priorities, based on specific country assessments of the main obstacles to improving the rule of law.

26 Our assessment of IPA II planning and implementation documents from the 2014-2020 period shows an alignment with policy and political dialogue documents, such as the EU common positions on stabilisation and association agreements (SAAs) and the results of sub-committee meetings on justice, freedom and security. In several cases, the rule of law sectors identified by both the Council and the Commission in SAAs and enlargement reports have fed into specific objectives in the various IPA action programmes, then into financed projects. [Figure 6](#) provides an example of how the two action streams interlink. Our review of a sample of reports from international organisations and think tanks showed that they have highlighted issues similar to those targeted by the Commission.

Figure 6 – Albania: consistency between political dialogue and financial support



Source: ECA, based on Commission and Council documents.

27 The Commission publishes annual enlargement reports with information on the rule of law situation in each country. These annual assessments present what has been achieved during the previous year in the areas defined in both the IPA II planning documents and political statements, as well as recommendations and guidance on the priorities for reform, such as amending existing or adopting new legislation in line with EU standards or Council of Europe recommendations. As they highlight some important rule of law needs, they are useful when designing future IPA support. While fulfilling their purpose of providing information on the enlargement process, the reports do not systematically link progress (or the lack of progress) to specific EU actions or suggest how the EU could help to implement the recommendations.

28 CSOs play a key part in ensuring government accountability and freedom of expression. However, our review of EU common positions on SAAs and the minutes of sub-committee meetings on justice, freedom and security showed that, except in Albania, the EU has not systematically addressed in these meetings the role of CSOs.

29 The Commission has increased its financial support for CSOs through the European Endowment for Democracy and other instruments (see an example of a project supporting CSOs in paragraph 51). Yet evidence shows that EU support for civil society action on the rule of law is insufficient in meeting the needs of the sector (see paragraphs 30-31 and 70) and mostly based on short term projects. An independent

evaluation on the rule of law has noted that the lack of progress correlates to, among other things, “inadequate participation or marginalisation of civil society”²².

30 The lack of proper consideration for the role of CSOs, in both political dialogue and financial support, was also criticised by Transparency International in its assessment of the 2018 Communication on enlargement²³. In the context of challenges to the freedom of expression, this remains an area of particular concern in all six Western Balkan countries (see paragraphs [66-67](#)).

31 Furthermore, the Commission has never used IPA monitoring indicator 3 “Percentage of accession-related policy making and reform processes where civil society is consulted effectively” (under specific objective 1 “Political reforms”) for its reporting, which has weakened the monitoring of progress in this area. In fact, the IPA II monitoring evaluation considered that the indicator “could provide very useful information on the involvement of the CSOs in IPA II”²⁴.

The Commission does not systematically mitigate key risks to the sustainable impact of EU action

32 The main risks to the impact and sustainability of EU support are political will and the ownership of reforms, especially when administrative capacity is weak. Insufficient political will undermines project ownership and weakens the commitment to use project outputs or build on them to further advance the reform agenda. Weak administrative capacity (for example, insufficient personnel and training, or the absence of a staff retention policy leading to high turnover rates), combined with low pay for officials and other staff involved in the reforms, will impede progress. The Commission is expected to identify these risks and design the necessary safeguards into its support.

33 Our review of the project design documents in our sample showed that, although the Commission and its implementing partners have identified these risks in all six

²² “Thematic evaluation of EU support for rule of law in neighbourhood countries and candidates and potential candidates of enlargement (2010-2017)”, Executive summary, Final report, 2019, p. 5.

²³ Transparency International EU, “The Western Balkans: Captured states or a community of law?”

²⁴ IPA II Monitoring, Reporting and Performance Framework, Specific contract 2014/351 964, Final report, 2016, p. 45.

Western Balkan countries, they have not taken sufficient mitigating action (see paragraphs 35 and 37).

Measures to address weak administrative capacity during project implementation are often ineffective

34 The objective of 18 projects in our sample was to increase the professionalism, accountability and efficiency of the targeted institutions, and capacity-building was a main component of the financed activities. For these activities to be effective, partner countries need to show adequate commitment, for example by providing adequate staffing, facilities, budgets and IT tools. The Commission identified these prerequisites and included them in the terms of reference of project calls, but the implementing partners did not propose specific action that would enable them to enforce compliance with the commitments taken.

35 The implementing partners included in the project proposals and contracts phrases such as “engage early with the administration”, “ensure transparency in project implementation”, “ensure open and participatory drafting”. However, as these cannot compel implementing partners to take specific action, we do not consider they are effective risk mitigation measures. We noted that some EU delegations have tried to intervene through policy and political dialogue to secure the necessary funding and/or staffing for EU-funded reforms. However, the fact that grant agreements do not contain detailed prerequisites has limited what they have been able to achieve.

IPA II depends on domestic political will to drive change and reform ownership

36 Political will and ownership play a major role in the success of any reforms. In principle, the Western Balkan countries have committed to reform by virtue of their status as candidates / potential candidates for EU membership. However, the EU has acknowledged²⁵ that this commitment is often lacking. For example, the 2020 communication on enhancing the accession process called on the Western Balkans leaders to deliver more credibly on their commitment to implement the fundamental reforms required, whether on rule of law or fighting corruption²⁶. The country reports that are part of the Commission’s annual enlargement package do not contain a section for the assessment of reform ownership and political will. Nonetheless, in all

²⁵ Commission Communication, “A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”, COM(2018) 65 final, p. 8 and “Questions and Answers: Economic and Investment Plan for the Western Balkans”.

²⁶ “Questions and Answers: Economic and Investment Plan for the Western Balkans”.

six reports the Commission has consistently linked lack of ownership with a lack of meaningful progress.

37 While IPA II can set the stage for institutional change, reforms can take place only with domestic political support. Our audit of the sampled projects shows that, where project components focus on technical assistance, enhancing capacity and institutional efficiency, political support was strong and these activities generally proceed according to plan. Where components target, for example, amendments to the legislative framework in order to strengthen independence and accountability (such as in the case of projects 14 and 15), then political commitment was often weaker. See [Box 1](#) for examples of how political will is affecting reforms in Serbia.

Box 1

Serbia: Important constitutional reforms are stalled despite the contribution of EU support to increased judicial efficiency

As early as 2014, the EU-Serbia Stabilisation and Association Agreement stressed the importance of constitutional changes in the justice sector. The 2016 IPA II action programme “Support to justice sector” was set up to support implementation of the chapter 23 action plan to achieve an independent, accountable and efficient judiciary, including by way of constitutional reform.

However, at both the 2018 and 2019 meetings of the EU-Serbia sub-committee on justice, freedom and security, the Commission noted a delay in adopting the constitutional amendments that were set as an interim benchmark in the chapter 23 action plan. The proposed constitutional reform was subsequently put on hold until after the parliamentary elections of June 2020.

In October 2020, the Ministry of Justice announced the fourth version of draft amendments to the Constitution. The Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, the Judges’ Association of Serbia, the Lawyers’ Committee for Human Rights, the Judicial Research Center and the Belgrade Center for Human Rights announced in a joint statement that “the proposed amendments strengthen political influence on the judiciary”. At the same time, the Council of Europe, through its Group of States against Corruption (GRECO), voiced its concern about “the rather acrimonious environment in which the consultation process has taken place”.

In December 2020, the newly appointed government resumed the discussion on constitutional reform. The text was adopted in the parliamentary committee in 21 September 2021 and received a favourable opinion from the Venice Commission in October 2021, including key recommendations. The recommendations need to be addressed before the amendments will be adopted in Parliament and put for a referendum.

During the same period, **project 12** (on judicial efficiency), which was funded in 2015 and implemented between 2016 and 2018, yielded impressive results. In the 2.5 years of the project, almost 1 million cases were cleared from the backlog and efficiency measures were extended to courts covering more than 82 % of the Serbian population. In its 2018 country report, the Commission recognised the efforts made by Serbia in this operational area.

