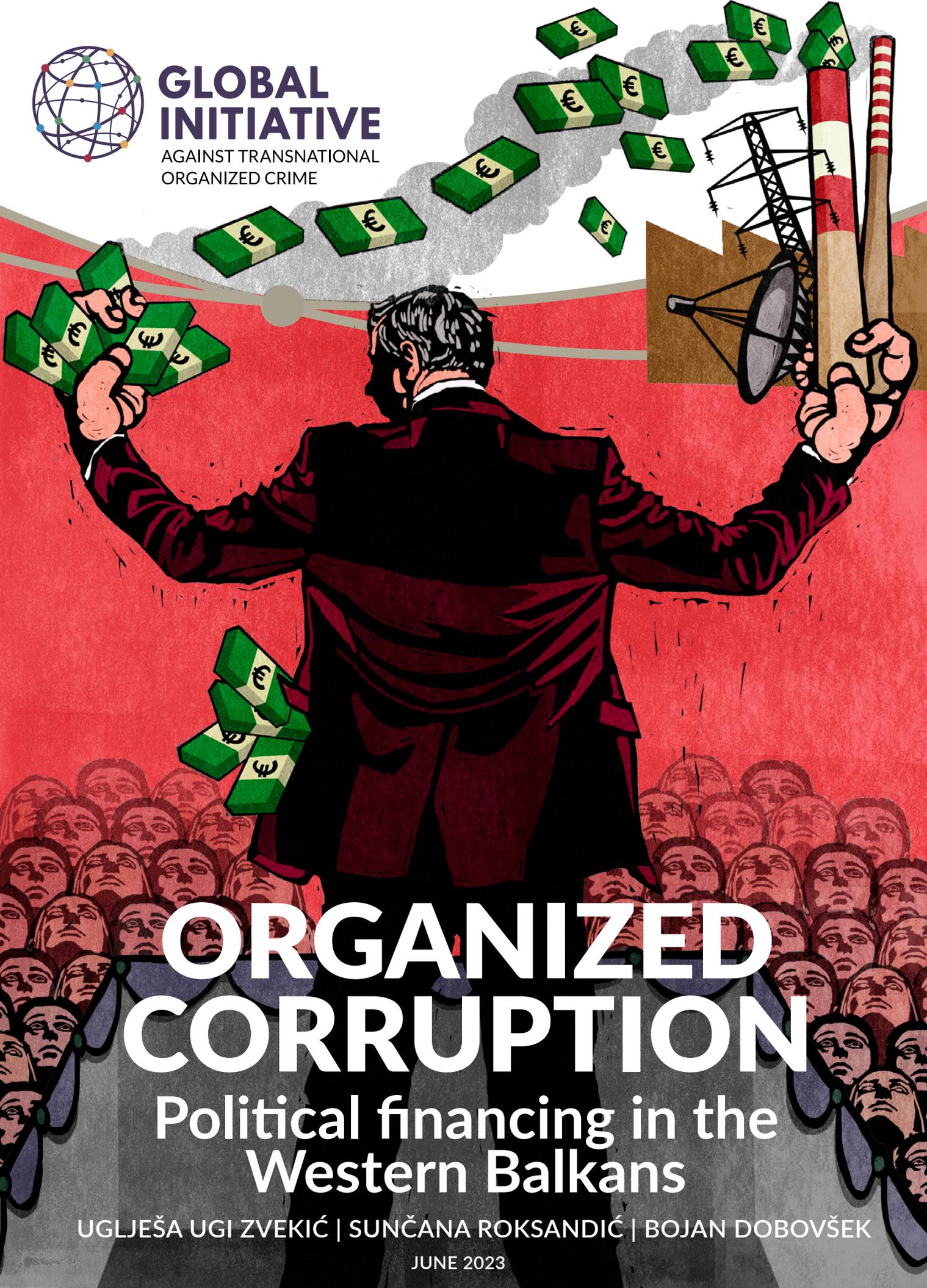


GLOBAL INITIATIVE

AGAINST TRANSNATIONAL ORGANIZED CRIME



ORGANIZED CORRUPTION

Political financing in the Western Balkans

UGLJEŠA UGI ZVEKIĆ | SUNČANA ROKSANDIĆ | BOJAN DOBOVŠEK

JUNE 2023

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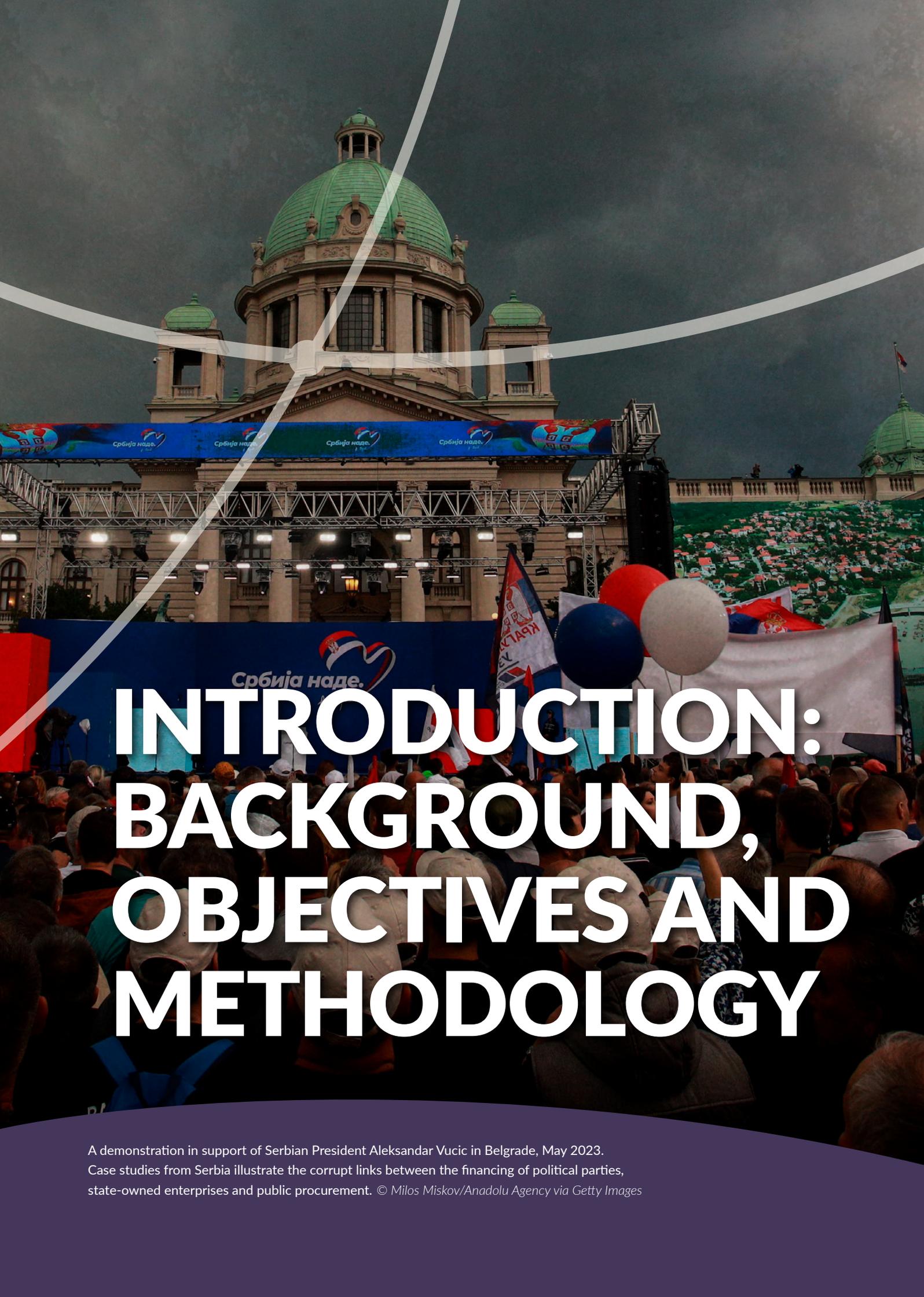
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ACRONYMS AND ABBREVIATIONS

APC	Agency for Prevention of Corruption
BiH	Bosnia and Herzegovina
CEC	Central Electoral Commission
CPA	Central Procurement Agency (Kosovo)
EPS	Electric Power Industry of Serbia
GRECO	Group of States against Corruption
KESH	Electricity Generation Company (Albania)
LFPP	Law on Financing of the Political Parties (Kosovo)
LGE	Law on General Elections (Kosovo)
LPW	Law No. 06/L-085 for the Protection of Whistleblowers (Kosovo)
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Cooperation in Europe
OSHEE	Electric Distribution Operator (Albania)
PENF	Public Enterprise National Forests (North Macedonia)
POE	Publicly owned enterprise
PPB	Public Procurement Bureau (North Macedonia)
PPP	Public-private partnership
PPRC	Public Procurement Regulatory Commission (Kosovo)
SAO	State Audit Office (North Macedonia)
SCPC	State Commission for Prevention of Corruption (North Macedonia)
SCPPA	State Commission for Public Procurement Appeals (North Macedonia)
SOE	State-owned (public) enterprise
SPAK	Special Anti-Corruption Structure (Albania)
UNMIK	United Nations Mission in Kosovo
WB6	Western Balkan Six



Power generation is one of the industries in the Western Balkans most affected by organized corruption, with decision-making influenced by political interests. © Shinyfamily/iStock via Getty Images Plus



INTRODUCTION: BACKGROUND, OBJECTIVES AND METHODOLOGY

A demonstration in support of Serbian President Aleksandar Vucic in Belgrade, May 2023.
Case studies from Serbia illustrate the corrupt links between the financing of political parties,
state-owned enterprises and public procurement. © Milos Miskov/Anadolu Agency via Getty Images



Politics play a central role both in fighting and perpetuating corruption, according to the Global Initiative Against Transnational Organized Crime (GI-TOC)'s series *Infrastructure of Integrity*,¹ which analyzes corruption and anti-corruption in the Western Balkan Six (WB6). These reports use the term 'organized corruption' to explain how corruption is embedded in the political economy of many countries in the region. Organized corruption is 'a symbiosis of organized crime, criminal methods and high-level corruption, which creates a crooked ecosystem that enriches and protects those with access to power'.²

Organized corruption is not only about systemic illicit financial gains and undue influence in decision-making, but also the systemic buying and influencing of social support to gain or maintain political and economic power.

Organized corruption is particularly evident in the political context of transitions towards democracy, when key parts of the economy are in the public domain, as is the case in the Western Balkans. In this context, control of politics and control of the economy are interlinked. Being in power means controlling the strings of the public purse.

Political parties utilize political power to acquire economic influence through the control of public finances and public officials. Political victory enables the use of state funds and enterprises for patronage and to gain financial, political and social benefits. In such an environment, elections are often a winner-take-all contest, not only for the political parties but also for those who benefit from patronage. It therefore follows that those who profit from power have an interest in financing political parties and elections.

Project objectives

Political financing certainly entails how political parties and elections are financed. This relates to the acquisition of power. But once power is acquired, there is another dimension to political financing – namely, control over financial investments and the economy, particularly through public enterprises and public procurement, and how this is used to maintain and expand power and wealth.

The transparent, accountable and responsible management of public resources for public good can only be achieved by counteracting the misuse of the public purse for political or personal agendas and enrichment. Establishing responsible practices will maintain and enhance the integrity of all stakeholders and beneficiaries. Such outcomes will enhance the appreciation for and implementation of international rules, standards and good practices in preventing and combating corruption and strengthening the rule of law in the Western Balkans.

To dissect and analyze the issue, three components of political financing are covered in this report:

- The financing of political parties and elections
- Political influence and control over state-owned (public) enterprises
- Political use and control over public procurement

Methodological approach

National experts conducted a review of legislative frameworks and reports on political financing concerning political parties and elections, state-owned (public) enterprises (SOEs) and public procurement in all six countries of the Western Balkans.³ This material was analyzed for its compatibility with relevant international and European standards and procedures, including those of the European Union, the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe.

Selected case studies illustrate typical forms of abuse or misuse of public and private funds to promote political and economic interests through organized corruption.

Interviews were held with politicians, state officials, heads of specialized public prosecutions and courts, anti-corruption agencies and state audit institutions, investigative journalists, civil society organizations, researchers and anti-corruption activists.

Regional overviews provide summaries of the national analyses and case studies. The working drafts of national reports for each component are available at the GI-TOC and can be provided upon request.



POLITICAL PARTY AND ELECTION FINANCING

Protestors rally outside parliament in Podgorica, Montenegro, in December 2022. Throughout the Western Balkans, organized criminals have been used to maintain order at protest demonstrations for political parties. © Savo Prelevic/AFP via Getty Images



Issues for consideration

Well-established regulation of political functioning and financing is necessary to ensure effective, representative and fair democratic governance.⁴ If the flow of money into politics is not adequately regulated, it can threaten democracy, corrupt parties and buy power: politicians gain an unfair advantage over their opponents, and donors gain access and influence over corrupt policymakers. The result can be political capture, wherein the interests of a powerful few can bend or even make rules so that state structures serve their own interests, rather than those of the public. This risk is present in almost all countries of the world but is particularly high in countries where private interests are able to influence political processes, where state institutions are weak or packed with cronies of the ruling elite, or where the winners of elections have control over state apparatuses that afford possibilities for patronage, for example, where there are significant state assets or a large public administration that can be exploited.

The transition to multiparty democracy that has been taking place in the Western Balkans since the 1990s has created opportunities for political corruption, such as buying influence in government policymaking through political donations. To guard against this, regulation of political financing must be part of an overall integrity framework that includes the management of conflicts of interests and lobbying. Therefore, it is important to analyze the role of oversight and control mechanisms and the compatibility of political party and election financing with international guidelines, best practices and relevant European and international standards.

