

Coping with EU decision-making: How are the Balkan countries preparing their policymaking systems for membership?

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BACKGROUND – SOUND POLICYMAKING MATTERS

Under the public administration reform (PAR) pillar of the European Union's conditionality for the Balkans,¹ the EU puts a strong emphasis on the improvement of the aspirants' policy development and coordination practices. Yet the governments of the region are not pulling their weight. Recent external monitoring efforts reveal very poor results in this reform area across the Balkans, with few positive country examples. To help improve the situation, the European Commission should 'mainstream' its requests for quality policymaking across the sectoral policies in which it monitors and supports the work of the region's governments.

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High-quality standards in the development and coordination of public policy are always relevant in a domestic context but even more so in the framework of EU accession. Voters judge the responsiveness and responsibility of their government by the quality of their policies. Membership in the EU then embeds

governments' performance in a complex and multi-level decision-making system, in which national leaders need to be able to identify and argue their policy positions and priorities. Moreover, they need to effectively communicate and implement EU laws back home. Since the EU policy cycle is dependent on the performance of national decision-making systems and practices, it is critical to ensure that new entrants have a robust capacity to deliver quality policymaking.

The requirement that the EU imposes on Balkan aspirants to reform how they develop and coordinate their policies is precisely meant to help them prepare for a supranational arena of policymaking. *Inter alia*, the EU asks the Balkan countries to formulate evidence-based policies, involve the public and civil society in policymaking processes, and ensure transparency in the government's decision-making and reporting. These and other related requirements are laid out in the Principles of Public Administration, developed specifically for the EU aspiring countries. Their implementation is monitored by SIGMA/OECD, on behalf of the European Commission and, since 2017, by the region's civil society through the WeBER project.

STATE OF PLAY – BALKAN GOVERNMENTS' UNDERWHELMING PERFORMANCE

Independent monitoring suggests that the region's governments currently display a low level of preparedness in the sphere of policymaking and coordination. The assessment of local civil society organisations (CSOs) is also negative.

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All Balkan governments score poorly across the standards related to policy planning, monitoring, and reporting, as well as on the use of evidence and public consultations in policymaking. The SIGMA/OECD 2017 monitoring reports, compiling country results across 51 PAR indicators, show that the region's average results in this field are meagre, ranging from 1 to 2 on a scale from 0 to 5. Compared to other PAR areas, such as public service or financial management, these average scores are the lowest in the region.

Transparency of reporting and government decision-making

Moreover, as a rule, the region's governments do not publicly report on their work or on progress towards achieving their policy objectives. Half of the executives either completely fail to publish annual work reports or do so only once every two or three years, in an *ad hoc* manner. On the other hand, the governments of Bosnia-Herzegovina (state-level Council of Ministers), Kosovo, and Montenegro have established regular reporting practices. However, even among these cases, only the first two include a performance assessment on policy priorities in their reporting. In the Montenegrin annual government reports, as well as in the few of the Serbian reports found online, the text only presents the activities implemented during the year, without any discussion of the policy results.

Furthermore, none of the Balkan governments reports on a regular basis on planning documents, such as EU accession plans, Economic Reform Programmes, or Development Strategies, though Bosnia-Herzegovina and Kosovo fare better than the rest of the region in this regard. The perceptions of civil society confirm this shortcoming. Only 17% of CSOs in the region agree that their governments regularly issue reports on their work or the objectives met.

Concerning the transparency of government decision-making, some countries regularly publish information and

documents on what their cabinets have deliberated. But none are a shining example. As shown in the table below, the Albanian, Kosovan, and Serbian governments do not publish agendas or minutes of their governmental sessions, although other countries do somewhat better in this area. For example, in Bosnia-Herzegovina, individual institutions make their decisions public, albeit without links to the Council of Minister sessions. In the former Yugoslav Republic of Macedonia, one has to pay to retrieve information on government decisions. CSOs assess this opacity critically, with only 13% agreeing that their government's decision-making process is overall transparent.

Use of evidence in policy design

Also, despite a chronic lack of internal capacities for analytical tasks (when preparing policies and legislation), ministries make insufficient use of evidence and inputs supplied by think tanks and CSOs. Whereas strategies and other formal planning documents occasionally reference CSO studies and reports, particularly in Albania, Serbia, and to a lesser extent in Bosnia-Herzegovina and Kosovo, impact assessments and policy papers rarely do (occasionally only in Kosovo and Serbia). Ex-post assessments and evaluations are largely missing in the region's policy sphere, which makes it impossible for CSOs to provide input into analyses of the effects of policies.