Strong conditionality delivered results but was not systematically applied

38 Conditionality clauses are a major asset in applying reform pressure and can mitigate the risks of insufficient political will or administrative capacity. Conditionality means making contracts or assistance dependent on a prior undertaking to meet certain conditions. In the case of IPA II, the Commission has repeatedly referred to “strict conditionality” at project level in its successive enlargement strategies, without defining the term specifically.

39 The IPA II regulation provides for two types of conditionality to foster reforms. The first is the use of performance rewards, a mechanism of financial incentives for beneficiaries that make particular progress towards meeting the membership criteria and/or efficient implementation of pre-accession assistance. The second is the introduction of additional requirements for the gradual disbursement of aid. The Commission has applied such requirements in two of the six Western Balkan countries. In Kosovo, the IPA monitoring committee linked the achievement of reforms, in particular in the area of public administration reform and public financial management, to future EU financial assistance²⁷, and in Bosnia and Herzegovina the Commission set specific conditions to jump-start reforms that had stalled in the area of accountability and independence of the judiciary. The example in **Box 2** demonstrates how conditionality can be used to apply pressure for reform, but our audit work shows that the Commission does not systematically use it.

²⁷ Conclusions of the Kosovo IPA monitoring committee meetings of March 2018 and April 2019.

Box 2

Linking reform results to future financial assistance – the High Judicial and Prosecutorial Council in Bosnia and Herzegovina

In the past 15 years, the EU has provided more than €60 million to the judiciary with the aim of strengthening the rule of law in Bosnia and Herzegovina. About €18.8 million of this financial assistance has gone in direct grants to the High Judicial and Prosecutorial Council (HJPC). However, according to the Commission, the HJPC has shown insufficient ambition in pursuing reforms and ensuring that the EU-funded actions it carries out are sufficiently sustainable. In addition, the Commission reported in the 2020 enlargement report that the Bosnian authorities and judiciary had taken no action to address implementation of the key rule of law priorities, while the obstruction of judicial reforms, both by politicians and from within the judiciary, remained widespread.

On 19 January 2021, the Commission informed the HJPC that:

- (a) further support under the IPA II grant awarded in 2017 would be reassessed;
- (b) support under the 2019 grant would be split into two, with the second grant agreement dependent on satisfactory implementation of the first;
- (c) the HJPC must bear the cost of financing its judicial IT system, and the IT department must undergo ISO certification.

40 While the 2020 performance reward strengthened the link between progress on the ‘fundamentals’ and additional IPA II funding, there was no provision or condition linking the lack of progress or backsliding with reduced funding, in specific aid-intensive areas such as infrastructure or rural development. Additional requirements (see [Box 2](#) and paragraph [38](#)) are a more effective type of conditionality, in that they can trigger national corrections by invoking an immediate aid reduction. Nevertheless, the additional requirements mechanism is not applied systematically. IPA II – unlike the original IPA scheme – does not explicitly provide for the possibility of suspending assistance if a beneficiary country fails to observe the basic principles of democracy, the rule of law and respect for human rights.

41 In its position paper of 27 March 2019, the European Parliament advocated tougher conditionality rules, with a workable suspension clause, to penalise backsliding

in the areas of democracy, rule of law and respect for human rights.²⁸ The IPA III regulation²⁹ sets out to reinforce conditionality, but it is not clear how this will affect the provision of funding.

42 In its action plan annexed to the 2018 Communication, the Commission proposed to apply conditionality during accession negotiations “[...] by ensuring concrete results in judicial reform and in the fight against corruption and organised crime are achieved before technical talks on other chapters can be provisionally closed.” However, the Member States did not echo this option in the Sofia declaration (see paragraph 17).

43 Conditionality may also be used at the highest political level through an ‘overall balance clause’ that allows the Council to decide not to open or close any negotiating chapter if progress on chapters 23 and 24 is unsatisfactory. This clause was invoked at the opening of the 2012 Intergovernmental Conference (IGC) on the accession of Montenegro, and was repeated at the 2014 IGC on the accession of Serbia. The Commission referred to the clause in its 2014 progress report on Montenegro and the 2014-2015 enlargement strategy paper, which prompted the Montenegrin authorities to address the shortcoming identified.

44 The overall balance clause was explicitly covered in the Commission’s 2020 communication on enlargement, where, despite being very critical of Serbia, the Commission assessed that “[...] an overall balance is currently ensured [...]”. However, the Council concluded that “Serbia has not met the conditions for opening a new chapter in the accession negotiations [...] the country needs to make progress in the areas of democracy, independence of the judiciary, freedom of expression and the media”³⁰. Although the Council did not take a formal decision to use the overall balance clause, we consider that this statement led to the same conclusion. The decision triggered a reaction in Belgrade, with both the President and the new government engaging with the EU delegation and the Quint³¹ to advance the process.

²⁸ European Parliament legislative resolution of 27 March 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the Instrument for Pre-accession Assistance (IPA III).

²⁹ Regulation 2021/1529 establishing the Instrument for Pre-accession Assistance (IPAIII).

³⁰ 9.12.2020 statement by Michael Roth, German Minister for European Affairs (rotating Council presidency), [Article in Serbiamonitor](#).

³¹ The Quint is an informal decision-making group consisting of the United States, France, Germany, Italy and the United Kingdom.

During our audit, we found no guidance on when and how the overall balance clause should be applied.

45 Another instance of the Council setting additional conditions accompanied by a specific timeframe was in relation to the Albanian bid to open accession negotiations. In April 2018, the Commission issued a recommendation to open negotiations without stating additional conditions. However, in its June 2018 conclusions, the Council made negotiations conditional on action in five key areas, and instructed the Commission to monitor and report on progress. Although the Commission noted in May 2019 that significant progress had been made and again recommended opening negotiations, the Council twice deferred a decision on the matter. It finally decided in March 2020 to open talks, but more than one year later a common EU negotiation framework has yet to be agreed. The slow pace of accession negotiations, risks weakening the expected transformative power of conditionality.

EU action has contributed to reforms, but has had little overall impact on progress in the rule of law

46 In this section, we assess the contribution of EU action to rule of law reforms in the Western Balkans and the impact of those reforms on each country's overall progress in the rule of law. We examined whether EU action has contributed to those developments, and whether that contribution is likely to be sustained over time. To obtain more insight into the performance, sustainability and the Commission's monitoring of EU projects, we also assessed the outputs and outcomes of a sample of 19 projects³². For full details of the sample, see [Annex I](#).

³² We excluded one project (project 16) from the analysis for lack of relevance, as it was a construction project that was cancelled before any work was done.

Project's planned outputs have mostly been achieved, but outcomes are technical and operational

47 Of the 19 projects we assessed, 13³³ had been completed at the time of the audit³⁴, while the remaining six were still ongoing. In ten³⁵ of the 13 completed projects, outputs were fully or mostly achieved as intended. However, in seven cases this was done by means of a contract extension ranging from one³⁶ to 10³⁷ months. Of these ten projects, **projects 11 and 12** stood out for the quality of their reporting, with clear information on activities and results. Project 11 used a traffic-light system to monitor and show the achievement of output indicators for each activity. In three of the remaining completed projects³⁸, although final reports were not yet available, interim reporting showed progress towards the targets.

48 The most common output indicators for the projects we assessed were quantitative and related to the delivery of training courses and workshops, the provision of experts (to help draft legislation, action plans, strategies and methodological guidelines), the completion of studies and IT or non-IT pilots, and the provision of legal advice.

49 We also assessed the outcomes of the 13 completed projects in our sample³⁹. We concluded that five had achieved what was intended⁴⁰ (see **Box 3**) and three other projects were on track to achieving outcomes⁴¹. It was not possible to assess the remaining projects in this way, due to the lack of final reports at the time of the audit and poor reporting on achievements (see **Box 4**).