The following sections analyze the relevant legislative frameworks in each of the six Western Balkan countries and their compatibility with international standards. The annex contains a snapshot of the situation.

Legislative frameworks

Albania

The Law on Political Parties and the Electoral Code are the main pieces of legislation that regulate the means and sources of political party finances. There have been a number of amendments to both over the last 20 years, with the most recent occurring in 2020.⁵ However, despite some experimentation, the changes usually accommodate the interests of the two main political parties, the Democratic Party (right) and the Socialist Party (left), which have taken turns in power over the past 30 years. This has left little space for other parties and creates a winner-take-all situation during polarized election processes. An ad hoc parliamentary committee composed of representatives from both political parties was established before the 2017 elections to draft legal amendments recommended by the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE. However, suggested amendments to the Electoral Code came very late and did not fully address the recommendations from the OSCE and the Council of Europe. Furthermore, and partly as a consequence, during the 2021 elections, concerns remained about vote buying and the misuse of public resources for official functions.⁶

The Central Election Commission (CEC) imposes administrative and criminal sanctions. However, there is no unified methodology for collecting information on contestants' financial activity, and training on how to monitor compliance with campaign finance regulations is lacking.

Albanian Democratic Party supporters rally in Tirana ahead of the 2021 general elections. The financing of elections in the Western Balkans is subject to corruption and organized crime, which is becoming more difficult to trace. © Gent Shkullaku/AFP



The preparation for the 2021 parliamentary elections made a positive shift towards the improvement of the standards of political financing. The Council of the European Union opened accession negotiations to Albania in March 2020. Among other reforms, the Council asked that before the first intergovernmental conference, 'Albania should adopt the electoral reform fully in accordance with ODIHR recommendations, ensuring transparent financing of political parties and electoral campaigns'.⁷ In June 2020, amid a very polarized political environment and influenced by the need to improve the political climate and fulfil the EU conditionality on political criteria, both political camps agreed to improve electoral standards by adopting a number of amendments to the Electoral Code on 23 July 2020 with Law 101/2020. The new amendments altered the composition of the CEC to make it less influential and touched on public and private financing of the campaign, oversight of campaign coverage in the media, and election dispute resolution.

The ODIHR, in its monitoring report of the 2021 parliamentary elections, highlighted that some of its recommendations had not yet been addressed, specifically 'those related to de-politicization of lower-level election commissions, use of party campaign materials in the news and equal rights of party and citizen observers'.⁸ It also recommended that law enforcement authorities investigate 'all allegations of electoral violations, including misuse of state resources, in a thorough, timely and transparent manner'.⁹ Voters should be systematically informed about applicable mechanisms for reporting any instances of pressure and should be assured that they will not face negative consequences.

Overall, regarding the campaign finance of the 2021 parliamentary elections, the ODIHR noted that the CEC adopted binding regulations in time, which later resulted in some legal ambiguity. However, further details were omitted. It further highlighted that contestants were not required to disclose financial reports before election day, limiting transparency and the ability of voters to make an informed choice with reference to sources of campaign funds.¹⁰

Bosnia and Herzegovina

The financing of political parties and elections in Bosnia and Herzegovina (BiH) is regulated by several legal instruments. The most important is the Law on Financing of Political Parties, which applies equally to the financing of political parties and election campaigns. As BiH has a complex constitutional structure consisting of several administrative units and levels of government, the financing of political parties and campaigns is also regulated at the entity and Brcko District levels.

In the entity of the Federation of BiH, this issue is regulated to a lesser extent by the Law on Budget Execution of the Federation of BiH, which is passed every calendar year within the procedure of adopting the entity budget. In the other entity, the Republika Srpska, the financing of political parties and campaigns is regulated by the Law on Financing of Political Parties from the Budget of the Republic, City and Municipality. Finally, the Brcko District, as a separate constitutional unit under the sovereignty of BiH state institutions, also has its own special Law on Financing

Political Parties from the Budget of the Brcko District of BiH. The Law on Financing of Political Parties prescribes the sources of financing, the obligation to submit financial reports, financial control of political parties and the competencies of the Central Election Commission (CEC) of BiH for the implementation of law. In accordance with its competencies, the CEC has adopted bylaws regulating reporting in the financing of political parties and election campaigns, as well as procedures according to which the Audit Service for Financing Political Parties reviews, controls and audits financial reports of political parties. Although the state Law on Financing of Political Parties prescribes clear rules, the entity and the law in the Brcko District prescribe a different way of allocating and distributing budget funds for financing political parties. The Federation of BiH does not have a law on financing political parties from the budget, so it allocates funds for their financing in accordance with the Law on Execution of the Budget of the Federation of Bosnia and Herzegovina, which it adopts every year.

Financing of political parties is also regulated by internal acts of political parties: statutes, annual plans and programmes of spending funds, accounting rules, rulebooks on financial operations, and decisions on the amounts of membership fees, treasury maximums, etc.

The fines for breaches range from €250 to €5 000. The CEC can impose a fine of up to three times the amount of funds received for a misdemeanour if the political party received funds in excess of the highest determined annual income, in excess of the highest determined voluntary contributions or in a manner prohibited. The CEC can also impose a fine if the political party does not report or pay into the state budget excess amounts stemming from voluntary contributions that exceed the determined limits, as well as voluntary contributions from unnamed (anonymous) sources.

More work is needed to bring the relevant law in line with recommendations from the ODIHR and the Group of States against Corruption (GRECO).¹¹

Kosovo

Besides the Constitution, which ensures democratic elections in general and sets the position for the Central Election Commission (CEC) as the main election body in Kosovo, the most important regulations on financing political parties and elections in Kosovo are the Law on Financing of the Political Parties (LFPP), adopted in 2010 and amended in 2012 and 2013, and the Law on General Elections (LGE), adopted in 2008. Together they cover a wide range of issues related to the financing of political parties and elections. However, the legislation covering this topic is highly contradictory. Although the two laws have, to some extent, improved the regulation of financing political parties and elections, particularly the amendments of the LFPP, the implementation of provisions is largely ineffective. This is due not only to inefficient oversight but also to contradictory provisions within these laws. In addition, according to the LFPP, the statutes of political parties should list the financing sources and define accountable mechanisms for party financial matters. Budget from the state, membership fees, private contributions and self-generated incomes remain the main sources of financing for most political parties.

Both the LGE and the LFPP have only superficially defined situations requiring fines related to each of the financing provisions. They both tend to keep penalty rates exceptionally low, and they are formulated ambiguously and, in certain cases, conflict with one another. For example, according to both an LGE amendment made in 2010 and an LFPP amendment made in 2012,¹² the maximum amount that political parties can be fined for breaching the provisions of these respective laws is €50 000. However, neither law prescribes a detailed situation in which this maximum fine can be applied. In the case of the LFPP, some attempts were made to be more prescriptive in the 2013 amendment, which included a new provision stating that political entities that cannot prove the origin of received and executed incomes over €20 000 shall be fined three times that amount. Yet it is unclear whether this provision is referring to a single contributor or to the overall contribution.

In addition, the LFPP did not initially include any fines for accountable party officials. Those fines were included only in its 2013 amendment and now range from €1 000 to €5 000. If the accountable official is a candidate, they may also lose their mandate, but no criminal charges are envisaged. Fines seem to be exceptionally low, including against natural persons (up to €300) and legal persons (up to €1 000) who breach these provisions of the LFPP. No liability is envisaged for heads of parties if their respective party is involved in breaching the LFPP.

Political parties usually submit their annual and election financial reports on time. This is motivated by the potential fine, which can reach up to €5 000, plus added daily interest of 1%. To date, there have been no reported cases in which parties were punished for presenting inaccurate statements.

More analysis is needed on the compatibility of Kosovo's legislative framework with EU, OSCE and Council of Europe standards. On paper, legislation in Kosovo is more or less in line with relevant standards, but it has weak oversight of political party financing.

Montenegro

The Law on Financing of Political Entities and Election Campaigns (2020) regulates presidential and local elections and provisions. In April 2022, Montenegro was expected to establish its new government, which proclaimed election reform to be one of its priorities. To date, laws related to elections have been developed by ad hoc parliamentary committees. Such a body was established following the 2020 parliamentary elections, but its work was boycotted by the opposition for unrelated reasons.

Montenegrin law is very advanced when it comes to regulating the use of public funds during election campaigns. The law provides a number of prohibitions and restrictions that seek to limit the abuse of institutional advantages and the illegal use of state resources to gain advantages in elections.

When the law is violated, the Agency for Prevention of Corruption (APC) issues warning measures to the relevant political entity. If it finds shortcomings that can be remedied during the control, it initiates misdemeanour proceedings and imposes the suspension of budgetary assets transferred for election campaign financing, in accordance with the law. When a political entity acquires revenues or uses funds contrary to the law, the APC imposes the total or partial loss of the right to budgetary assets transfer for election campaign financing. In addition to regular reports, political entities must submit the data that the APC needs in order to perform the affairs under its competence in the process of determining possible violations of the law.

For legal persons, a €5 000 to €20 000 fine is prescribed for violating the law, while the fine for natural persons ranges from €500 to €2 000. The prescribed fines for political entities range from €5 000 to €20 000, while the fines for responsible persons in a legal entity range from €500 to €2 000. The same amounts are provided for misdemeanour offences committed by responsible persons in a political entity, while a fine ranging from €200 to €2 000 may be imposed on the responsible person in a state body, state administration body, local self-governing body, local administration body, public enterprise, public institution, state fund, or legal entity founded or owned in part by the state or a local self-governing unit.

The ODIHR has identified a few problems, including the possible exertion of pressure on public employees and the use of employment in public service to bribe voters. It calls upon the oversight body to 'identify and publish the information on inaccuracies, including unreported incomes and expenditures',¹³ and it notes that the 'absence of sanctions for inaccurate reporting limits the effectiveness of oversight'.¹⁴ 'The law also lacks regulation for the use of loans and comprehensive methodology for evaluation of in-kind donations. There is a sanction for early campaigning, but the law fails to clearly define the activities that constitute early campaigning. At odds with international good practice, the contestants are able to declare any income to their campaign fund as coming from their regular party account without disclosing the origins of such contributions'.¹⁵

The ODIHR recommends that an effective mechanism could be considered to enable the APC 'to directly cross-check donors against a database for public procurement contractors and law enforcement databases and to identify multiple donations by a single donor'.¹⁶

The Anti-Corruption Agency and the State Audit Institution monitor political party financing with limited results. Parliamentary oversight in the area was hindered by the prosecution's refusal to report to the parliamentary anti-corruption committee and attend its special session on the 'envelope affair'.¹⁷

North Macedonia

The highest legal act in North Macedonia is the Constitution, which guarantees the protection of human rights and freedom of expression and sets the political, legal and social arrangements in the country. The legal framework that regulates the establishment of the political parties, their financing, and the financing and oversight of elections is covered by the Law on Political Parties (2004, last amended 2022), the Law on Financing Political Parties (2004, last amended 2020), the Electoral Code (2006, last amended 2021) and the Law on Prevention of Corruption and Conflict of Interest (2021).

The legal framework regulating the financing of political parties and campaigns is relatively consistent, as it has been continuously amended throughout the years. However, implementation is not always in accordance with the legislation.

Sanctions for late or non-submission of financial reports should be effective, proportionate and dissuasive. In 2019, the State Commission for Prevention of Corruption (SCPC) received 54 reports from third parties on irregularities in the financing of electoral campaigns and opened three cases on its own initiative.¹⁸ Of these 57 cases, 34 were resolved. In the report for 2020, there were 32 reports on irregularities in the financing of election campaigns received by third parties and one case opened on the SCPC's own initiative, of which 32 were resolved.¹⁹ More information is needed to be able to evaluate the effectiveness of the system in place.

In general, North Macedonia has a culture of impunity for grand corruption cases. North Macedonian investigative journalists have been working to reveal the assets owned by the political parties. For example, the assets possessed by the Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity (VMRO-DPMNE) were revealed to be worth around €60 million, making it the richest party in

Supporters of the North Macedonia opposition party VMRO-DPMNE protest in Skopje in 2017. VMRO-DPMNE is the richest party in Europe, with some €60 million in assets.
© Robert Atanasovski/AFP via Getty Images



Europe.²⁰ The question remains as to how a political party could amass such a huge amount of property, taking into account the money that they receive from the budget and from reported donations. Although transparency has improved in recent years, strengthening the oversight role of institutions such as the SCPC so that they have capacity to closely monitor the functioning of political parties remains a priority.

The ODIHR has underlined the need for greater transparency in funding political parties. For example, in the report for the presidential election held in 2019, the ODIHR underlined that, in order to enhance the transparency and oversight of campaign finance, legislation should regulate third-party activities and require accounting of expenses incurred by political parties supporting candidates.²¹ Loans received by political parties and candidates for the purpose of election campaigning should be subject to similar restrictions and reporting requirements as donations. The report for the early parliamentary elections held in 2020 states that the Electoral Code should be comprehensively reviewed in order to harmonize it internally and with other relevant laws and to bring it in line with OSCE commitments, international obligations and good practice. Furthermore, the Electoral Code should require that campaign finance reports be submitted and published on the day of submission in a uniform format suitable for public scrutiny and accompanied by supporting financial documentation.

GRECO has recommended introducing rules governing: the interaction of persons entrusted with top executive functions with lobbyists and third parties seeking to influence the public decision-making process; and the regular disclosure of such contacts, including the subject matter discussed and the identity of the persons participating in and represented at such meetings.