Also, except for Kosovo, CSOs active in policy research and analysis feel that policymakers insufficiently summon, use, or acknowledge their policy proposals. Namely, for the question on whether government institutions invite them to prepare or submit policy papers, studies, or impact assessments, these organisations express similar levels of agreement (37%) and disagreement (35%) at the regional level. When asked how often ministries invite them to take part in task forces for drafting policy or legislative proposals, more than 40% responded that this never or rarely happens. Meanwhile, the 57% who reply with "sometimes", "often", and "always" show that there is a growing tendency in the region's administrations to seek policy input from experts and researchers in the civil sector. In Kosovo, 81% of the surveyed CSOs share this opinion.

Policymaking inclusiveness

What is more, the EU requires line ministries to design their policies inclusively, with the active participation of society. Although all governments have formal procedures for

Table: Online availability of materials from the WB governments' sessions (October-December 2017)

Country	# of Gov. Sessions	Agendas Published	Minutes Published	Press Release Published	Adopted Documents Published
Albania	15	0	0	5	15
Bosnia-Herzegovina	11	11	11	11	1
Kosovo	16	0	0	15	15
The former Yugoslav Republic of Macedonia	17	17	17	17	0
Montenegro	14	14	0	14	14
Serbia	27	0	0	15	22 ²

conducting public consultations when developing strategies and legislative drafts, the concrete processes remain mostly underdeveloped. CSOs tend to be disappointed with the regularity and quality of these procedures.

More specifically, only a third of the surveyed CSOs agrees that formal consultation frameworks provide the conditions for effective involvement of the public in policymaking, with more positive views emerging in Albania and Kosovo, where close to a half agree. Also, only one in five CSOs confirms that ministries consistently apply formal consultation procedures when developing policies. Also, 60% claim that they have rarely or never been consulted in the early phases of the legislative process (that is, before the drafting of the documents). The views of the CSOs in Kosovo are significantly more positive on these questions than those of their regional colleagues.⁵

Ongoing reform efforts in the region suggest improvements in the area of policymaking and coordination. Kosovo and Serbia have both adopted distinct strategies to upgrade their policy planning and policymaking. The Montenegrin government has recently approved new methodologies for strategic planning and coordination. EU funds support developments in this field. The Kosovan government has signed a contract with the EU to receive EUR 22 million in budget support on the condition that it also implements reforms and improves policymaking. In 2015, the EU had agreed to a similar contract, worth EUR 70 million, with the Serbian government. However, Belgrade has not yet met the conditions for the disbursement of these funds.

To date, the Balkan aspirants have not adequately prepared their policymaking systems for the challenges of functioning within the complex EU system. Out of the broad PAR portfolio within the EU accession process, the area of policy development and coordination stands out as one of the weakest points. Some of the major problems include a lack of reporting to the public on government work, opacity in cabinet decision-making, and insufficient use of evidence in the design of policies.

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PROSPECTS – INDUCING CULTURAL SHIFT WITH SMART CONDITIONALITY

The absence of public reporting on government priorities and strategies, as well as the insufficient transparency of decision-making at cabinet level, renders Balkan governments less accountable to their citizens. Civil society thus struggles to scrutinise governmental actions, for example, drawing attention to the executive's failure to deliver on its promises or to decisions related to

foreign and domestic investments that tend to be an important source of corruption. As too many government actions and practices stay outside the public sphere, the lack of transparency hampers the development of the rule of law – a fundamental reform area for the EU. Stripped of the privilege of secrecy, governments would feel the weight of external pressure and become more honest and diligent, which, in turn, would help to restore trust in democratic institutions.

The external conditionality by the EU and the domestic pressure by the non-governmental sector should increase simultaneously.

Moreover, although the region's governments frequently lament the shortage of capacities for collecting and analysing evidence to support policy development, WeBER research suggests that available evidence, such as from CSOs, is underused or ignored. One immediate corollary is a lower quality of policies and poor anticipation of their economic, societal, and environmental effects. Given that evidence-based policymaking is a clear EU condition, **governments should consider all resources on hand before taking decisions.** CSOs may not have the best legal or policy experts, but they do work directly with various stakeholder and citizen groups and can, therefore, provide valuable data and information to feed into the policy cycle. Besides, only by practising can civil society develop its expertise and knowledge about where its input can add value to the government's work.