³³ These are projects 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 17, 18 and 20. We consider project 1 to have been completed, as the last variable tranche of the initial budget support amount has been paid. A four-year budget support extension was agreed in 2020.

³⁴ Cut-off date set at 31.1.2021.

³⁵ Projects 1, 2, 3, 4, 6, 8, 11, 12, 17 and 18.

³⁶ Project 11.

³⁷ Project 6.

³⁸ Projects 10, 11 and 20.

³⁹ Projects 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 17, 18 and 20.

⁴⁰ Projects 1, 4, 6, 12 and 17.

⁴¹ Projects 2, 18 and 20.

Box 3

Examples of successful technical and operational outcomes of EU projects in Bosnia, Serbia and Montenegro

In **Bosnia and Herzegovina**, *project 6*, concerning the construction and renovation of several court buildings, achieved its outcomes. Infrastructure improvements have had a favourable impact on the efficiency of the courts and the judiciary as a whole, since the creation of new office space has allowed the long-overdue appointment of additional judges and staff, which had previously been impossible for want of premises. This has contributed in turn to a steady reduction in the backlog of cases (for example, 20 % for a cantonal court so far).

Project 12 in **Serbia** has largely achieved its objective to improve the efficiency of courts through standardisation of working processes and procedures and introduction of new and improved methodologies. In particular, the backlog in all lower Serbian courts has shrunk by 940 649 cases. The project has reduced the backlog at 30 partner courts by almost 60 %, from 1 399 481 to 571 233. The project was extended to more courts because of its good results.

Project 18, a multi-country project implemented by the Council of Europe, achieved several of its short-term outcome objectives. For example, it contributed to improving the **Montenegrin** Supreme State Prosecutor's Office framework for implementing ethical rules and integrity plans for its prosecution of economic crimes, thereby allowing the institution to satisfy GRECO recommendation (ix).

Despite these positive developments in the area of efficiency, all these countries continue to face serious problems in relation to the independence of the judiciary (see paragraphs [60-61](#)).

Box 4

Poor performance reporting limits the assessment of outcomes

Project 3 entailed the provision of institutional support via a twinning arrangement between the Albanian government and EU Member States during the 2016-2019 period. The overall objective was to improve governance by reducing corruption risks, and to support implementation of the country's inter-sectoral strategy against corruption.

The Commission's 2017 results-oriented monitoring (ROM) report concluded that: "[...] relevant outcome indicators are not fully in place to track and assess the changing level of capability in the functioning of the institutions concerned.

Appropriate quantitative and qualitative targets are missing for the outcomes and for some of the output indicators.” It recommended that the Albanian twinning team improve the project’s logframe and introduce relevant outcome indicators with measurable targets.

The twinning team did not take up these two proposals to improve the logframe, and the reporting remained largely descriptive, as confirmed by the 2019 ROM report: “The recommendation made by the previous ROM from 2017 on the need for introduction of relevant outcome indicators have not been taken into consideration.”

As a result, although most activities took place as scheduled, we were not able to assess their effect on the achievement of the project’s objectives.

50 When the political will exists EU support can have meaningful impact. **Box 5** provides the example of two IPA II funded projects, where political will helped leverage the impact of EU support.

Box 5

The reform momentum in Albania has boosted the impact of EU support

The 2016 amendment of the Albanian Constitution led to an overhaul of the legal and policy framework on the functioning of the judiciary. The reform was supported by several IPA II projects:

- **Project 2** supported and monitored the compulsory re-evaluation (vetting) process of more than 800 judges, from the establishment of vetting institutions to completion of the whole re- evaluation exercise.
- **Project 4** helped advance the justice reform by providing expert assistance to the drafting of new legislation (e.g. by-laws and procedural ethical codes) in close cooperation with the Ministry of Justice and the Parliament and in line with the recommendations made by the Council of Europe’s Venice and GRECO commissions.

51 We found that freedom of expression was the least covered area funded through IPA II in the area of rule of law. However, we found that when support was provided, it had proven beneficial. **Project 19** is a successful example. The project is progressing as planned and is likely to achieve its intended outcomes, owing to the growing number of supported CSOs, activists, journalists, media outlets and other media actors that are

continuing to operate through European Endowment for Democracy⁴² support. All the grant recipients report that they have been enabled to strengthen their civil society and media work (or maintain their work in repressive environments).

Project monitoring sometimes failed to measure outcomes, and few projects are likely to be sustainable

52 The Commission regularly monitored all the projects in our sample, but the performance assessment was not always complete because reporting generally focused on activities rather than results. The reports we examined always described what had been done, linking activities to the project objectives, but not always what had been achieved at project completion, especially in the form of outcomes.

53 Incomplete reporting is often the result of shortcomings in a project's design, and in particular its logical framework. Usually, when the logframe has been well defined at the preparation stage, with both output and outcome indicators including baseline and target values, reporting is clearer and it is possible to monitor progress at least at the level of outputs. Nine projects in our sample⁴³ had a well-defined logframe. In nine⁴⁴, the logframe was deficient either because of missing indicators or missing baselines and targets. Four projects⁴⁵ were subsequently revised, improving the logframe. For the two construction projects⁴⁶ the nature of the contract made a logframe unnecessary.

54 Of the nine projects that achieved all or most of their outputs (see paragraph 47), five had been subject to independent results-oriented monitoring (ROM)⁴⁷, which both highlighted the project results and helped improve implementation and reporting. ROM reports drawn up at an early stage provided useful input for projects that were

⁴² [European Endowment for Democracy](#) is an independent, grant-making organisation, established in 2013 by the EU and Member States as an autonomous international trust fund to foster democracy in the European Neighbourhood, the Western Balkans, Turkey and beyond.

⁴³ Projects 2, 7, 10, 11, 12, 15, 18, 19, 20.

⁴⁴ Projects 1, 3, 4, 5, 8, 9, 13, 14, 17.

⁴⁵ Projects 1, 5, 9, 14.

⁴⁶ Projects 6 and 16.

⁴⁷ Projects 3, 4, 12, 18, 19.

not on track to achieve their objectives or when it was difficult to assess project progress. In one case⁴⁸, failure to take up a ROM recommendation resulted in poor reporting.

55 The ROM reports on nine projects in our sample⁴⁹ had identified issues of project sustainability. The 2019 external evaluation on the rule of law also confirmed that, in many contexts, sustainability is difficult to achieve⁵⁰. Only three projects were taken up by the national authorities, giving them some guarantee of financial sustainability⁵¹. Otherwise, financial sustainability was mostly dependent on the continuation of EU support⁵². Together with weak project ownership (see also **Box 6**), the two most obvious obstacles to sustainability are poor financial and institutional capacity. This was also recognised by the IPA II monitoring committee at its meeting in 2019: “The sustainability of the results of EU-funded actions is often at risk, notably due to poor maintenance and lack of financial resources”⁵³.

Box 6

Lack of project ownership endangers sustainability

- In the case of **project 7 (Bosnia)**, the conclusions of the 2020 evaluation of IPA II and other donors’ assistance to the High Judicial and Prosecutorial Council were critical about the beneficiary’s capacity to take over the project: “[...] the HJPC still heavily relies on donor support after more than fifteen years of assistance, while plans for integration of the current project staff in the Council’s permanent organizational structure have not resulted into concrete and substantive change. At the same time, HJPC’s periodical and unjustified requests to donors for additional funds to invest on IT system development, cast doubts on the overall strategic planning capacity of this

⁴⁸ Project 3.

⁴⁹ Projects 3, 4, 5, 9, 10, 12, 14, 18, 19.

⁵⁰ Thematic evaluation of EU support for rule of law in neighbourhood countries and candidates and potential candidates of enlargement (2010-2017), Executive summary, Final report, 2019.