Serbia

Regulations of the financing of political parties and elections in Serbia have evolved from the first legislation of the sort in 1991 to the Law on Financing of Political Activities (February 2022), which reaffirms basic principles of the first legislation enacted in the democratic context of 2003. It regulates the financing of election campaigns and of the regular work of political parties. Essentially, the new law provides substantial public funding at all levels of government, while retaining ceilings for private donations to parties and insisting on full transparency of party funding. However, the overall limit for financing from private sources is not established for private funding of parties. Controlling mechanisms remain in the hands of the Agency for Prevention of Corruption and the State Audit Institution.

The new law of 2022 envisages a criminal act of giving or obtaining funds on behalf of a political entity for its financing, contrary to the provisions of the law, with the intention of concealing the source of funding or the amount of funds raised by the political entity. Violence, threats of violence, unequal treatment or denial of rights to natural or legal persons due to contributions to political entities is also envisaged as a criminal act.

Serbian law prohibits the exertion of any form of legal or physical pressure on natural or legal persons when raising funds for a political entity, as well as the provision of any promises, privileges or personal benefits to the contributors to political entities. Besides these criminal acts, the law envisages a whole set of misdemeanour offences.

The legislation in the Republic of Serbia related to the financing of political parties is largely aligned with the standards and recommendations of international organizations, namely the ODIHR, GRECO and the EU. That said, as in other WB6 countries, there is room for improvement in terms of implementation. The 2020 ODIHR Special Election Assessment Mission Final Report on Serbia recommends that to 'enhance the transparency of campaign finances, previous ODIHR and GRECO recommendations should be addressed, including lowering donation limits, and introducing requirements to submit and publish financial reports prior to election day'.²²

Main features

Albania

Models and sources of funding for political parties are provided in the law that also regulates the threshold of public funds for political parties eligible to obtain financing from the annual Budget of State, which during non-election years is based on the number of members of parliament. The law also regulates, in general terms, the sources of funds generated by political parties. Accordingly, the funds can be created by: membership fees and the use of parties' facilities to generate incomes (i.e. rent); public funds, including financial assistance to the extent specified in the State Budget approved by law by the Parliament; and non-public funds such as financial donations, donations in kind, services, sponsorships, loans or guarantees, as well as any other financial transactions. Therefore, the Law on Political Parties does not limit the sources of donations from private entities to political parties unless the donation is registered. Donations from the diaspora are considered domestic donations. Political parties should register all institutions and individuals that provide donations, and the donors should sign a declaration specified by the CEC. Anonymous donations are not allowed. According to CEC guidelines, voluntary work is considered 'voluntary service' and not a donation 'in kind'. The CEC imposes sanctions of an administrative and criminal nature. However, there is a lack both of unified methodology on collecting 'findings on contestants' financial activity' and of training on how to monitor compliance with campaign finance regulations.

Bosnia and Herzegovina

The Law on Financing of Political Parties stipulates that a political party may be financed by membership fees, voluntary contributions of legal and natural persons, publishing, sale of propaganda material and organization of party events, income from property owned by a political party, budget of BiH in accordance with the law, entity budgets, cantonal budgets and the budget of the Brcko District of BiH, the budgets of other units of local government in accordance with the law (entity laws), and profits from companies owned by political parties. Individuals and legal entities may make voluntary contributions to political parties multiple times during the calendar year. Voluntary contributions



in cash are paid into the transaction account of the political party's headquarters. The total amount of voluntary contributions of a natural person to one political party may not exceed the amount of €5 000. The fines that are imposed for breaches range from €250 to €5 000.

Kosovo

Legislation has limited political party funding to identifiable sources such as state funding, membership fees, contributions from natural and legal persons, incomes from properties and sales of goods, and other incomes that can be self-generated by political parties. The law also ensures that contributions collected both by public and private sources are spent in accordance with its provisions. The law bans political parties from taking contributions from a number of potentially controversial sources, including foreign governmental, non-governmental, or private entities; unknown natural or legal persons; institutions that gain capital from gambling and betting; public institution authorities or other entities using state capital; public enterprises; natural or legal persons who have direct economic claims; private enterprises that have valid public funded contracts, up to three years after those contracts are concluded; NGOs, charitable organizations, religious organizations and trade union organizations; and natural and legal persons who have been charged by law enforcement institutions. Contributions from natural persons

Bosnian Serb leader Milorad Dodik (centre) attends a political rally of ruling Serb nationalist party SNSD in Republika Srpska, ahead of the 2022 general elections. © Pierre Crom/ Getty Images

that exceed €2 000 and those from legal persons that exceed €10 000 are similarly prohibited. Lack of capacity is evident when it comes to monitoring contributions that are not monetary or are partial in nature.

Montenegro

According to the law, budgetary assets for financing the costs of an election campaign shall be provided for in the year in which regular elections are held. The law also prescribes that political parties are prohibited from receiving material, financial assistance and non-financial contributions from other states; companies and legal entities outside the territory of Montenegro; natural persons and entrepreneurs who do not have the right to vote in Montenegro; anonymous donors; public institutions; legal entities and companies owned by the state; legal entities that have failed to meet their outstanding obligations towards employees within the last three months; civil society organizations such as trade unions, religious communities and organizations, and NGOs; providers of games of chance; and persons who were convicted by a final judicial decision of a criminal offence with elements of corruption and organized crime. The same law regulates presidential and local elections, and the provisions are the same. If it finds shortcomings that can be remedied during the control, the Agency for the Prevention of Corruption issues warning measures to the political entity, initiates misdemeanour proceedings and suspends budgetary asset transfers for election campaign financing of a political entity, in accordance with the law.

Protestors demand an early general election in Podgorica, Montenegro, in November 2022. High levels of corruption in the Western Balkans prevent the region from achieving international standards in the financing of elections.

© Rusmin Radic/Anadolu Agency via Getty Images



North Macedonia

The law regulates the manner and procedure for providing funds, disposing of funds for the ongoing operation and activities of the political party, and controlling the financing and financial and material operations of the political parties. Financing for political parties can be derived from private or public funds. The public sources for financing political parties are funds envisaged in the budget of the Republic of North Macedonia. The private sources for financing political parties include membership fees; donations, gifts, contributions, grants and sponsorships; bequests; sales of promotional and advertising material; and personal incomes in accordance with the law on financing of political parties. The Electoral Code regulates the organization and financing of elections. This code enables political parties to receive additional public funding for running electoral campaigns.

The funding of political parties and electoral campaigns, both public and private, should be separate and should not overlap.

Serbia

Political parties receive monetary support from the budgets of national, provincial and local governments, while the financing of regular political activities differs from that of the elections. In addition to budgetary support, political parties may receive support in goods and services provided for free or on conditions that are more favourable than those available on the market (e.g. rent of space owned by local, provincial or national government, services by public enterprises, free media space on public media, etc.), with the same conditions applicable to all political parties. With respect to regular political activities, each political party receives a proportional part of the total amount allocated by the state. Political parties can also be financed by private sources such as membership fees, donations, inheritances, property incomes and loans from banks and other financial organizations in Serbia. While individual private donations to political parties are limited, overall funds from private sources are not capped.

Control and oversight

Albania

The latest amendments to the Electoral Code in 2020 brought a new architecture of bodies in charge of overseeing the administration of electoral campaigns, including the financing of electoral subjects and elections. The law follows a three-tiered approach within one institution, with different bodies playing different roles to allow more space for checks and balances. Therefore, the CEC is composed of the State Election Commissioner, the Regulatory Commission and the Complaints and Sanctions Commission.

Each electoral subject should submit to the CEC detailed reports of its sources of financing and of the financing of elections 60 days after the announcement of the final election results. The report should follow the approved CEC template. Candidates' reports during local elections must be submitted 30 days from the date of the election.

The CEC applies a four-layer approach to transparency and supervision. First, it assigns individuals to monitor the elections and prepare reports. Second, it appoints certified financial auditors to assess the financial reports of electoral subjects. Third, after receiving the reports from electoral subjects, it compares them with monitoring and auditing reports and, if there are comments, asks the electoral subjects to reflect and provide evidence. Fourth, reports of electoral subjects, having been assessed, are published on the CEC website within 10 days.

Bosnia and Herzegovina

The CEC has a special Audit Service that annually controls the financial operations of political parties, reviews and controls the financial reports submitted by political parties, and audits the financing of political parties. The implementation of these provisions is not regulated, and the capacity of the CEC to supervise the implementation of this obligation is questionable. In addition to annual financial reports, political parties submit special financial reports, as well as pre-election and post-election financial reports during election campaigns in which they are participating. The CEC has quite broad competencies in terms of auditing the financing of political parties, but whether it has sufficient capacity is less clear.

Kosovo

The CEC is the main mechanism established by the Constitution to ensure the financial accountability of political parties. This permanent body is composed of 11 members, of which only the chairperson is required to be apolitical. In general, oversight of political party finances is considerably weak, but the auditing process did identify irregularities in political party financial statement reports in certain cases. The reporting filed by each party contains thousands of pages that require individual analysis, which makes the overview and auditing of these financial statements extremely difficult. There are no transparency rules that would oblige the media to report financial incomes.

Montenegro

The Agency for the Prevention of Corruption carries out control and supervision of the financing of political entities and election campaigns. Political parties are required to submit annual financial reports that are audited by the State Audit Institution. Numerous inconsistencies in the official reports of political entities on the financing of their election campaigns suggest that some either misrepresent or do not report the costs and then compensate with funds for regular operations or with unrecorded cash payments.

North Macedonia

The SCPC, the leading entity in the fight against corruption, and the State Audit Office (SAO) are the main institutions legally entitled to monitor the financing of political parties and elections. The law on prevention of corruption and conflict of interests provides the SCPC with a huge scope of competence through which to act upon

detected irregularities in the financing of political parties and elections. Additionally, the SAO regularly audits budgetary funding and can therefore detect irregularities in these fields. Financial reports are submitted to the State Election Commission, the SAO, the SCPC and the Parliament of the Republic of North Macedonia; for local elections, they are also submitted to the Municipal Council and the Council of the City of Skopje. Financial reports are published on the websites of the State Election Commission, the SAO and the SCPC.

Serbia

Several safeguards are envisaged by the new law to enable control and oversight of the financing of political entities and their activities. All accounts used by political parties must be easily identifiable, and parties are obliged to use a single separate account for financing election campaigns. The Agency for the Prevention of Corruption is the main institution responsible for control and oversight, and it has the right of direct and unimpeded access to political parties' accounting records, documentation and financial reports. The Agency is funded through a percentage of the amount allocated to the financing of campaigns. The State Audit Institution also exerts control over the financing of political parties. Every year, it audits a certain number of reports of political parties represented in the National Assembly of the Republic of Serbia. The Tax Administration controls the donors of political parties based on the reports by the Agency.

A campaign rally for Serbian President Aleksandar Vucic in Belgrade, 2022. Electoral campaigns often involve initiating public infrastructure works, which are used to gain an electoral advantage for the party in power. © Oliver Bucic/ Bloomberg via Getty Images





STATE-OWNED (PUBLIC) ENTERPRISES

In the Western Balkans, many state-owned enterprises, including in the energy-generation sector, are aligned with ruling political parties. © njakrc via Shutterstock

Overview and legislative frameworks

SOEs: The prey of political parties

State-owned (public) enterprises (SOEs) in the Western Balkans represent an important economic sector, as they are responsible for managing numerous fundamental services of broad public interest. They are therefore crucial for maintaining the economic security of each Western Balkan country.

However, the way in which many of these SOEs are structured and managed has not escaped the legacy of the post-communist transition. Rather than being reformed according to free market principles, these centralized state-owned companies have often become de facto assets of ruling parties, both at national and local levels.

Controlling access to and the provision of energy, water, railroads, roads and highways, waste disposal, arms production and trade is therefore intrinsically linked to the maintenance and expansion of political power. In the WB6, SOEs are often used by politicians to extract public funds and channel them to private pockets, oiling the machinery of political parties and patronage networks. Such partocracy enables the administration of public companies in the interest of political parties or those connected to them, including through public procurement and the awarding of contracts to businesses closely tied to ruling parties' leadership. As a result, SOEs in the Western Balkans are at a crucial nexus of business and politics that is vulnerable to corruption.

The number of SOEs in each of the WB6 is largely proportional to the size and population of the country, ranging from 20 SOEs in Kosovo to 294 in Serbia. Although there is a lack of transparency and reliable data on the economic performance of many of these SOEs, there is nevertheless a noticeable trend that suggests that many of them do not make a profit, which suggests that they are more useful for political gains than material ones. In fact, some SOEs are a financial burden. For example, in Montenegro,

out of the 20 companies that are on the Tax Administration's so-called 'black list', 11 are SOEs that have run up around €50 million in tax debt.²³ In Kosovo, the majority of SOEs would be bankrupt were it not for considerable state assistance. That said, some SOEs are an important source of revenue for state coffers. For example, in BiH, the total annual revenue of all public companies is estimated to be approximately €3.5 billion.

Despite the poor economic conditions of many of the SOEs in the region, these enterprises are coveted by ruling elites, as they can be used to supplement party budgets and strengthen party membership by providing employment for party members. It has been said that coalition negotiations on control of public enterprises are often tougher than those concerning the distribution of ministries and other institutions. For example, in Montenegro in July 2021, a list surfaced with details of a plan to divide the so-called 'election prey' among the new government coalition. The leaked document showed how 582 key management and governance positions in SOEs would be divided among parties of the ruling coalition, who would then dole out these positions to their members and supporters.²⁴ When the 'right people' are in the right place, SOEs can easily be instrumentalized.