As the negative perception of the civil sector suggests, the failure of Balkan governments to reach out to diverse segments of society and include them in policy design erodes the public's acceptance of the adopted solutions. Civil society does not have the popular mandate that would give it legitimacy to take part in policymaking. Nevertheless, CSO involvement is beneficial under two conditions. First, if its inclusion follows open procedures that facilitate contributions from various segments of society. Second, if its input is based on sound evidence, through proposals reflecting the needs of the population as a whole. Whereas governments often fail to ensure the former, CSOs frequently do not have the capacities to deliver the latter, because they lack either resources or the skills to carry out quality research and analysis. **The EU should, therefore, intensify its assistance targeting capacity-building** in both sectors, thus supporting a meaningful dialogue that benefits the entire society.

EU accession holds the potential to bring about improvements in the entire policy development and coordination segment of PAR. However, the sector is a sensitive one for national governments because it demands transparency and disclosure of information, which was confidential in the past. The more explicit the EU conditionality is in this field, the more empowered local CSOs will feel to call upon their governments to open up their policymaking processes. Meanwhile, changes are

likely to take time, as they touch upon governments' core functions and thus require the political and administrative culture to evolve and accept increased levels of scrutiny.

The Commission should seek to 'mainstream' policy development and coordination requirements across the negotiating chapters.

For these reasons, the **external conditionality by the EU and the domestic pressure by the non-governmental sector should increase simultaneously**. To that end, the European Commission and the member states, through the Council's Working Party on Enlargement (COELA), the General Affairs Council, the European Council, as well as the dedicated Western Balkans summits, should provide a stronger nudge for the countries to improve their policymaking systems.

More specifically, the **EU's rhetoric should first become firmer** on these issues and establish an explicit connection with the conditions in the field of the rule of law, which is indirectly impacted. Second, the **EU should condition its funding on the quality and transparency of policymaking** in all areas that these funds support. Finally, the Commission **should seek to 'mainstream' policy development and coordination requirements** across the negotiating chapters. Such an approach would allow the Commission to introduce benchmarks related to the process through which reforms have been adopted and implemented.

The few positive examples shown from the region demonstrate that assigning political priority to these reforms and underpinning the process with generous EU assistance can yield results, even if only over a long period. The Commission has engaged intensively with the governments of Kosovo, Montenegro, and Serbia, insisting on the importance of policymaking improvements and offering financial support to develop their capacities. However, in Kosovo – more so than in the other two cases – the issue has been given political priority status. It has been included in the government's programme for 2015-2018 with the Prime Minister's Office directly in charge of its implementation. The result has been that the Kosovan government reached similar or better results than the two EU accession frontrunners.

At the same time, **CSOs in the Balkans should step up their efforts to disclose both the good and the bad examples of openness, inclusiveness, and quality of policymaking, relying on sound evidence to support their claims**. Their conclusions and recommendations can find a stronghold in the EU's conditionality policy, which can

lend them greater leverage. In return, their findings can also feed into the EU's work on the enlargement dossier.

The EU conditionality in the realm of PAR, and more specifically on policy development and coordination, strives to prepare the future EU members to navigate the Union's complex system of policymaking. Reaching this goal is a learning curve both for the EU and Balkan aspirants. The Commission has already defined the **basic requirements** for Balkan countries. These **must be continuously sharpened** along the way and in line with the results that current policies produce on the ground. The idea is not more but **smarter conditionality**, which builds on tried and tested approaches, responds to specific circumstances, and links to themes of the negotiating chapters, where the real teeth lie. For aspiring EU members in the region, the transformation is wholesale, in that they are not merely adapting their otherwise functional domestic policymaking systems to the EU but developing their capacities from scratch. This requires a cultural change as much as it demands laws. At the end of the process, both the EU and Balkan countries will have learnt more about themselves and each other, and will likely emerge as better versions of their former selves.

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The overall goal of the WeBER project is to increase the relevance, participation, and capacity of civil society organisations and media in the Western Balkans to advocate for and influence the design and implementation of public administration reform. The project is implemented by the Think for Europe Network, coordinated by CEP Belgrade, and in partnership with the EPC Brussels. WeBER project is financed by the EU and co-funded by the Kingdom of the Netherlands.

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¹ The other two pillars are the rule of law and economic governance.

² Each government session has some documents published, but not all.

³ Rexha, Albana (2018), "Policymaking cycle in Kosovo: A view on systemic challenges and potential reform directions", Pristina: Group for Legal and Political Studies, p. 14.