⁵¹ Projects 6, 12 and 17.

⁵² Projects 1, 2, 4, 10, 18.

⁵³ IPA II monitoring committee, minutes 2019, p. 2.

institution and on its commitment towards substantive reform goals and fuller EU integration.”⁵⁴

The lack of ownership was seriously undermining the sustainability prospects of the project with the HJPC. Aware of this, the Commission requested the HJPC to set up a realistic staff transfer plan to provide IPA project staff some certainty about their future at the institution.

- The external evaluation for **project 9 (Kosovo)** referred to capacity problems and reluctance to ensure the continuity of what was achieved during the project’s implementation. One example concerns delays in the establishment of a ‘confiscation fund’ into which the amounts received from the confiscation of criminal assets will be paid and then redistributed to the criminal justice institutions. The project has provided the government of Kosovo with a model and a legal framework for the fund.
- In **Montenegro, project 10** strengthened the capacities of the judiciary and law enforcement bodies and provided expertise and support for a revision of the legislation governing new independent judicial bodies. However, at the end of the project several concerns remained as to the sustainability and proper functioning of the new institutions. The final report mentioned that both the High Judicial Council and the Prosecutorial Council were struggling to adapt to their new role and to exercise their prerogatives independently from the Supreme Court and Supreme Prosecution Office. The judiciary was reluctant to renew high management positions at the Judicial Council as long as there were no guarantees of the institutions’ financial independence.

56 Reporting on the lessons learnt at project closure can help identify obstacles to the sustainability of results. Annual action programmes contain a paragraph on lessons learnt, which are often linked to previous assistance; and the projects in our sample also included a section describing how they were based on previous IPA projects. However, this preliminary paragraph lacks an analysis of what has or has not worked, with suitable recommendations. In only five⁵⁵ of the 13 completed projects we audited did we find detailed reporting on lessons learnt. For example, the implementing partner for **project 12** highlighted the authorities’ limitations when confronted by the volume and speed of legislative and regulatory changes, and emphasised that future action will need to be accompanied by the resources and training that are necessary to

⁵⁴ 2020 Evaluation of IPA and other donors' assistance (grants) to HJPC – Executive summary, p. 13.

⁵⁵ Projects 1, 3, 9, 12, 18.

implement reforms. There are also plans to include lessons learnt in the final report on one ongoing project⁵⁶.

Despite many years of EU support to reforms in the Western Balkans, fundamental problems persist

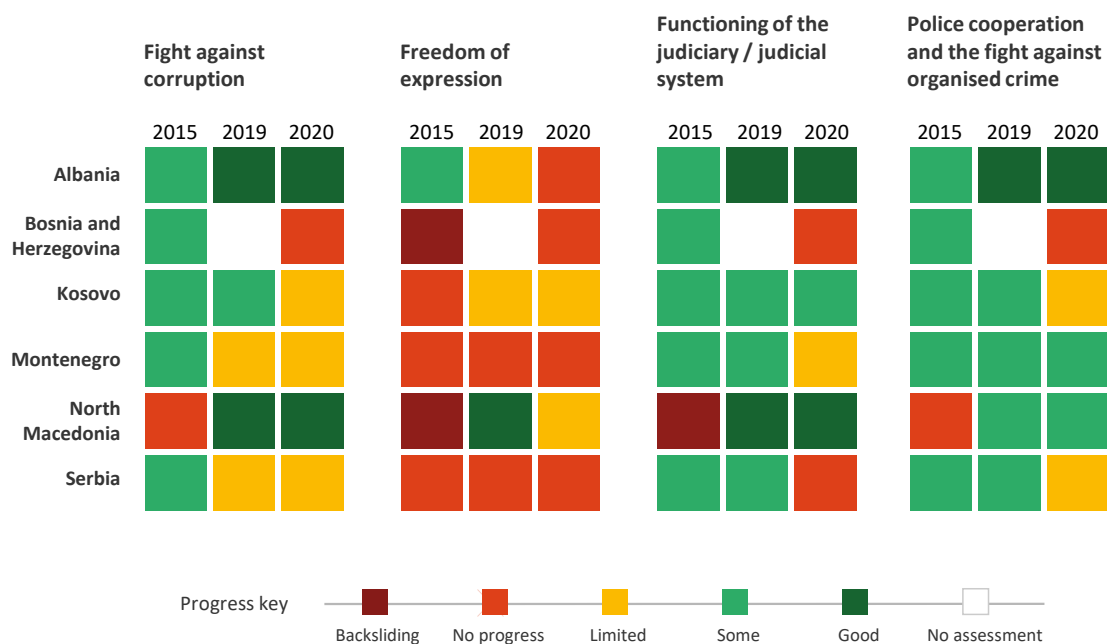
57 After more than 20 years of political and financial efforts in the Western Balkans, both the Commission and other international organisations report limited progress in the rule of law situation in the region (see [Figure 7](#) to [Figure 10](#)). The reforms described above have clearly not been enough to effect wholesale change in the rule of law, mainly because of the lack of domestic ownership and political will (see paragraph [37](#)).

58 The 2019 evaluation of EU support for the rule of law⁵⁷ acknowledged that EU support had encouraged positive developments (such as the development of sector strategies and action plans, institutional capacity-building, and greater independence, accountability and access to justice). It also highlighted that progress was nevertheless limited and sustainability difficult to achieve. According to the evaluation, “this is correlated to low levels of political will, institutional resistance to change, and inadequate participation or marginalisation of civil society”.

⁵⁶ Project 5.

⁵⁷ Thematic evaluation of EU support for rule of law in neighbourhood countries and candidates and potential candidates of enlargement (2010-2017), Final report, 2019.

Figure 7 – Commission’s assessment of rule of law components



Note: In 2019 the Commission did not produce a report on Bosnia and Herzegovina, but adopted an opinion of its application for EU membership.

Source: ECA, based on 2015, 2019 and 2020 country reports.

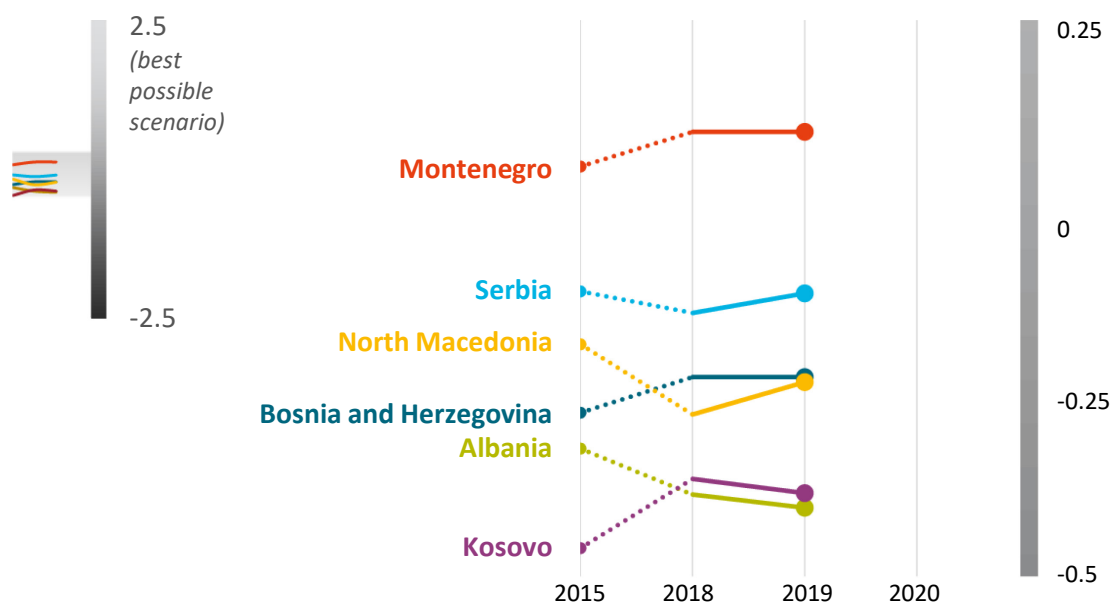
59 The following paragraphs present the main persistent rule of law problems in the Western Balkans and illustrate how little progress has been achieved by key reforms.