SOEs can also be a useful source of advertising for political parties in power. There are cases of major energy, water and sewage companies buying advertising space, despite having few competitors, thereby generating revenue for media outlets, not least those with links to political parties. Additionally, the threat of withdrawing such advertising is often used to pressure the media to influence which stories are published or withheld. Public scrutiny is limited by restrictions. For example, in Serbia's Law on Free Access to Information of Public Importance, asking for information is free, but that does not mean that one can expect an answer.

Albania

In Albania there is no published, official list of SOEs and no clear public data on their assets, net income or total number of employees. However, as of 2022, there are approximately 244 local and national SOEs that are either partially or 100% government-owned and that operate providing different services to Albanians.²⁵ The management and decision-making processes of many of these SOEs are influenced by political factors rather than by market forces or business strategy.

After the collapse of communism, Albania inherited a centralized economy and a number of large SOEs. One of the first steps taken by the Albanian government in the early 1990s was the privatization of these companies and the creation of legal conditions for the development of the private sector. However, the government maintained ownership of a number of SOEs that are overseen by the Ministry of Economy's Directorate General for State Property and relevant line ministries. It is estimated that the Directorate General controls about 37 SOEs as of 2022, but the precise figure is not available.²⁶ Major SOEs in Albania relate to the energy sector (including oil and gas, as well as electricity generation, transmission and distribution), the national post office and the railway.

Electricity supplier and distributor



Albania, which is heavily dependent on hydro power, has been experiencing an electricity shortage due to poor meteorological conditions. Foreign loans have been taken out to finance electricity imports in order to ease the risk of power cuts.

© Gent Shkullaku/AFP via Getty Images

The state is responsible for the production and distribution of electricity in Albania, and the country's two main SOEs are the Electric Distribution Operator (Operatori i Shpërndarjes së Energjisë Elektrike, or OSHEE) and the Electricity Generation Company (Korporata Elektroenergjitike Shqiptare, or KESH). Albania is almost exclusively dependant on hydro-power, with 98% of energy generated domestically deriving from this source. In 2021, the Albanian government earmarked €100 million for a liquidity fund for OSHEE for the year and added that it would boost it by another €100 million in 2022 while offering state guarantees. Furthermore, OSHEE has signed agreements for three loans. The European Bank for Reconstruction and Development has provided €70 million to 'address liquidity gaps caused by the COVID-19 pandemic', but the funds may also cover the construction of a new underground power substation in central Tirana.²⁷ The two other loans came from commercial banks in Albania: €10 million was secured by the American Investment Bank, and €20 million by the OTP Albania Bank. These loans were taken to finance electricity imports, due to the high volatility of a sector that depends on meteorological conditions. This evidently poses significant fiscal risks, and so the government has given state guarantees.

However, the financial affairs of KESH and OSHEE have not been properly audited, and there have been allegations of mismanagement. OSHEE has been the subject of numerous corruption allegations. Specifically, its former procurement director and two other officials of the Bid Evaluation Commission at OSHEE were arrested in October 2020 by the Special Anti-Corruption Structure (SPAK) for favouring an Italian company in a consultancy tender in 2016 in return for a bribe.²⁸ Moreover, following two years on the run, the former director of the cabinet at OSHEE, the individual responsible for receiving the €132 000 bribe, was arrested in December 2022.²⁹ Investigations are ongoing.

Additionally, the Albanian energy sector itself is not financially self-sustainable. The European Commission has warned the government that contingent liabilities from SOEs remain high and could weigh on the debt ratio. Before the COVID-19 pandemic and the earthquake, in 2019 the domestic guarantees amounted to €136 million (0.9% of GDP) for the state-owned electricity supplier, illustrating the low level of sustainability and possible fiscal risks associated with the weak governance of SOEs in the energy sector.

Albpetrol

Albpetrol is an important Albanian SOE responsible for petroleum production and marketing and is one of the biggest employers in the region of Fier. Over the past 20 years, the Albanian government has tried a number of times to give Albpetrol a concession, develop a public–private partnership deal or even privatize the company. The last attempt, in 2013, fell through because of allegations of corruption.³⁰ The state-owned oil company is vulnerable to corruption because of how it awards public procurement contracts, its revenue management and implementation of production sharing agreements,³¹

the lack of transparency in budget reporting,³² and its corporate governance model.³³ Over the last 20 years, Albpetrol has had 13 heads, some of whom have been reportedly closely affiliated with the respective parties in power. For example, the last two heads of Albpetrol were former mayors of Patos and Fier.³⁴ Another former director was also the former administrator of the company that was awarded the waste management and incinerator public–private partnership for Fier (who was arrested by SPAK while the director of Albpetrol for allegations of corruption in 2022).³⁵

Bosnia and Herzegovina

SOEs are a major employer in BiH. According to latest data, around 50 SOEs employ approximately 80 000 people in the country and generate about €3.5 billion in revenue.³⁶ Profitable SOEs include those in telecommunications, electricity, railways, mining, military and road construction. It is therefore not surprising that political parties compete for control over these public companies.

Although there are formal procedures for appointments to management and supervisory bodies in public companies, in some cases, senior positions are allegedly appointed by the ruling party as a way of paying off favours, rewarding loyalty or ensuring that senior officials will serve party interests.³⁷ Furthermore, the resources of public companies are reportedly often openly used for party activities in the pre-election period and during campaigns for upcoming elections.³⁸ Of 350 public events organized by public institutions, 67% were attended by electoral candidates and used for pre-election promotion.³⁹ More specifically, in the case of Rudnik and Termoelektrana Ugljevik, it was reported that the company organized and funded the transport of 500 members of the Alliance of Independent Social

Democrats Youth to Guca, Jahorina and Zlatibor to rally support for the party.⁴⁰ According to the same report, an employee is quoted as saying that ‘workers of public companies are engaged day and night in pasting posters, billboards’, and it is clear ‘why individuals get a job in public institutions and state-owned companies about 20 days before elections – to collect votes – while permanent employees are sent on vacation’.⁴¹

Like so many other aspects of life in BiH, the issue of SOEs is handicapped by the complex, decentralized and poorly coordinated constitutional structure of the state itself. The legal framework governing the activities of SOEs is fragmented and subject to the influence of the relevant level of government. Public information, data and registers related to the activities of public companies are insufficient, and in some cases, SOEs are considered exempt from the application of important anti-corruption laws, such as those in the realm of public procurement.

The Law on Public Enterprises prescribes the duty to avoid conflicts of interest for a particular groups of persons, specifically those connected to a public company through personal or professional relationships.⁴²

Electricity companies as a power source

The SOE Elektroprijenos has a monopoly on the transmission, maintenance, construction and expansion of Bosnia and Herzegovina's electricity network. It is therefore much coveted by political actors. Parties are reported to vie to place their loyalists in senior positions where they may be able to extract money from the company and influence management decisions.⁴³

In 2018, Elektroprijenos was blocked from making €90 million in investments due to apparent conflicts related to a lack of consensus between the Croatian Democratic Union of Bosnia and Herzegovina and the Party of Democratic Action regarding whether a particular individual was to remain in his role as chief executive.⁴⁴ Already established clientelism and political influence over high-ranking staff are reportedly at the centre of most disputes.⁴⁵

Renewable energy is widely perceived as becoming the latest sector in which political parties are seeking to appoint their supporters, as solar and wind energy deals can be lucrative.⁴⁶

In the Federation of Bosnia and Herzegovina, the electricity company Elektroprivreda BiH employs approximately 4 500 employees and generates around €500 million per year. This lucrative public company has been at the heart of corruption scandals related to apparent inappropriate political influence and the interests of ruling political parties.⁴⁷ Indeed, the Audit Office gave Elektroprivreda a negative opinion in its 2020–2021 financial reports.⁴⁸



The Tuzla thermal power plant, operated by state-owned enterprise Elektroprivreda. Elektroprivreda has been at the heart of corruption scandals in Bosnia and Herzegovina. © Oliver Bunic/Bloomberg via Getty Images

Republic of Srpska

There are similar patterns in the way the ruling political parties manage the resources of public enterprises in Bosnia and Herzegovina's Republika Srpska entity. In one case in the road infrastructure sector, the former director of the public company Ceste RS was suspected of having violated the provisions of the Law

on Public Procurement, resulting in damages of around €8.5 million.⁴⁹ Over a period of seven years, a company with links to the family of the president of the Republic of Srpska, which mostly deals with public sector IT business, concluded over 780 contracts with various SOEs, valued at over €100 million.⁵⁰

Kosovo

Kosovo has around 20 SOEs. Most of these seem to have been operating without profits, or even with losses, for some time. Both central and municipal institutions seem to have failed to perform their duty to serve the public interest as shareholders of these SOEs. National Audit Office reports for 2020 noted that out of 14 public enterprises audited, 12 received negative opinions because their financial statements did not give a true and fair view of the entity and were not compiled in accordance with the rules of international accounting standards.⁵¹ If not for state aid and subsidies, most of these SOEs would be bankrupt. Lack of political willingness to adequately manage these entities seems to be at the centre of all the problems. Government coalitions have allegedly been intentionally interfering in the management structures of SOEs and their decision-making processes in order to ensure that political interests are served above public interests.⁵²

All SOEs in Kosovo, without exception, are facing a series of devastating problems, including unfavourable contracts; liquidity problems; over-employment, often due to nepotism, and in many cases at much higher salaries; the duplication of positions; irregular promotions and more.⁵³ There are few cases in which responsible individuals have been held accountable for mismanagement.⁵⁴

The existing regulation on the mandate and structure of SOEs in Kosovo dates back to the period just after 1999. The initial regulation came through Regulation No. 2002/12 on Establishing of the Kosovo Trust Agency, which was adopted by the United Nations Mission in Kosovo (UNMIK) in June 2002. This regulation laid the foundations for Kosovo's SOE sector by providing the legal basis for the post-Yugoslavian transition era of the Kosovo SOEs and enabling them to establish new legal entities and organizational structures.

Following Kosovo's declaration of independence on 17 February 2008, the Assembly of Kosovo adopted the Law on Publicly Owned Enterprises (POEs) in June 2008. The primary purpose of this new law was to bring the SOE sector in line with the new Constitution of the Republic of Kosovo by suspending UNMIK Regulation No. 2002/12 as the primary legislation regulating this sector and ending the mandate of UNMIK and the Kosovo Trust Agency in managing the sector.⁵⁵ By virtue of the Law on POEs, there are two types of SOEs in Kosovo: central SOEs, which are owned by the central government of the Republic of Kosovo, and local SOEs, which are owned by specific municipalities. They are all construed as joint stock companies.

The Law on POEs emphasizes that such enterprises are managed by three key internal structures: a board of directors, key appointed officials and an audit committee. Although each of these managing mechanisms is meant to be apolitical and serving the interests of the SOEs, political interference is prevalent, and appointed individuals are frequently tied to serving political interests.⁵⁶ Boards and executive structures of POEs are consistently underperforming, and it could be argued that audit committees have not been adequately fulfilling their roles.

There are several control and oversight bodies designed specifically for SOEs. The most important are the Municipal Shareholder Committee, the Committee for Oversight of Public Finance, the POE Policy and Monitoring Unit, the National Audit Office, the Anti-Corruption Agency and judicial institutions. However, most of these bodies face many of the same challenges as the other internal governance structures of POEs.

The Municipal Shareholder Committee is the highest control and oversight body for SOEs. It acts on behalf of the government on key issues regarding the central SOEs, including the appointment of internal governance structures, the supervision of business performance and oversight.

The POE Policy and Monitoring Unit (POE Unit) is established by the Law on POEs within the framework of the responsible Ministry of Economic Development, and its head is appointed by the respective minister.⁵⁷ Its competences seem to be very limited, without any executive role. The capacity of the POE Unit has remained weak, with 10 officials tasked to monitor a sector comprising tens of thousands of employees.⁵⁸ The current government seems to be pushing to strengthen the mandate of the POE Unit by proposing executive competences within the frame of the new Amending Draft Law on POEs, which is in progress and is supposed to be adopted in 2023.⁵⁹ POEs are subject to external auditing conducted by the National Audit Office, whose annual reports show that, for many years now, most local POEs have been operating with negative balance sheets.

The Law on POEs states that central SOEs are subject to the oversight of the Assembly of Kosovo. Meanwhile, local SOEs are overseen by the relevant Municipal Assembly. However, in both cases, the role of these important oversight instruments has been minimal.

Another important SOE oversight mechanism is the recently adopted legislation on whistle-blowers, namely, Law No. 06/L-085 for the Protection of Whistleblowers (LPW), adopted on 2 January 2019. While this legislation establishes 'defined rules, procedures of whistleblowing, the rights and protection of whistle-blowers as well as obligations of public institutions and private subjects regarding whistleblowing',⁶⁰ the 'lack of knowledge regarding the field of whistleblowing by public institutions presents a serious challenge in the implementation of LPW'.⁶¹

The fall of Kosovo Telecom



Kosovo Telecom, known for its mobile operator VALA, is one of the biggest contributors to the Kosovan budget but suffers from mismanagement and nepotism. © SOPA Images Limited/Alamy Stock Photo

Kosovo Telecom JSC is one of the biggest central POEs in Kosovo and was established in 1999. It is especially known for its mobile operator, VALA, which was the first and biggest mobile operator in Kosovo, boasting more than 1.2 million clients and being the strongest contributor to the country's budget. From 2008 to 2015, Kosovo Telecom paid over €250 million in dividends to the central budget. However, its decline started in 2009, when Telecom signed a contract with Dardafon.Net LLC to establish the private virtual operator Z-Mobile, reported to be owned by Blerim Devolli, who has become one of the most noticeable oligarchs in Kosovo in recent years.⁶² With this contract, Z-Mobile was guaranteed access to all Kosovo Telecom facilities and was given access to 200 000 mobile numbers, enabling it to compete directly with Kosovo Telecom's products.⁶³ In return, Telecom was to receive 30% of the dividends, while Z-Mobile would take the rest.⁶⁴

Z-Mobile began offering more advanced packages and cheaper prices than Kosovo Telecom, which started to lose its position in 2015 while Z-Mobile was performing strongly and making considerable profits. Z-Mobile requested additional numbers and services from Telecom, but the request was swiftly denied. This prompted Dardafone.Net LLC to submit a complaint to

the arbitral tribunal, which decided in 2016 that Telecom should pay Z-Mobile a fine of around €30 million for its loss of profits.⁶⁵

At the beginning of 2019, after a parliamentary investigation, it was concluded that the contract signed between Telecom and Z-Mobile contained unfavourable terms.⁶⁶ In January 2019, Kosovo Telecom decided not to continue the existing contract with Z-Mobile following its eventual expiration on 30 July that year. Dardafone.Net LLC responded to this decision by once again taking Kosovo Telecom to court.⁶⁷ In both cases, the court decision was in favour of the private operator. It is estimated that during the decade long period of this contract, from 2009 to 2019, Telecom lost over €100 million in revenue.

In addition, Kosovo Telecom suffers from mismanagement, political appointments,⁶⁸ nepotism,⁶⁹ duplicated positions, irregular promotions and disproportionately high salaries for a large number of staff. However, when it comes to the internal management of Kosovo Telecom, the situation has been improving since February 2021. Among other actions, new Board members were appointed and the Chief Executive Officer, Deputy Chief Executive Officers and Financial Chief were dismissed.⁷⁰

Montenegro

Data from 2021 indicates that there are close to 60 SOEs currently operating in Montenegro. They employ over 12 000 people, spending an estimated €200 million on salaries alone. These numbers exclude an additional 120 companies that are established by local governments in Montenegro.

In 2010, the Law on the Improvement of Business Environment was adopted, which obliged SOEs to become either limited liability companies or joint stock companies. Three SOEs are still covered by a separate Law on Achieving Public Interest in Public Companies and Institutions, namely, the public TV and radio broadcaster, National Parks of Montenegro, and the company responsible for coastal zone management. At the moment, there is no national strategy for the management of SOEs, and legal frameworks largely fail to recognize and distinguish between SOEs and privately owned companies.

As in other countries in the region, it is not unusual for senior positions, such as CEO or board member, to be stacked with political appointees in such companies.

The government of Montenegro has, over time, guaranteed more than half a billion euros in loans and credit to support SOEs. Yet despite this, most SOEs have been taking losses for decades, effectively making them some of the biggest tax debtors in the country. Of the top 20 companies on the Tax Administration's 'black list', 11 are SOEs, having accrued approximately €50 million in tax debt.⁷¹

The situation is hampered by weak control mechanisms and few punishments, even after reports of serious violations of the law by the State Audit Authority, which suffers from a shortage of staff. According to the Law on Budget and Fiscal Responsibility, the Ministry of Finance is in charge of 'monitoring and analysis of the financial plans and reports of public companies',⁷² which in practice refers only to the three state-owned companies that were not transformed into LLCs or joint-stock companies.

Annual commercial audits are not obligatory for all SOEs, and those that are carried out are often late or completed by auditing companies with poor track records. In theory, the financial data of SOEs could be controlled by the Budget Inspector in the Ministry of Finance, but this institution has yet to be effective, despite being approved in 2014.⁷³ Specifically, data and information regarding the work of the Budget Inspection Unit is not available to the public, and no misdemeanour charges have been filed.⁷⁴

Despite the poor performance of SOEs, their number continues to increase: in 2021, four new SOEs were established. New SOEs are founded on the basis of decisions by the government, but there are inconsistencies in terms of the government's role as a founder. Accordingly, in 2021, a separate Department for Corporate Management was established under the Ministry for Capital Investments with the major task of analyzing and controlling the work of some, but not all, SOEs. However, the first report released by this department revealed major shortcomings in its organization and authority, namely, that there was no clear definition of the department's jurisdiction over the work of the SOEs that were targeted by its authority.⁷⁵ Furthermore, there was no clear legal obligation established for those companies to provide the data needed for monitoring and analysis to the department or ministry.

The wiretap affair

Decades-old allegations appear to have been validated in early 2013 when the Montenegrin ‘wiretap affair’ was brought into the public eye.⁷⁶ Several hours of audio recordings from meetings of the then-ruling Democratic Party of Socialists (DPS) revealed a scheme for buying votes from citizens in exchange for short-term jobs in government institutions and SOEs. These two- to six-month contracts would be renewed until just before the next elections, at which time the employee was encouraged to vote for the ruling party in order to keep their job. These recordings have yet to be officially authenticated. Since this practice – not unique to Montenegro – seemingly achieved favourable outcomes and was not curbed in any way, it lasted for decades and became the norm. However, the result was a state administration and SOEs burdened with an excessive number of employees, making the state the largest employer in the country.

The practice allegedly continues today, especially among senior positions in state institutions and SOEs.⁷⁷ Political appointees enjoy a degree of protection and patronage in return for political loyalty, and they are expected to mobilize employees to vote for the ruling party.⁷⁸ Additionally, these individuals become a safeguard of political harmony among state-owned company employees, making sure that those who vote for the opposition are identified.⁷⁹

In March 2013, a document with a list of post office employees was published alongside a memo that the head of the post office sent to his supervisor stating that he had managed to track down everyone who did not vote for the ruling political party.⁸⁰ In another notable case, publicly reported on by the media in 2021,⁸¹ a list contained a detailed plan for how seats on governing boards of SOEs were to be divided among the political majority that supported the new government of Montenegro. According to this leaked document, a total of 582 SOE roles – CEOs and members of managing and advisory boards – were distributed to political parties to employ their members and supporters.⁸²

The wiretap affair was never fully prosecuted, leaving this practice unpunished and normalized. Most of the actors in this affair are still active in Montenegrin social life.⁸³

North Macedonia

North Macedonia has 149 public enterprises, of which 109 are public utilities, 14 cover transport, eight are public enterprises for agriculture and forestry, two concern information, one concerns the information technology sector and 15 cover a variety of other public interest activities, such as sport, urban planning, energy, the treatment of stray animals and more. Of the 149 public enterprises, 13 were established by the government, three were founded by the Assembly and the majority, and 133 were established by the City of Skopje and the municipalities.

The largest number of employees are found in public enterprises covering communal works, followed by SOEs covering transport and agriculture and forestry.⁸⁴

SOEs	Number of employees
Communal works	10 390
Transport	3 990
Agriculture and forestry	2 592
Informative character	773
Other activity of public interest	221
Information society	180
Total	18 146

FIGURE 1 State-owned enterprises and employee numbers, North Macedonia.

To increase transparency in the operations of public enterprises and SOEs, the regulations governing the operations of these entities, primarily the Law on Public Enterprises and the Company Law, as well as their statutes and statements, oblige enterprises to submit quarterly reports on their financial operations to the government of the Republic of North Macedonia. They must also make the reports public on their websites.

However, due to insufficient public information, it is very difficult to establish clear facts regarding the role of SOE boards and the way they apply their authority and competencies, as well as the extent of their objectivity in carrying out their functions of strategic guidance and management monitoring. Indeed, it is very rare for SOEs to publish their annual reports on official websites.

The integrity of SOEs is not ensured, and there is no effective control mechanism. On the contrary, SOEs are very often in the public eye due to problems related to their integrity.⁸⁵ For many years, SOEs have been perceived as nests for party supporters and cronies.⁸⁶ The general lack of transparency and accountability contributes to a low level of trust within the institutions and the state system as a whole.

The functioning of SOEs in the Republic of North Macedonia is regulated by the Law on Public Enterprises, which was first adopted in 1996 and most recently amended in July 2022.⁸⁷ According to the law, funds for the operation and development of

public companies shall be provided from the incomes received from their own operation, from loans and from other sources. The bodies of a public enterprise are: the governing board,⁸⁸ the supervisory board and the director.⁸⁹ There is no code of corporate governance for SOEs. Article 18 of the Law on Public Enterprises contains rules on conflicts of interest, noting that a member of a public enterprise management board cannot have personal interests in an enterprise or a company that is in business relations with the public enterprise. Each member of the management board and the general manager of the public enterprise is obliged to warn the founder about the existence of any conflicts of interest among members of the management board. SOE officials are also obliged to provide asset declarations to the SCPC.⁹⁰

Additionally, the Law on Lobbying contains a provision that prohibits lobbying activities on the part of responsible persons in public enterprises or public institutions established by the legislative, executive or local government. Furthermore, these persons are also not allowed

to lobby for the first six months after the completion of their term.⁹¹ However, SOEs have no provisions in their internal regulations related to lobbying.

Each SOE has a statute that regulates its work, as well as a director, a governing board and a supervisory board. The governing board is the highest body in the SOE. The director manages the SOE in accordance with the acts adopted by the governing board, implements the programmes for work and development of the SOE and submits reports to the governing board and the relevant municipal authority, for instance the City of Skopje. The supervisory board is responsible for financial oversight of the SOE. The financial resources of the SOE consist of the company's own revenues, budget from the relevant authority, loans, donations and other resources in accordance with the Law on Public Enterprises.⁹² The Electoral Code prohibits donations from public sources, either in monetary form or in kind.⁹³ The SAO conducts audits on the work of the SOEs in accordance with the law on audit and the yearly programme for audits.

Public Enterprise National Forests

The Public Enterprise National Forests (PENF) was founded in December 1997 and began to operate on 1 July 1998 as the legal successor to 30 independent forest enterprises in the Republic of North Macedonia. As a public enterprise, PENF is authorized by the Forest Law (Article 87) to carry out the management of state-owned forests. It is also authorized by the law to perform professional activities for private forests (Article 92, Article 97), including related administrative procedures (Article 67). It is supposed to protect a public resource, but it tends to operate on market principles instead. There is also a serious business barrier in the way of selling standing wood, which is allowed in degraded forests only (with less than 50 cubic metres/hectares growing stock) and limits the liquidity of the enterprise.

Furthermore, in the past, PENF has allegedly been exploited to create jobs. In 2013, the Minister of Finance organized a public lottery to employ 1 600 people, and presented it as a project focused on specifically employing individuals from socially vulnerable groups, even though that many people were not required.⁹⁴ The candidates were selected by computer, allegedly at random. The government has nevertheless publicly denied these allegations.⁹⁵ Because of the surplus of employees, some of the new staff members were transferred to other public institutions. At the time, this initiative was seen by political analysts as a ploy by the government to offer short-term employment as a way of gaining popular support.⁹⁶ There was no criminal or administrative investigation in this case.

Serbia

In December 2021, the Serbian Business Registers Agency established a register of business operators in which the Republic of Serbia participates as a majority or minority shareholder. As of September 2022, there were 294 such enterprises. However, it is estimated that the number is higher if one factors in enterprises established at the local level.⁹⁷

As in other countries in the region, many Serbian SOEs have large amounts of debt that significantly erode or even outstrip the company's assets, and they employ significantly more staff than is economically sustainable. Studies estimate that the net losses of all SOEs in Serbia amount to more than 3% of GDP.⁹⁸ Additionally, in Serbia, political parties often require public sector employees to demonstrate their political allegiance to the ruling parties. This is especially the case for people in senior positions at SOEs.

The operation of SOEs in Serbia is regulated by a complex legal framework. There are two main types of SOEs in Serbia. The first are public enterprises, which are primarily

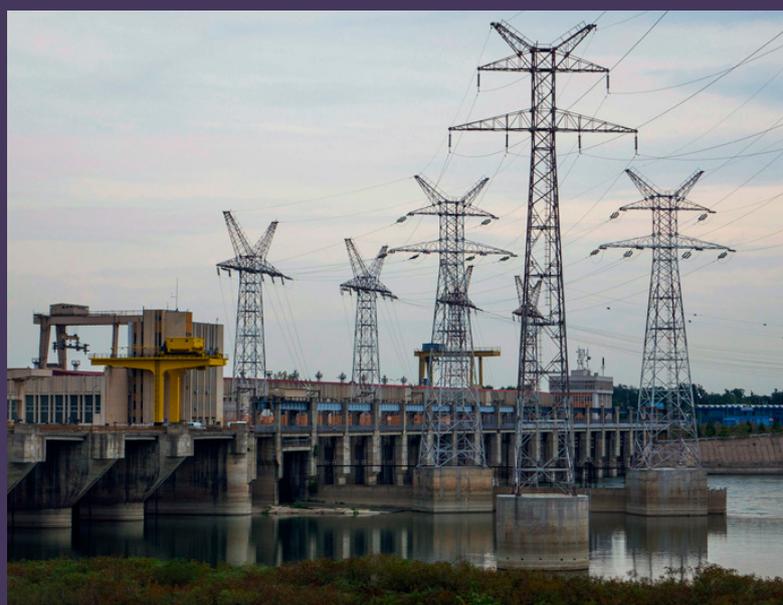
regulated by the Law on Public Enterprises, adopted in 2016 and amended in 2019. The main characteristic of these SOEs is that they pursue activities that are in the public interest. The second type are so-called commercial SOEs operating in competitive markets. The total number of commercial SOEs in Serbia is unknown.⁹⁹ Commercial SOEs are established under the Companies Law as joint stock companies or limited liability companies.¹⁰⁰

The legal framework for governing SOEs in Serbia is relatively solid, but there is room for improvement in regulating the governance and integrity of SOEs, as well as their oversight. Furthermore, the rules relating to the appointment of management that were prescribed by the Law on Public Enterprises and implemented in March 2019 need to be more consistently applied.