Functioning of the judiciary

Figure 8 – Selected rule of law indicators

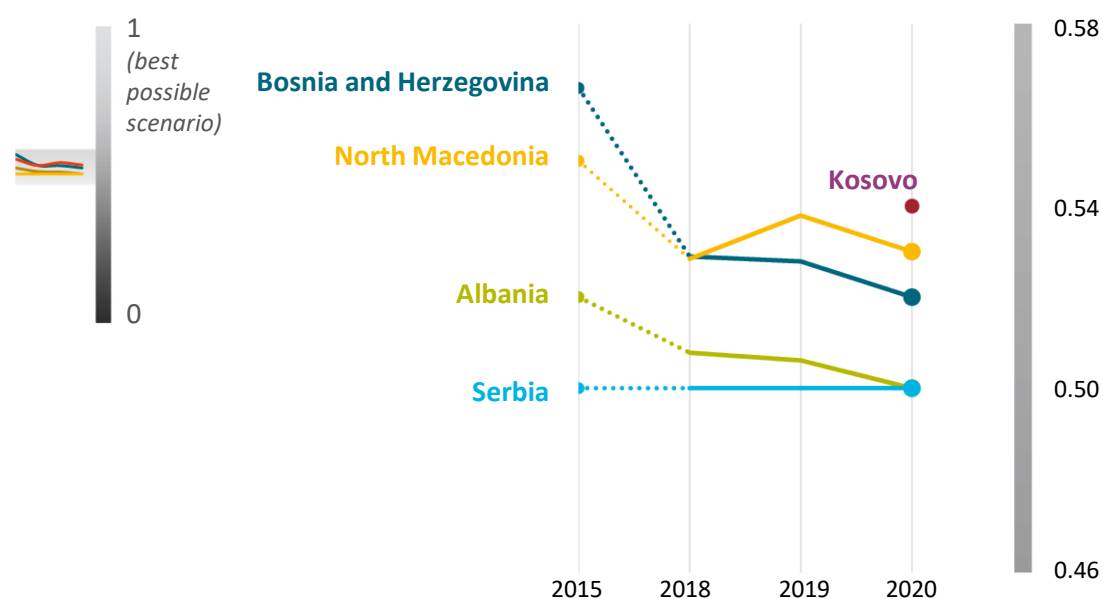
Worldwide Governance Indicators

Rule of law



World Justice Project

Rule of law index



Source: ECA, based on Worldwide Governance Indicators (World Bank Group) and World Justice Project.

60 The implementation of new legislation aimed at strengthening the independence, professionalism and accountability of judicial and prosecutorial bodies and structures, in the cause of the fight against corruption and organised crime, faces delays –mainly due to a lack of political commitment. In the region (notably in Albania, Montenegro and Serbia), government officials (some of them high-ranking) and members of parliament still comment publicly and regularly on ongoing investigations and court proceedings, and sometimes even on individual judges and prosecutors. In Serbia articles in tabloid newspapers target and seek to discredit members of the judiciary⁵⁸ and in Albania the Council of Europe criticized the practice of online media to spread rumours and attacks on public figures⁵⁹.

61 In Serbia, judges have asked to be excused from adjudicating on cases involving local politicians, citing pressure on themselves and their families⁶⁰. In Montenegro, the recent reform of the Prosecutorial Council, recent Judicial Council decisions on the reappointment of seven court presidents for a third consecutive mandate, despite limitations to two terms set in legislation⁶¹, and the inability of the Parliament to reach a qualified majority for high-profile judicial appointments, indicate that the judiciary and prosecution services continue to be vulnerable to political interference. In Albania, attempted interference with the judiciary, including by authorities within the judiciary, and internal and external pressure on prosecutors remain an issue⁶².

⁵⁸ European Commission, [Serbia 2020 report](#), p.20.

⁵⁹ Venice Commission, [announcement of the opinion on the Law on Audio-visual Media Services, June 2020](#).

⁶⁰ European Commission, [Serbia 2020 report](#), p. 20.

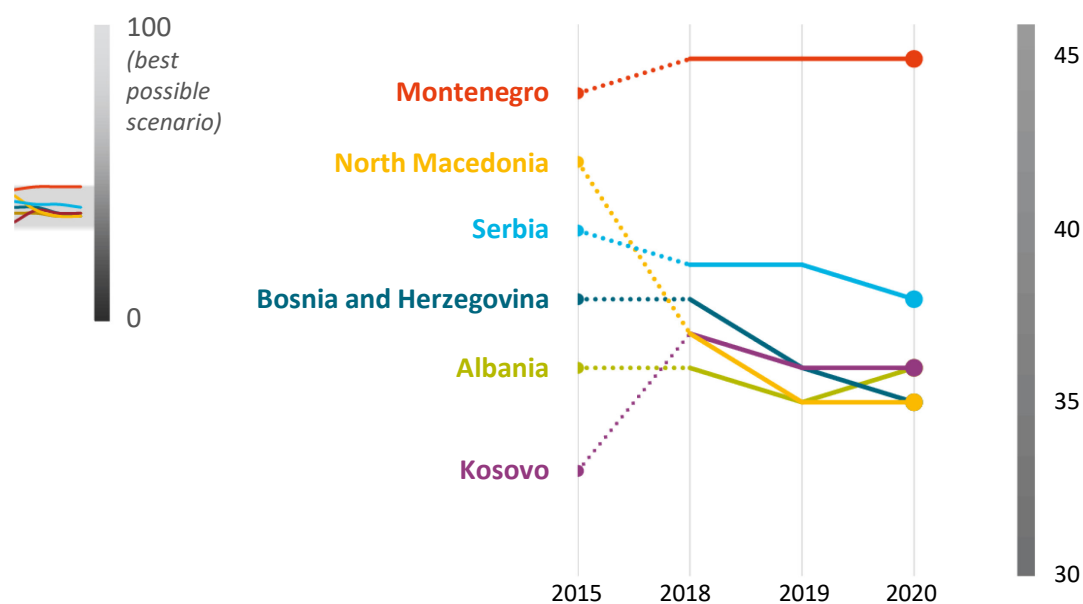
⁶¹ Freedom House, [Nations in Transit](#), Montenegro, 2020.

⁶² European Commission, [Albania 2020 report](#), p. 20.

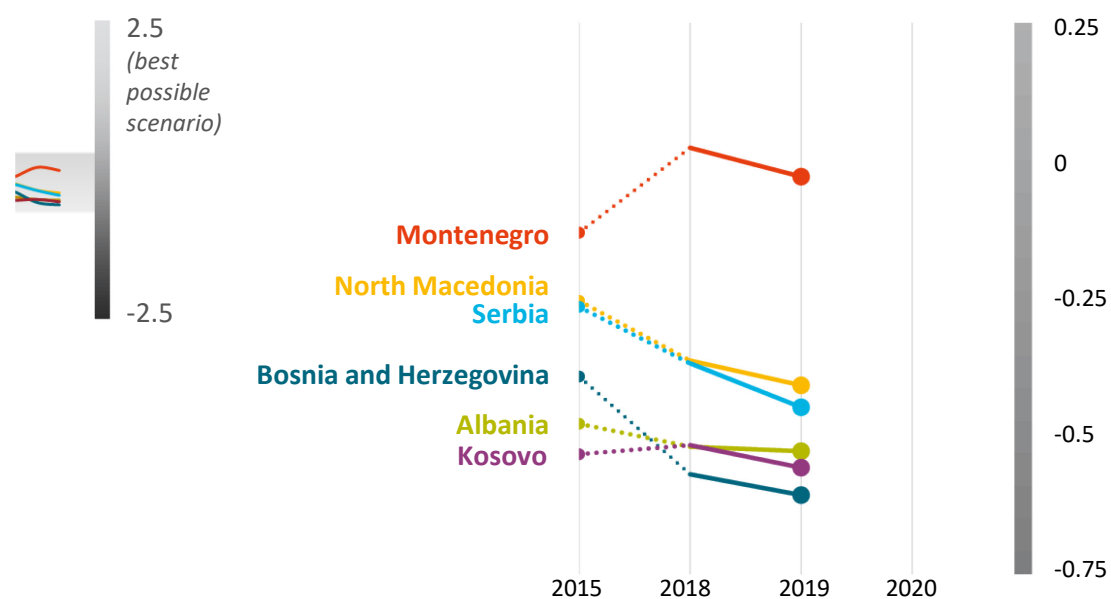
Fight against corruption

Figure 9 – Selected corruption indicators

Transparency International Corruption Perception Index



Worldwide Governance Indicators Control of corruption



Source: ECA, based on Transparency International and Worldwide Governance Indicators (World Bank Group).

62 The Commission reports that the situation in sectors that are particularly vulnerable to corruption (those involving substantial public expenditure or entailing direct contact with the public) remains largely problematic throughout the region. A recent Serbian law on special procedures for infrastructure projects, which allows in particular for projects of ‘strategic importance’ to be exempted from public procurement rules, has raised serious concerns about the potential for corruption⁶³. Transparency Serbia condemned the practice of appointing ‘acting directors’ to manage public property for a period of six months as enabling the governing party “to keep those persons on a tight leash”⁶⁴.

63 In its latest reports on Montenegro’s progress⁶⁵ towards membership, the Commission noted only “limited progress” in the fight against corruption, which it said was “prevalent in many areas and remains an issue of concern”. Among others, the reports mention the release in 2019 by a businessman of secret video recordings – and, later, secret audio recordings and documents – implicating numerous public figures from key state institutions in alleged illegal party financing and bribery scandals.

64 In Albania, the Public Procurement Agency reports that the number of negotiated procedures without prior publication has fallen significantly in recent years. However, interviewed business representatives and journalists (see *Annex II* for the list of meetings) said that corruption in public procurement is pervasive, with clear indications of state capture: procedures often lack effective competition, the prices bid for public works are inflated, and procurement for concessionary agreements lacks transparency.

65 The Transparency International and World Bank corruption indicators (see *Figure 9*) confirm that, despite years of EU reform action, state capture and widespread corruption have not been contained. We consider that in order to have a meaningful impact, the EU needs coordinated and simultaneous action in a wide range of policy areas connected to the rule of law.⁶⁶ The 2020 clustering of negotiation chapters (parallel assessment of chapters 23 - Judiciary and fundamental rights, 24 -

⁶³ European Commission, *Serbia 2020 report*, p. 29.

⁶⁴ [Comment by the President of Transparency Serbia after the release of the 2020 report.](#)

⁶⁵ Montenegro reports for 2019 and 2020.

⁶⁶ See for example Marko Kmezić and Florian Bieber, “[Protecting the rule of law in EU Member States and Candidate Countries](#)”, in particular chapter 4 “Ways forward”.

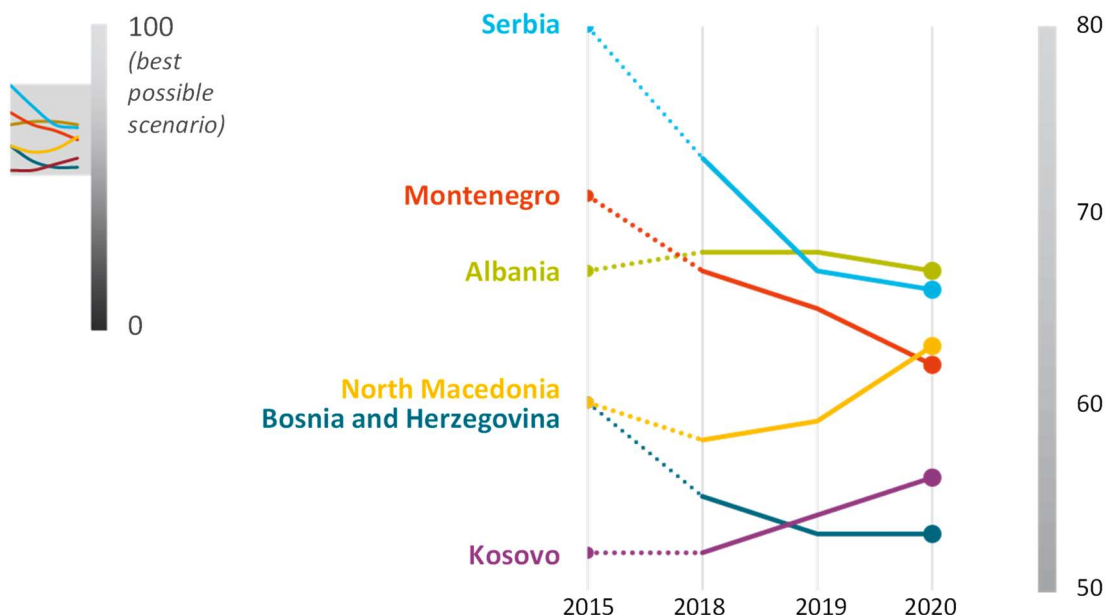
Justice, freedom and security, 5 - Public procurement, 18 – Statistics, and 32 - Financial control plus economic criteria, functioning of democratic institutions and public administration reform) should allow such an approach⁶⁷ and is, therefore, a step in the right direction. However, this change only applies to Montenegro and Serbia, the two countries currently negotiating, and has yet to be put into practice.

Freedom of expression

Figure 10 – Selected freedom of expression indicators

Freedom House

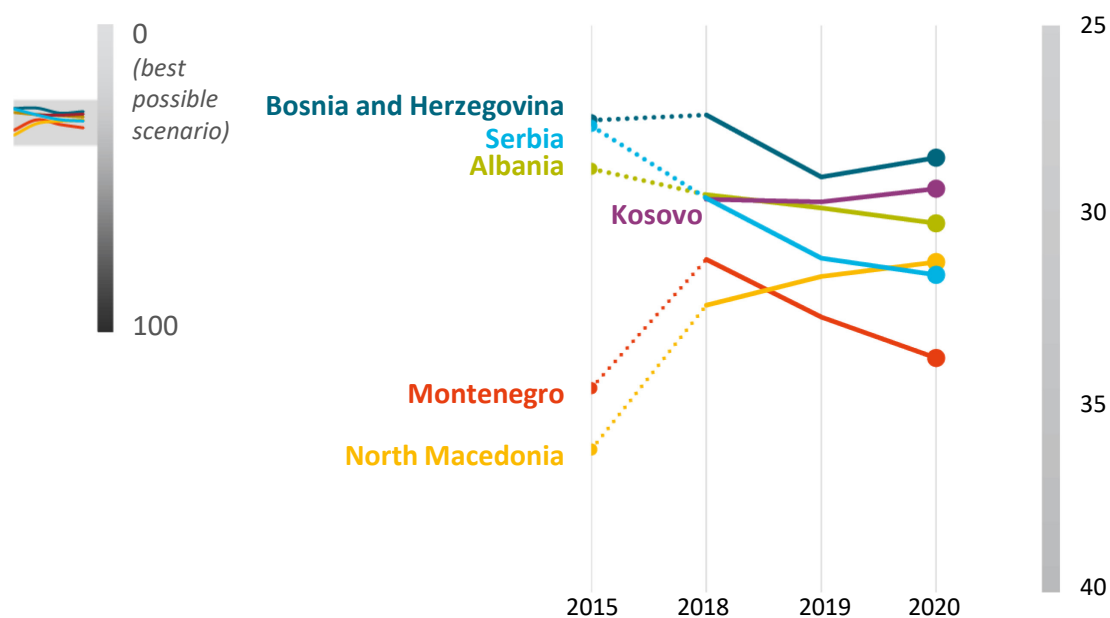
*Freedom in the world index**



* This index has several components, but we consider all have freedom of expression connotations.