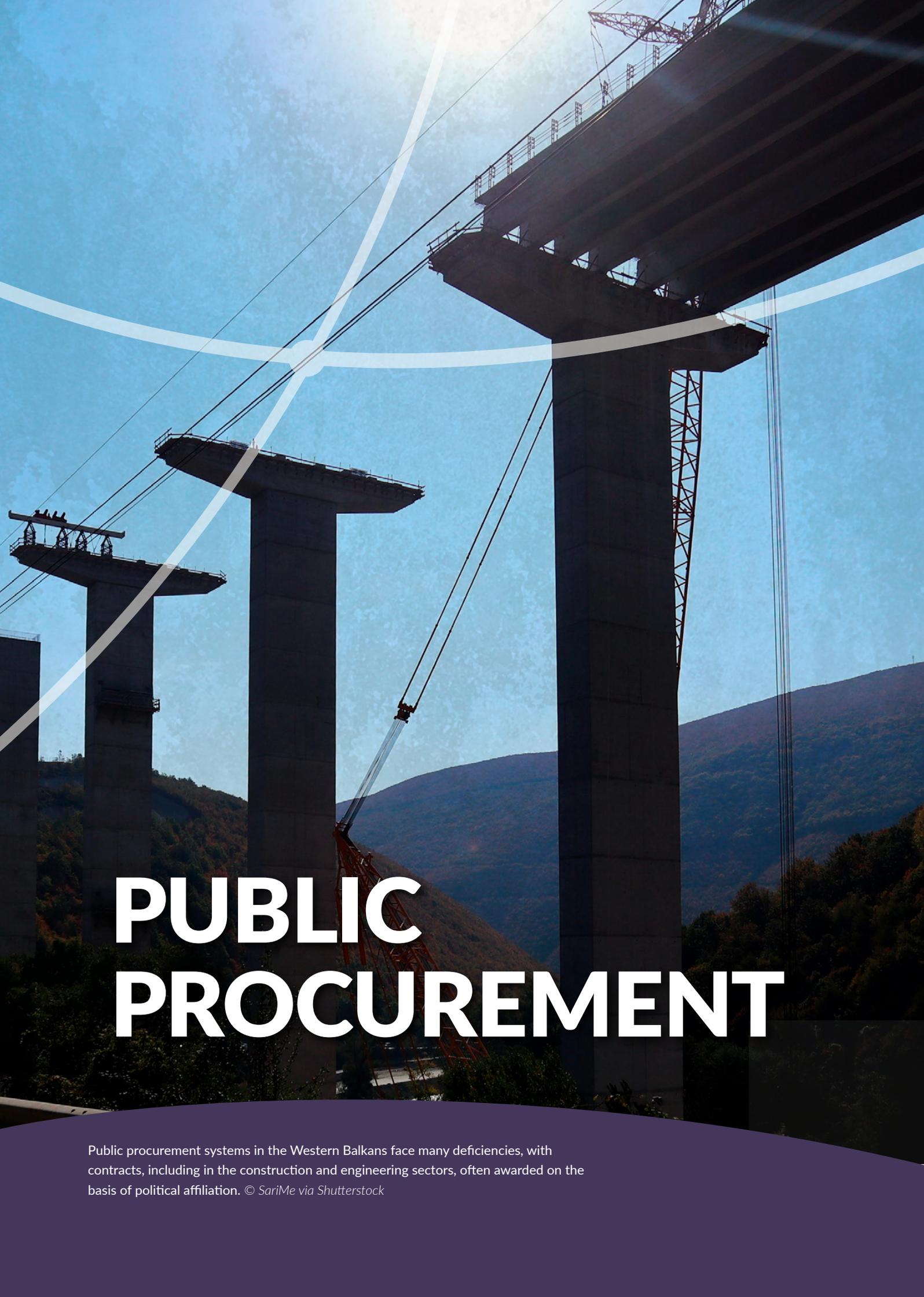
In relation to SOEs in Serbia, EU monitoring reports have raised concerns about the lack of transparency, corruption, rigged public procurement processes, employment of party members, sponsorships and the use of funds and assets for political party financing.¹⁰¹

Electric Power Industry of Serbia

The Electric Power Industry of Serbia (EPS) is the biggest SOE in the country; in 2021 it contributed around 1.38% of the state's GDP, down from 2.23% in 2020.¹⁰² It has been criticized as a good example of poor governance of public resources.¹⁰³ Indeed, the EPS is a classic case of the politicization of an SOE. For example, the CEO who stepped down in January 2022 not only was illegally appointed, as he did not meet the relevant experience conditions,¹⁰⁴ but he reportedly also illegally held the position of acting director for over five years in direct violation of the Law on Public Enterprises, which allows an acting director to serve only a year.¹⁰⁵ According to the State Audit Institution, the EPS has spent €14 million in violation of the Law on Public Procurement.¹⁰⁶ Other criticisms that have been levelled against the company include overstaffing, high salaries, artificially low pricing for household electricity and high environmental pollution.¹⁰⁷



The Iron Gate power station on the border between Serbia and Romania. Serbia's electricity sector faces significant challenges relating to organized corruption. © Rolf Richardson/Alamy Stock Photo



PUBLIC PROCUREMENT

Public procurement systems in the Western Balkans face many deficiencies, with contracts, including in the construction and engineering sectors, often awarded on the basis of political affiliation. © SariMe via Shutterstock

Introduction

Public procurement is considered one of the processes most vulnerable to corruption. It therefore receives considerable attention in anti-corruption instruments. For example, Chapter II, Article 9 of the United Nations Convention Against Corruption, which focuses on '[p]ublic procurement and management of public finances', emphasizes the importance of proper public procurement and the necessary measures to avoid possible misdeeds and corruption related to it. EU reports pay great attention to the legislative provisions and implementation of public procurement systems in the WB6. Preventing and countering corruption in public procurement is one of the three goals of the Regional Anti-Corruption and Illicit Finance Roadmap, adopted in Ohrid, North Macedonia, in June 2021.

The GI-TOC's Infrastructure of Integrity reports highlighted that the risk of corruption is particularly evident in the public procurement processes of all Western Balkan countries and often represents an indicator of organized corruption.

Some of the main deficiencies when it comes to public procurement include: improper management and conclusion of contracts, poor procurement planning, conclusion of contracts without committed funds, a lack of open procurement procedures, adaptation of criteria so as to favour certain operators, irregularities in evaluations of tenders and the conclusion of contracts with abnormally high prices.

Over the past few years, the quality of legislation relating to public procurement in WB6 countries has improved. However, in practice, the process is often undermined by a lack of integrity and insufficient professionalism in public procurement systems at both the central and municipal levels. Part of the problem seems to stem from the informal practices of the political elite, who use public procurement to fund clientelism, reward political loyalty and feather their own nests.

As with other aspects of preventing and fighting corruption in the Western Balkans, implementing the relevant legislation and establishing effective oversight and control are crucial when it comes to public procurement. This section looks at the relevant legislative frameworks for each of the WB6 countries and provides case studies that highlight exploitative practices related to public procurement.

Overview and legislative frameworks

Albania

Albania has taken a number of steps to improve its legal framework on public procurement as part of the EU accession process. In 2020, Albania adopted a public procurement strategy for 2020–2023 and a new public procurement law, following recommendations from the European Commission.¹⁰⁸ The new public procurement law is said to be in accordance with EU directives on public procurement.¹⁰⁹ The planning and preparation of public procurement procedures is generally transparent, and public procurement principles and forecasts are published regularly. However, procurement contracts have been negotiated without prior publication, for example, in relation to crisis situations such as the COVID-19 pandemic and post-earthquake reconstruction projects.¹¹⁰

Since signing the Stabilisation and Association Agreement with the EU in 2006, Albania has been aligning its public procurement legislation to EU standards.¹¹¹ However, some of the secondary legislation still needs to be adopted to ensure the implementation of the procurement law of 2020. For example, in March 2020, the government declared that all tenders during the COVID-19 pandemic would be conducted under the ‘essential interests of the state’, meaning that no transparency or regular procurement procedures would apply.¹¹²

Public procurement legislation has been a topic of debate over the years, especially in relation to which institutions are fit to conduct oversight and regulate processes. At the moment, there are a number of public institutions involved in public procurement processes, including the Public Procurement Agency, the Public Procurement Commission, the Ministry of Finance and Economy, the Ministry of Defence, the Ministry of Internal Affairs and the Central Purchasing Agency.

In the past, some of these agencies have come under scrutiny due to allegations of corruption. For example, in July 2021, nine current and former public officials, including the former head of public procurement at the Ministry of Interior and several members of the committee for the evaluation of offers at the Public Procurement Agency were arrested by SPAK.¹¹³

In response to allegations of corruption and mismanagement, the government adopted amendments to the law on public procurement with the aim of harmonizing the public procurement framework with EU best practices on public procurement. These amendments include specifying the procedures and regulations for public procurement in particular sectors, such as transport, postal services, water, energy and gas.¹¹⁴ Furthermore, rather than requiring a certification issued by public authorities or third

parties for participation in public procurement contract bidding, the amendments to the law envision that companies should be able to submit a self-declaration form for eligibility. Additionally, the new legislation includes a provision to publish periodic information and notices in advance of upcoming public procurement contracts, as seen in the EU directives for public procurement. The new law also includes a provision to modify or invalidate public procurement contracts after they are awarded.¹¹⁵ As such, the legal framework on public procurement has improved drastically over the last few years.

Public-private partnership

Public-private partnerships (PPP) are contractual relationships between government agencies and private sector companies for the delivery of goods or services to the public. PPPs have been widely used in Albania over the last decade, and many of these deals have been shrouded in secrecy. In the past four years, PPP contracts have been awarded in key sectors including energy, transport, environment, urban development, health and fiscal control. The most controversial PPP contracts and concessions have been for the construction and administration of urban waste treatment plants.

The treatment of waste by incineration for energy production began in December 2014. The procurement process for the construction of incinerators was open to PPPs, and contracts were awarded to a network of small companies in partnership with one another that included some companies registered in offshore tax havens with unknown owners.¹¹⁶ Investigations discovered that these lucrative PPP contracts were awarded via rushed processes with no proper transparency or accountability.¹¹⁷ According to reports in the Albanian media and from some government officials, payments for the incinerators have continued, even though major irregularities have been found and the heads of these companies were wanted by the police on allegations of engaging in corruption.¹¹⁸ High-level politicians who have served in the current government were arrested and are awaiting court hearings on charges of engaging in corruption and abuse of power for favouring specific companies to win these contracts. However, there has been no official review of the process, despite major criticism and ongoing investigations into the construction of the waste incinerators.¹¹⁹

Bosnia and Herzegovina

As a highly decentralized country with many levels of government, Bosnia and Herzegovina established a unique and centralized legal framework for public procurement in 2004. A new Law on Public Procurement was adopted in 2014, and the latest amendments were adopted in August 2022. The law regulates the rules of public procurement procedures in a comprehensive manner, and it establishes the Public Procurement Agency as a regulatory body and the Procurement Review Body as a secondary authority.

In 2014, the law recognized several types of procedures, such as open, limited, negotiated (with or without prior publication of notice), competitive dialogue, competition for conceptual design and more. Internal controls, audit offices, civil society and the private sector have a protective role.¹²⁰ The Public Procurement Agency launched and improved a specialized public procurement portal, which contains information about contracting authorities, bidders, procurement notices and appeal decisions of the Prosecutor's Office and the Court of Bosnia and Herzegovina.¹²¹

However, public institutions have yet to develop sufficient internal resources in terms of staff, knowledge and skills to adequately respond to the tasks of the modern public procurement system. As a result, there are systemic deficiencies in the field of public procurement planning, public authorities lack strategic vision for public procurement, and the Public Procurement Agency and the Prosecutor's Office do not have sufficiently strong legal mechanisms for monitoring, controlling and sanctioning violations of the law.¹²² There are developed corrupt practices and a fairly harmonized criminal market among actors, and these stimulate and maintain the already widespread corrupt practices in the state through public procurement.¹²³

In the decentralized constitutional and legal environment of BiH, penal provisions for violations of the Law on Public Procurement only exist in some jurisdictions (the Republic of Srpska entity and the Brcko District), which poses a unique problem.¹²⁴ Moreover, the courts issue a small number of judgments with very mild penalties for violations of the law.¹²⁵

The August 2022 amendments to the law were designed to improve transparency and to reduce the scope for conflicts of interest in public procurement procedures. They include: the mandatory appointment of public procurement officers in bodies that have significant procurement values, more precise definitions of some disputed terms and situations, a stronger electronic procurement mechanism, improvements to conflict of interest matters and improvements in corruption prevention mechanisms.¹²⁶ However, civil society has cautioned that even these new amendments will struggle to effectively mitigate the shortcomings directly responsible for creating corruption risks in lucrative procurement processes.¹²⁷

In short, despite a solid legal framework, public procurement remains exposed to significant risks of corruption. To address this situation, legal loopholes will need to be filled and the legislation will need to be more adequately implemented.

Profiting from the pandemic

A number of public procurement scandals during the COVID-19 pandemic raised public attention and anger, particularly around how the state of emergency was used to exploit opaque procurement processes for personal enrichment at the expense of public health and resources.¹²⁸

Just a few months after the outbreak of the pandemic, there was a scandal in the Federation of Bosnia and Herzegovina surrounding the procurement of badly needed medical ventilators. The government of the Federation acquired a total of 100 medical ventilators from China, which cost about €5 million. Eighty devices were delivered to the country's capital by a charter flight. A few days later, the media began to question this arrangement, especially given that the company that procured the medical ventilators was originally registered as an agricultural company.¹²⁹ Not long after, authorities opened an investigation into the case, resulting in an indictment filed by the Prosecutor's Office of Bosnia and Herzegovina at the end of 2020. The Court of Bosnia and Herzegovina confirmed the indictment against high-ranking public officials in the government of the Federation – the prime minister, deputy prime minister and director of the Federal Administration for Civil Protection – as well as the director of the company that procured the medical ventilators and the company itself.¹³⁰ They are accused of association for the purpose of committing criminal offences, abuse of official position and authority, negligent work in the service,



Bosnia and Herzegovina has seen a number of scandals surrounding the public procurement of medical equipment, particularly during the COVID-19 pandemic. © Gent Shkullaku via Getty Images

money laundering and more. There is still no first-instance verdict of the court.¹³¹

In another case that occurred in Republika Srpska, the director of the Institute for Public Health and the directors of the procuring companies were accused of abuses in the public procurement of medical equipment in a case that was officially labelled high-level corruption.¹³² According to the allegations in the indictment, the questionable purchase of medical equipment resulted in damages of around €650 000.

More recently, the public was informed about an investigation into the director of the Civil Protection Administration, who is suspected of having committed certain abuses in public procurement of medical equipment and, more generally, abuses of power.¹³³

Public-private partnership

PPPs are recognized by the EU as important instruments for securing missing funds for the implementation of public interest projects. They can offer additional know-how and management skills that are lacking in the public sector and optimize of the use of funds.¹³⁴

There are 12 laws governing PPPs in BiH, and they are not fully harmonized with the relevant EU standards or with one another in terms of their mutual relationships.¹³⁵ Implementation of these laws is uneven, resulting in poor transparency regarding the procedures and cases of contracted PPPs, among other things.¹³⁶

The development of PPPs in BiH is driven by the sizeable diaspora (about 2 million people), which is economically potent and reportedly often interested in investing within this model, but corruption hinders those intentions.¹³⁷

Given the complexity, length and flexibility of PPP contracts, the PPP model is more vulnerable to corruption, which not only diminishes the positive effects of cooperation but can also threaten the entire PPP project.¹³⁸

Kosovo

Overall, findings shows that integrity in the public procurement system in Kosovo has been weak.¹³⁹ Political factors appear to have been the main drivers behind the establishment of widespread informal practices in this sector. Taking into consideration the leading role contracting authorities have in procurement processes, it is evident that they represent the source of the vast majority of problems regarding public procurement.¹⁴⁰

The public procurement sector in Kosovo is regulated by the Law on Public Procurement of the Republic of Kosovo, which was adopted by the Assembly of Kosovo in September 2011 and amended once in 2014 and twice in 2016.¹⁴¹ Several pieces of secondary legislation have been adopted, including the Rules and Operative Guide of Public Procurement.¹⁴² The main goal of the Law on Public Procurement is to ensure the integrity and accountability of procurement processes, including of the public officials, civil servants and other persons involved in the procurement activities.¹⁴³ The Law on Public Procurement foresees two criteria for issuing a contract: the lowest offer and the most economically attractive offer.¹⁴⁴ Contracting authorities have the main administrative roles.

The main oversight bodies are the Public Procurement Regulatory Commission and the Procurement Review Body. The Central Procurement Agency (CPA) is an executive agency that operates within the Ministry of Finance and is responsible for compiling lists of common use goods and articles and for conducting centralized procurement activities on behalf of all contracting authorities at the central and local levels.¹⁴⁵ Contracts signed by the CPA are legally binding for the respective contracting authorities. The CPA prepares and submits to the ministry in charge of public finances an annual report reflecting its public procurement activities during that calendar year.

The Public Procurement Regulatory Commission (PPRC) is an independent regulatory agency tasked with developing the public procurement system in Kosovo that enables the implementation of the Law on Public Procurement. The PPRC ensures the existence of a fluid system to encourage competition, respect the equality of participants in the public procurement process, and achieve the highest possible rational, efficient and transparent standards for the use of public funds. The PPRC also conducts ex-post monitoring of contracts. Its latest annual reports indicate that many contracting authorities have not been monitored over the years because of the institution's insufficient capacities to cover all monitoring needs.¹⁴⁶

The Procurement Review Body is an independent administrative review body that is responsible for the implementation of the procurement review procedures envisaged by the Law on Public Procurement. This institution was left without board members for more than 16 months beginning in March 2021,¹⁴⁷ which resulted in more than 100 projects and tenders initiated by the institutions of Kosovo being blocked. According to the European Commission's 2022 report, the Procurement Review Body would greatly benefit from increasing its qualified staff numbers, as it struggles to deal with the considerable backlog of complaint cases.¹⁴⁸ Cases in which members of the Procurement Review Body and experts are subject to corruption allegations appear to be commonplace.¹⁴⁹

Pristina–Skopje highway contract

The construction contract for the Pristina–Skopje highway was signed in 2014 between the Kosovo government and ENKA-Bechtel, a Turkish-American joint-venture partnership.¹⁵⁰ From the beginning, civil society and the media were critical of the project, which was initially estimated to cost taxpayers around €600 million, although its contract was never made publicly available.¹⁵¹ One of the key problems that this project faced in its first couple of years was the government's struggle to execute payments on time. Because of this, in 2016, ENKA-Bechtel presented the government with a compensation claim, the exact amount of which was not initially made public.

In September 2017, just days after the new governmental coalition was formed, ENKA-Bechtel reignited its claims for compensation. This time, Bechtel went public with its compensation request, which totalled €63.3 million for the period from 2014 to 2016.¹⁵² Just 18 days after coming to power, the new government reached an agreement with Bechtel to pay €53 million in compensation.¹⁵³

Suspicious regarding the possibility of corrupt practices emerged almost instantly. According to a state-commissioned report that was not made public until it leaked to the media in 2019, the government had failed to pay no more than €14 million – less than a third of the compensation actually paid to Bechtel.¹⁵⁴ As a result, an initial criminal investigation against the minister of infrastructure was launched in June 2018, just days after the government authorized its first payment to Bechtel.¹⁵⁵ The charges were confirmed in February 2022, and additional charges were also laid against two other officials at the ministry. They denied any wrongdoing, but the prosecution stated that the minister completely neglected a report from the highway supervision company Hill International,¹⁵⁶ and that he failed to present Hill International's opinion to the ministers council, which could have potentially resulted in €38 million in savings to the public budget.¹⁵⁷

It recently emerged that the Haradinaj government paid Bechtel an additional €44 million, beyond the €53 million in compensation.¹⁵⁸ This additional payment is thought to have been based on an illegal contract. The Law on Public Procurement treats any contracts that are not signed by the procurement official as illegal.¹⁵⁹ In June 2022, the special prosecution reportedly commenced a new investigation into this case, although though they have yet to officially confirm it. However, the Ministry of Infrastructure confirmed that the prosecution had confiscated all its related documents and that the investigation is underway.¹⁶⁰

Istog Municipality mayor and the family

From 2003 to 2004, a private company named Macon built a seven-story building on municipal property in Kosovo, yet the municipality did not own any housing space in the building.¹⁶¹ Macon was formally owned by the family of the then-mayor of the Municipality of Istog. For six years, the former mayor appeared to have been declaring to the Anti-Corruption Agency that he held 15% shares in this company. In one of his public statements, the former mayor declared that he had owned the 15% shares in 2000 and that, since then, he had not been directly involved in the company, which he admitted was owned by his two brothers.¹⁶²

It emerged in the media that Macon had also received tenders worth hundreds of thousands of euros from the municipality, including two in 2010 and one more in 2014.¹⁶³ In October 2020, it was reported that the former mayor had been arrested by the police along with two municipal officials – one of whom was his deputy – on suspicion of conflict of interest, abuse of office and falsification of official documents.¹⁶⁴ In June 2021, the former mayor received a symbolic one-year prison sentence for favouring his family-owned company and awarding it a €289 000 infrastructure tender in 2014. He was also forbidden from taking any public role for a period of one year.¹⁶⁵

Montenegro

Montenegro's public procurement and contracting sector is continuously perceived as being one of the most prone to corruption, with weak transparency and close to no sustainable results when it comes to the application of penalties.¹⁶⁶ According to the European Commission, the procurement market in 2021 corresponded to 4.47% of the country's GDP, estimated to be worth €220 million in total.¹⁶⁷ This figure represents a stark decline from the previous year, which corresponded to 13.1% GDP and a total of €545 million.¹⁶⁸ According to the Commission, reasons for this decline included COVID-19, major organizational changes in the public administration and the very late adoption of the 2021 state budget.¹⁶⁹ Reports indicate that one fifth of the contracts were concluded based on a single offer being submitted in the process of public procurement.

The existing Law on Public Procurement was changed several times but still allows for misinterpretation and holds 'convenient legal windows' to conduct ill-practice, harming the state budget and the public interest.¹⁷⁰ In October 2021, the government adopted a new 2021–2025 strategy for improving public procurement and public–private partnership policies, as well as an action plan for 2022.¹⁷¹ According to the Ministry of Finance,

one reason for amending the Law on Public Procurement was to remove the observed limitations and ambiguities in the practical application of the law and to move towards harmonization with EU law. Another reason, as stated by the government, was to make the procurement process more efficient and transparent. Changes also focused on strengthening the electronic system of public procurement in order to both simplify the public procurement process and increase the transparency of the entire system. However, the large number of contracting authorities within the country remains a considerable obstacle to the overall efficiency of the procurement system.¹⁷²

According to the Law on Preventing Corruption, any legal entity that concludes a public procurement contract with a public official becomes a related person who can be subject to a comprehensive check of assets and income.¹⁷³ Due diligence that would enable a real assessment of the suitability of bidders in a public procurement tender is significantly limited by legal requirements that oblige the ordering parties to perform only a superficial formal verification of persons and companies.

There is no separate criminal offence related to public procurement in the Criminal Code of Montenegro. The procurement process is regulated by the State Commission for Control of Public Procurement, which is in charge of receiving and acting upon complaints of violations of procurement rules and procedures. In cases where the law is violated, the State Commission has the authority to terminate the tender decision and to submit an initiative for inspection control to the public procurement inspector.

This inspector is housed within the Directorate for Inspection Control of Montenegro and can act independently of State Commission initiatives, originating inspection controls ex officio, reviewing state institutions' procurement plans and internal procedures, executing procurement tenders and acting on concrete cases of possible violations.

Former mayor of Budva's conflict of interest

The former mayor of the Municipality of Budva in Montenegro is also the owner of the construction company Carinvest, registered in city of Kotor. Carinvest was the hidden subcontractor for tendered works announced by the Municipality of Budva, on whose behalf the contracts were personally concluded by the former mayor himself.¹⁷⁴ The contracts were formally concluded with the Podgorica company Asphalt-Beton Gradnja, which then used Carinvest's machinery to perform the agreed upon works.

MANS, an NGO, discovered that the Municipality of Budva had concluded as many as 11 contracts worth €1.9 million with Asphalt-Beton Gradnja.¹⁷⁵ In addition to the contract for the purchase of work, the former mayor also signed an integral part of the tender documentation, namely, a statement ensuring the absence of conflict of interest in this contract.¹⁷⁶ Local media recordings, which followed the implementation of the works and the reconstruction of rural roads for which Asphalt-Beton Gradnja was formally engaged, revealed that the work was instead done by machinery belonging to the former mayor's family-owned company, Carinvest, although this company was not listed as an official contractor or subcontractor, as is required by the Law on Public Procurement and the terms of the tender.¹⁷⁷ Ultimately, the former mayor misled the authority he managed, the general public and other competent authorities.

Toškovići

According to Montenegro's Law on Public Procurement, a person cannot participate in a bid if convicted of listed criminal offences. The construction company Toškovići received several million-euro tenders, even though its formal owner at the time, Ivica Tošković, had been convicted of tax and contribution evasion, and creation of a criminal organization – criminal acts that would exclude his company from the bidding process. One of the projects Toškovići received was implemented by the international tender rules of KFW Bank, which eventually forced the Podgorica Water Supply Company to terminate its contract with Toškovići.

North Macedonia

The 2020 European Commission Report remarked on public procurement challenges, while the 2021 progress report additionally mentioned the need to implement more effective anti-corruption measures in the procurement cycle. The 2021 report also noted limited progress in the implementation of the Law on Public Procurement bylaws, as well as the need for additional staffing, enhanced capacities and continuous training at key institutions, contracting authorities and economic operators.¹⁷⁸

Implementation of existing laws and trainings must also be improved, including by addressing the criteria, thresholds and standards for public procurement. Among other elements that need to be improved are biased evaluation methods, inappropriate contractual terms, the lack of qualified personnel at contracting authorities and economic operators, and the insufficient time to prepare offers. In addition to a well-developed electronic system for public procurement, it is necessary to ensure that all institutions have suitable and interconnected tools.

The Law on Public Procurement regulates the manner of and procedures for public procurement in the Republic of North Macedonia.¹⁷⁹ It also establishes the competences of the Public Procurement Bureau (PPB) and the State Commission for Public Procurement Appeals (SCPPA), as well as the processes for awarding concessions and contracts for PPPs.¹⁸⁰ The PPB is a state administration body within the Ministry of Finance, and it is the central body responsible for coordinating and monitoring the public procurement system in the Republic of North Macedonia. The main objectives of the PPB include providing for the uniform implementation of public procurement legislative acts and strengthening capacities for the implementation of proscribed procedures for awarding public procurement contracts horizontally within contracting authorities. The SCPPA is a state body responsible for resolving appeals related to the procedures for awarding public procurement contracts, concessions and PPPs; appeals in the awarding of public procurement contracts in defence and security; and other issues in accordance with the law. SCPPA decisions are not subject to appeal, but it is possible to initiate an administrative dispute before the Administrative Court.