⁶⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, “[Enhancing the accession process - A credible EU perspective for the Western Balkans](#)”, COM(2020) 57 final, Technical Annex.

Reporters Without Borders World Press Freedom Index



Source: ECA, based on Freedom House and Reporters Without Borders World Press Freedom Index.

66 According to both Freedom House and Reporters without borders, there have been no improvements in the area of freedom of expression, with the exception of North Macedonia and Kosovo. The Commission’s latest annual reports on enlargement show that Bosnia and Herzegovina, Montenegro and Serbia have made no progress since 2015 (see [Figure 7](#)).

67 Attacks on journalists are a serious concern across the region⁶⁸. Journalists and media outlets continue to be targeted through intimidation, threats on social media and physical attacks, while investigations and prosecutions have been slow. The media scene continues to be highly polarised, and self-regulatory mechanisms remain weak. The growing volume of region-wide disinformation, often spread by state-backed media⁶⁹, further polarises society during electoral campaigns in particular.

68 Even in Albania, which has made the most progress in the area of independence of the judiciary, the disruption caused to the system by the scale and slow pace of vetting has affected public support for judicial reforms because of an increasing backlog of cases, and risks undermining their perceived legitimacy. The share of

⁶⁸ Human Rights Watch, “Attacks on journalists still a problem in the Western Balkans”.

⁶⁹ Euractiv, “In Serbia, fake news is spread by state-backed media”, 4.5.2021.

Albanians who believe that the reforms will have a positive impact shrank from 71 % in 2016 to 53 % in 2019, and those who think the reforms are being implemented appropriately fell from 46 % to 32 % during the same period⁷⁰. The Albanian public mainly gets its information from traditional media sources⁷¹, which are perceived as having vested interests and thus can either downplay or accentuate corruption scandals depending on their political or business allegiances. This, too, risks undermining the perceived legitimacy of the reforms.

69 The CSOs we interviewed drew attention to the need for strategic communication to spell out the positive effects of the reforms and explain that, while disruption will be temporary, the restructuring of institutions will bring lasting benefits. Effectively communicating EU goals to the public requires continued cooperation and coordination between the governments and civil society.

70 The EU has supported the development of a framework of formal government-civil society cooperation that is currently in place in all Western Balkan countries. However, the civil society currently does not play a sufficiently large role in policy and decision-making. With the exception of North Macedonia and to a certain extent Montenegro, where the EU delegation reports recent improvements to the environment in which civil society operates, the region's CSOs remain muted. Those we interviewed in Albania and Serbia confirmed that consultation is ad hoc and that civil society recommendations are often ignored in the final versions of documents. They would like to strengthen their collaboration with the EU delegations, the independent media community and investigative journalists in order to, among other things, monitor the reform implementation and its effect on the evolution of corruption; and alert the public opinion and the region's governments.

⁷⁰ IDM, "Opinion poll 2019: Trust in Governance".

⁷¹ Idem.

Conclusions and recommendations

71 The main conclusion of this audit of the effectiveness of EU support for the rule of law in the Western Balkans is that, EU action has contributed to reforms in technical areas, such as the efficiency of the judiciary and the development of relevant legislation, but in a context of insufficient political will, it has had a limited overall impact in advancing fundamental rule of law reforms in the region.

72 Notwithstanding some positive recent developments, mainly in Albania and North Macedonia, the Commission and other international organisations report limited progress in the rule of law. Fundamental problems remain in areas such as the independence of the judiciary, the concentration of power, political interference and corruption, which call for additional efforts in promoting reforms in these areas (see paragraphs [57-58](#) and [68](#)).

Recommendation 1 – Strengthen the mechanism for promoting rule of law reforms in the enlargement process

The Commission should strengthen its approach to encouraging and supporting fundamental reforms in the enlargement process. In particular, it should concentrate on setting strategic targets for each enlargement country by establishing final impact indicators in fundamental areas of the rule of law, such as independence of the judiciary, freedom of expression, the fight against corruption and state capture together with milestones for monitoring progress towards them.

Timeframe: December 2022

73 We found that, through the ‘fundamentals first’ approach and, since 2020, the clustering of negotiation chapters, the Commission has increased its focus on the rule of law in the Western Balkans and has generally translated the EU’s political priorities for the rule of law into specific action under the instrument for pre-accession (IPA) (see paragraphs [25-27](#)).

74 Other international organisations, think tanks and civil society organisations (CSO) have identified the same focus areas as the Commission for rule of law. We found, however, that EU support for civil society action on the rule of law is insufficient in meeting the needs of the sector and its impact is not thoroughly monitored. For example, the Commission has dropped the IPA II indicator for monitoring civil society

participation in the reform process and therefore does not report progress in this area (see paragraphs [28-31](#)).

75 An enabling media and civil society environment can help publicise and clarify the goals and results of EU actions, explain the path to EU membership and promote the EU's democratic principles. We found that freedom of expression is the area that has progressed the least in all six countries. In some countries, public support for the reforms necessary for accession is declining (see paragraphs [68-70](#)).

Recommendation 2 – Intensify support for civil society engaged in rule of law reforms and media independence

The Commission and the European External Action Service should intensify their support for independent civil society organisations and independent journalists. In particular, they should:

- (a) prioritise support for an independent media and for CSOs active in the area of rule of law by earmarking IPA III funding for CSOs under rule of law actions;
- (b) provide for long-term financial support for CSOs and independent media organisations, in a way that is not exclusively based on project funding;
- (c) assist civil society and independent media organisations to enable them to develop tailor-made tools to monitor how corruption evolves;
- (d) monitor the contribution of CSOs to rule of law reforms by means of specific indicators.

Timeframe: December 2022

76 Although the Commission has recognised that administrative capacity and political will are the key risk areas in the implementation of IPA projects, we found no specific actions to mitigate those risks. In particular, key risks are not used to generate preconditions for project funding or implementation, so they do not serve for the design of concrete mitigation measures. EU delegations have also rarely exploited the possibility of suspending IPA financial support if reforms are not progressing satisfactorily. IPA II lacks suitably strict conditionality clauses that would directly link stalled rule of law reforms to consequences in the funding of other sectors. The Commission's legislative proposal for the IPA III regulation reinforces conditionality. Yet the draft did not set out clearly how conditionality will affect the provision of funding (see paragraphs [34-35](#) and [38-41](#)).

77 We also found that, whenever the Council has applied political conditionality in the form of the overall balance clause, this has induced the partner countries to advance their reform agendas. Differences have arisen between the Commission and the Council on the extent to which a partner country has satisfied the clause. In our view, this situation threatens the incentive effects of conditionality (see paragraphs [41-45](#)).

Recommendation 3 – Reinforce the use of conditionality in IPA III

The Commission should link the disbursement of IPA III funding in non-rule of law areas (for example, rural development and infrastructure) to progress on the rule of law.

Timeframe: December 2022

78 The rule of law covers several interconnected cross-cutting areas. The 2020 enlargement methodology is a step in the right direction, because it entails the clustering of negotiation chapters, thereby enabling the Commission to tackle all areas related to the rule of law simultaneously during accession negotiations. However, the new methodology is too recent to have produced visible results, and it applies to negotiating countries only. The cross-cutting nature of rule of law means that EU actions funded in other IPA sectors may be negatively affected by generalised rule of law deficiencies (see paragraph [65](#)).

79 Most completed projects have achieved their intended outputs, and around half have achieved their intended outcomes. In the case of ongoing projects, either it is too early to make an assessment owing to project extensions, or progress cannot be measured because performance information is missing or of insufficient quality. When carried out, results oriented monitoring has helped to highlight projects results and improving their implementation. Overall, we found that IPA assistance has helped improve the efficiency of the judiciary and was key to implementing the legislative framework and promoting a proactive approach in the fight against corruption (see paragraphs [47-51](#)).

80 The main obstacles to project sustainability are poor financial and institutional capacity and lack of political will. Few IPA projects are taken up by national authorities, and they may thus not be financially sustainable after the end of EU support. Furthermore, the modest progress made in the rule of law over the last 20 years

threatens the overall sustainability of EU support, since it raises questions about the credibility of the accession process. Reporting on lessons learnt can help identify performance issues and obstacles to the sustainability of results, but is not commonly a part of project design (see paragraphs 52-56).

Recommendation 4 – Strengthen project reporting and monitoring

The Commission should:

- (a) construct sound log-frames for all relevant IPA-funded projects including , among other things, clearly defined output and outcome indicators using baseline and target values;
- (b) increase the use of results oriented monitoring missions of IPA III funded projects in the rule of law sector;
- (c) include a ‘lessons learnt’ section in all final project reporting, with findings and recommendations to improve the sustainability of future project results.

Timeframe: December 2022

This Report was adopted by Chamber III, headed by Mrs Bettina Jakobsen, Member of the Court of Auditors, in Luxembourg on 9 November 2021.

For the Court of Auditors

Klaus-Heiner Lehne
President

Annexes

Annex I – Audited projects – Outputs and outcomes

Ongoing project/no final report
No measurable indicators

N/A

Ontrack as at 1/2021
No Yes

No	Country	Project title	Outputs fulfilled	Outcomes fulfilled
1	Albania	Sector reform contract for the fight against corruption in Albania		
2	Albania	International Monitoring Operation. Support to the process of temporary re-evaluation of Judges and Prosecutors in Albania		
3	Albania	Support to the formulation, coordination and implementation of anti-corruption policies		
4	Albania	EURALIUS IV - Consolidation of the Justice System in Albania		
5	Bosnia and Herzegovina	EU4Justice - Support to the Fight against Organised Crime and Corruption in Bosnia and Herzegovina		
6	Bosnia and Herzegovina	Construction. reconstruction of Municipal, Cantonal Court and Prosecutors Office in Tuzla		
7	Bosnia and Herzegovina	Building an Effective and Citizen-friendly Judiciary		
8	Kosovo	Strengthening Efficiency, Accountability and Transparency of the Judicial and Prosecutorial System in Kosovo		
9	Kosovo	Further support to Kosovo Institutions in their fight against organized crime, corruption and CVE		
10	Montenegro	EU Support to the Rule of Law II (EUROL II)		
11	North Macedonia	Support to Justice Sector Reform		
12	Serbia	Judicial Efficiency		
13	Serbia	Prevention and fight against corruption		
14	Serbia	Strengthening Capacities of the Ministry of Justice in line with the Requirements of the EU Accession Negotiation Process		
15	Serbia	EU for Serbia - Support to the High Judicial Council		
16	Serbia	Reconstruction of Judicial Academy Building in Belgrade		
17	Serbia	Strengthening Capacities of Internal Control in the Fight against Corruption within the Ministry of Interior		
18	Multi-country	European Union, Council of Europe Horizontal Facility for the Western Balkans and Turkey		
19	Multi-country	Support to independent media and civil society in the Western Balkans and Turkey		
20	Multi-country	Countering Serious Crime in the Western Balkans		

Source: ECA.

Annex II – List of interviewed stakeholders (via video-conference)

Video conference
DG NEAR
EEAS
ALBANIA
EU delegation: Policy Dialogue and Political Perspectives
EU delegation: sampled projects
United States Agency for International Development (USAID)
US Overseas Prosecutorial Development, Assistance and Training Program (OPDAT)
Council of Europe
Union of Chambers of commerce
Balkan Investigative Reporting network (BIRN)
Institute of Democracy and Mediation (IDM)
The Albanian National Training and Technical Assistance Resource Center (ANTTARC)
Partners Albania
Agency of support of Civil Society (AMSHC)
School of Magistrates
Ministry of Justice
High Judicial Council
German Chambers of Commerce
Italian Chambers of Commerce
Anti-corruption task force
Special Prosecution Office
High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest (HIDAACI)

Video conference
BOSNIA and HERZEGOVINA
EU delegation: sampled projects
SERBIA
EU delegation: Policy Dialogue and Political Perspectives
EU delegation: sampled projects
Ministry of European Integration/National IPA Coordinator
Prime Minister's Media Advisor
Council of Europe
Serbian Chambers of Commerce
German Chambers of Commerce
Balkan Investigative Reporting Network (BIRN)
Center for Research, Transparency and Accountability (CRTA)
National Convention on the European Union (NKEU)
Ministry of Justice – Sector for European Integration and International Projects
Agency for Prevention of Corruption
Ministry of Justice – Assistant Minister for Judiciary
United States Agency for International Development (USAID)
Republic Public Prosecution Office
High Judicial Council Secretariat
Judicial Academy
Former Office for Cooperation with Civil Society
Prosecutor for Anti-corruption
Ministry of Interior – Internal Audit Service, Anti-corruption Department

Glossary and abbreviations

CSO: Civil society organisation

EEAS: European External Action Service

GRECO: Group of States against Corruption, the Council of Europe body that monitors Member States' compliance with the organisation's anti-corruption standards

HJPC: High Judicial and Prosecutorial Council (Bosnia and Herzegovina)

IPA: Instrument for Pre-accession Assistance, the EU's tool for building technical and administrative capacity in candidate and potential candidate countries

Logframe: Logical framework – a detailed planning tool covering the implementation, management, monitoring and evaluation of a project

Outcome: An immediate or longer-term, intended or unintended, change brought about by a project, such as the benefits resulting from a better-trained workforce

Output: Something produced or achieved by a project, such as delivery of a training course or construction of a road

ROM: Results-oriented monitoring, the review by independent experts of the outputs and outcomes of ongoing projects against criteria such as relevance, efficiency, effectiveness, impact and sustainability

SAA: Stabilisation and association agreement – an agreement which the EU concludes separately with each of the Western Balkan countries as part of the stabilisation and association process

Stabilisation and association process: The EU's policy on the Western Balkan countries, aimed at bringing about reforms with a view to their becoming Member States in the future

Replies of the Commission and the EEAS

<https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=60343>

Timeline

<https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=60343>

Audit team

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This performance audit was carried out by Audit Chamber III External action, security and justice, headed by ECA Member Bettina Jakobsen. The audit was led by ECA Member Juhan Parts, supported by Ken Marti Vaher, Head of Private Office and Margus Kurm, Private Office Attaché; Alejandro Ballester Gallardo, Principal Manager; Theodoros Orfanos, Head of Task; Naiara Zabala Eguiraun and Flavia Di Marco, Auditors. Thomas Everett provided linguistic support.

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Rule of law is one of the common values of EU Member States and enshrined in Article 2 of the Treaty of the European Union. It is also an essential and necessary condition for EU membership. We audited whether EU support for the rule of law in the six Western Balkan countries aspiring for EU accession has been effective. We found that, while EU action has contributed to reforms in technical and operational areas, such as improving the efficiency of the judiciary and the development of relevant legislation, it has had little overall impact on fundamental rule of law reforms in the region. We recommend that the Commission strengthens the mechanism for promoting rule of law reforms; intensifies support to civil society organisations and independent media; reinforces the use of conditionality; and strengthens project reporting and monitoring.

ECA special report pursuant to Article 287(4), second subparagraph, TFEU.



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