The National Strategy for the Prevention of Corruption and Conflict of Interest systematizes measures in public procurement.¹⁸¹ In order to prevent risks of corruption and unfair competition, the PPB developed the Public Procurement Strategy 2022–2026 and the Action Plan for 2022.¹⁸²

The public procurement system in the Republic of North Macedonia is decentralized, which means that each state institution procures according to their needs and plans. Contracting authorities and bidders are thus basic subjects in the implementation of public procurement contracts. The Ministry of Economy is responsible for the realization of PPPs and concessions in the Republic of North Macedonia.

The Criminal Code contains a special criminal offence related to public procurement: Article 275-c, abuse of a public call procedure, procedure for awarding public procurement agreement or public and private partnership.

Pandemic procurement

The Center for Civil Communications, an NGO, published two half-year reports covering COVID-19 public procurement for 2021.¹⁸³ These reports concluded that there was a lack of uniformity, a lack of bidders, disproportionately increased prices, missing quality standards related to pricing, insufficient justifications for the necessity of procurement, risks of corruption, pre-set tenders, unjustified price differences, non-transparent direct negotiations and problems related to conflicts of interest.¹⁸⁴ In addition, the reports highlighted the fact that COVID-19 public procurement contracts were issued for products that cannot be easily linked to the crisis, such as an official passenger vehicle with a leather steering wheel, six speakers and metallic paint.¹⁸⁵

According to the reports, there was a case in which an institution that wished to carry out the procurement of 1 000 rapid tests for the detection of the SARS-COV-2 antigen determined the value to be approximately €9 600 with VAT, or €9.60 per test – almost twice the market price.¹⁸⁶ In the end, due to high competition, a final price of €2 per test was agreed.



In North Macedonia, public procurement related to the COVID-19 pandemic was plagued by wrongdoing, including inflated prices for rapid tests.

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Serbia

The public procurement system was first introduced in the Republic of Serbia in 2002. Since then, the legislation has been reviewed and has evolved towards full alignment with EU law. Historically, the Public Procurement Office was obliged to appoint a representative of a civil society organization, an academic or an expert knowledgeable in public procurement as a civic observer in all public procurement procedures over €8.5 million. The civic observer reported directly to the Parliamentary Committee on Finances. However, in the last revision of the legislation, and through the adoption of the current Law on Public Procurement in 2019, this institute has been removed from Serbian legislation, mostly due to its potential contributions to detecting grand corruption and its impact on the integrity of public procurement in Serbia.

The Law on Public Procurement was adopted in 2019 and came into force on 1 July 2020. The extent to which it has been implemented is somewhat unknown, due to the short period of implementation and the disruptions in public procurement and contracting authorities' operations caused by the COVID-19 pandemic. Public procurement is treated in the same package as PPPs in the EU negotiations framework. Legislation on public contracting is not harmonized with EU law and represents a huge corruption risk in Serbia due to its poor legislative and institutional frameworks.

During the preparation phase of the Law on Public Procurement, one of the key issues highlighted by public debate was the financial thresholds for the application of the procedures envisaged by the law. Accordingly, around one third of all procurements conducted in Serbia would drop below the threshold and thus be exempted from application of the public procurement rules based solely on the financial threshold in question.¹⁸⁷ Primarily affected by the new lower thresholds are local self-governments and local public enterprises, with a significant portion of their conducted public procurement left poorly regulated. Combined with the lack of expertise and other resources on the local level, such regulation leaves enormous space for corrupt practices.¹⁸⁸

Major infrastructure projects usually involve the provision of loans for the financing of projects from partner countries. The Belgrade metro, highways, railroads and energy infrastructure projects are among those awarded to foreign companies without any competition. When such agreements are signed with big creditor countries, contracts are exempted from national freedom of information regulations, leaving plenty of space for corrupt practices and increasing the already high level of corruption perception.

In terms of control and oversight, the new Law on Public Procurement dismissed the obligation for procuring entities to submit quarterly reports on the implementation of public procurements to the Public Procurement Office. The new law also decreased transparency standards related to the negotiation procedure without prior publication of tender. Finally, the decision to remove the required civic observer for public procurements of high value weakened the system's capacity to fight corruption.

Procurements are often exempted from the application of public procurement legislation. This is particularly true of big infrastructure projects financed via loan agreements with third countries and directly assigned to companies from these countries without

complying with requirements for transparency, equal treatment or non-discrimination.

High levels of corruption and low trust in institutions prevent businesses from bidding for public contracts. Thus, the intensity of competition in public procurements is a reliable indicator of the levels of corruption. High levels of irregularity resulting in low trust in the system and low competition have been confirmed by the State Audit Institution, as well.¹⁸⁹ This is particularly concerning considering that the public procurement market represents 8.9% of the country's GDP and is estimated to reach a total value of €4.75 billion.¹⁹⁰ Additionally, by virtue of the new law, 67% of the cumulative value of all public procurement contracts concluded in 2021, a total value of €3.2 billion, was exempted from the application of the relevant law, according to the European Commission.¹⁹¹

The integrity of public procurements needs to be assessed throughout the entire procurement cycle, beginning with planning and ending with audit. Planning is the most neglected part of the procurement cycle, together with market research, which is avoided by Serbian procuring entities. With the extremely low level of competition in Serbian public procurement, it is quite easy to direct financial flows to private pockets. In the implementation phase of public procurement, the main corruption risks are hidden in technical specifications. Finally, it is impossible to determine whether the quality of goods matched what was needed and whether they were delivered in the quantities required.

The institutional set-up reflects the situation in the sector and contributes significantly to the grave picture of the public procurement system in Serbia. Under the current legislation, there are two key institutions dealing with public procurement in Serbia: the Public Procurement Office and the Republic Commission for Protection of Rights in Public Procurement Procedures. This institutional arrangement is in line with EU law. The competences are split between the Public Procurement Office, which is in charge of monitoring and providing instructions on the implementation of the legislation and protecting public interest, and the Republic Commission, which is tasked with controlling and protecting the rights of bidders.

The Public Procurement Office is a special organization that monitors the implementation of regulations on public procurement; participates in the drafting of laws and other regulations; adopts bylaws in the field of public procurement; provides professional assistance; prepares guidelines, manuals and other publications in the field of public procurement; and prepares reports on public procurement. The Republic Commission decides on requests for the protection of rights, and appeals against procuring entities' decisions and proposals from procuring entities that requests for the protection of rights not delay further proceedings in the public procurement process. Efficiency and effectiveness of the two institutions has been limited, to the extent that they have not fulfilled their respective mandates for a long period of time. Both institutions are severely understaffed.¹⁹²

Opaque emergency procurement

COVID-19 caused major disruptions in the public procurement systems, and Serbia is no exception in that regard, particularly since the new law on public procurement came into force on 1 July 2020, less than four months after a state of emergency was proclaimed. Denying access to information on procurements during epidemics may be justified, but information on costs

and quantities of procured vaccines and ventilators have yet to be made public. Secrecy, however, is often only a symptom and indicator of possible corruption. The minimal information on COVID-19 procurement that was made public fuels suspicions of irregularities in the procurement of medicines and equipment.¹⁹³



CHALLENGES

Demonstrators gather in front of the government's headquarters in Tirana, Albania, in November 2022, to protest against corruption and rising living costs. © Gent Shkullaku/AFP via Getty Images



As WB6 countries seek to promote and safeguard the transparent, responsible and accountable financing of political parties and elections, as well as the management of SOEs and public procurement, it is possible to summarize the main challenges they face regarding their legislative frameworks, their compatibility with international – and in particular EU – standard guidelines and protocols, and the institutional architecture of oversight and control.

Legislation

All six countries in the Western Balkans have legislation regulating the financing of political parties and elections. However, there are consistent shortcomings in terms of implementation, even after recommendations have been made by European institutions such as the Council of Europe and the OSCE. Even WB6 countries that have laws in line with European and international standards sometimes fail to live up to them due to insufficient oversight from relevant bodies or regulatory agencies, many of which lack independence. Poor integrity and rather high levels of corruption within each Western Balkan country detract from achieving international standards in the financing of political parties and elections.

Internal oversight and accountability for finances within political parties themselves need to be strengthened. Loopholes detected within each jurisdiction seem to show a lack of understanding or willingness to provide transparency in bookkeeping in relation to the financing of political parties and elections. Each national report demonstrates how political parties made use of loopholes and how provisions were misused or ignored in practice in order to achieve more support and seats in government. The lack of appropriate oversight or sanctioning, even when irregularities are discovered, does not help achieve international standards or the implementation of satisfactory provisions. Case law usually shows harsher punishments for parties that no longer hold power.

Although the legislative arena regarding public enterprises looks relatively well developed, it still suffers from notable shortcomings, particularly when it comes to the implementation and application of effective and independent oversight and control bodies and the selection of the best professionals for roles within SOEs. One common shortcoming is the

political appointment of key managers and other employees within an SEO, which often seems based more on political allegiance than skill. Another is the lack of respect for the findings of control and oversight bodies and the subsequent implementation of remedies to improve the situation. Yet another notable deficiency concerns the almost complete lack of transparency in relation to operations, appointments and the reporting of results. Similarly, there is also a lack of public accountability, including, in some instances, limited access to data; in some countries, there are not even accurate accounts of the number and sectoral distribution of SOEs.

In each of the WB6 countries, public procurement is exposed to corruption. Considerable efforts have been undertaken to align legislation with EU law in an expression of political willingness and the desire to be seen as seriously devoted to the values and expectations of the EU and UN. The alignment of laws on public procurement with EU standards is still an ongoing process in the Western Balkans. Most countries established their relevant legislative frameworks in the initial years of the 2000s, and all countries have since passed amendments aimed at improving transparency and integrity and reducing risks of corruption.

However, the legislative route has not always been unidirectional towards reducing corruption opportunities related to public procurement. For example, as noted earlier, Serbia's legal framework obliged the Public Procurement Office to appoint a representative of a civil society organization, an academic or an expert knowledgeable in public procurement as a civic observer in all public procurement procedures over €8.5 million. The civil observer reported directly to the Parliamentary Committee on Finances. However, in the last revision of the legislation, and through the adoption of the current Law on Public Procurement in 2019, this institute and obligation were removed from Serbian legislation. Moreover, in a number of laws, convenient legal windows – or loopholes – were introduced. There is a need for further in-depth 'corruption proofing' of public procurement related legislation.

Control and oversight

When it comes to political party financing, control and inspection are performed by CECs in Albania, BiH and Kosovo. In Montenegro, North Macedonia and Serbia, this task is performed by agencies or commissions for the prevention of corruption, as well as by state audit offices. WB6 countries have adopted new laws and a number of controls based on EU recommendations, but implementation is lagging. The constitutional set-up of BiH (three entities and cantons in the Federation of Bosnia and Herzegovina) poses a special complication, with inconsistent legislation and a lack of supervision and competence of behalf of the CEC. Supervision is more successful during election campaigns at all levels, but the pre-election period and control over media advertising still pose problems. Albania has implemented the latest legislation with a three-tiered approach, which appears to be an interesting control model. Civil society's role as an oversight actor is very important throughout the Western Balkans and needs to be further enhanced and institutionalized, particularly in view of the influence of political parties over other control institutions.

Transparency is lacking, and SOEs are rarely held accountable. In North Macedonia, for example, although the Law on Public Enterprises and the Company Law oblige SOEs to submit quarterly financial reports to the government and publish them on their official websites, the enterprises rarely release these reports to the public. The Law on Free Access to Information of Public Importance in Serbia aims to strengthen transparency in this regard. Nevertheless, it has been reported that since the law's adoption, SOEs have been ignoring most information requests, even to the extent of ignoring requests submitted by the Commissioner for Information of Public Importance. Almost identical problems plague public procurement.

Implementation

Most legislation is generally in line with international standards, but there are marked problems with the implementation of laws. There are therefore a number of loopholes in the legislation that need to be addressed. Too often, political parties deliberately bypass the law to promote their own financial interests and impact election results and power-based decision-making.

In such situations, the role of control and oversight mechanisms is of utmost importance, although they cannot alone impose and safeguard transparency, responsibility and accountability. Many of the control structures are themselves politicized and therefore no longer impartial; some are not independent or lack sufficient financial support and capacity to carry out their functions. Control over political financing must necessarily deal with corruption and money laundering, yet most of the control structures and procedures related to the political financing of parties and elections are rather limited. Both political parties and the people that run them are potentially corrupt, and there is evidence that much of the money in politics flows through private pockets rather than party treasuries. Treating the financing of political parties as separate from the control of political officials' property and of public contracting, especially public procurement, leaves any system of control invalid and consequently inefficient. Inefficient control mechanisms, prosecutions and courts add impunity to the failure of anti-corruption measures in the financing of political parties.

There is ample evidence of increased spending on social media advertising, particularly on Facebook, in all recent electoral campaigns, yet many relevant pieces of legislation lack references to sponsoring political campaigns on social media. There are also numerous examples of media being misused in political campaigns. Some electoral lists delayed reporting their advertisements as political, thereby avoiding making the details of such advertising public. Some election participants reported lower than actual costs for field campaigns and the production of promotional videos. Some media outlets gave discounts to certain political parties or provided services that were not defined in their price lists, while others broadcast political marketing without having submitted price lists by the legally defined deadline.

Electoral marketing campaigns often consist, in part, of opening or initiating public infrastructure works, such as roads, bridges, railways, high-speed trains, shopping centres or

factories, which are financed from the state budget but are functionalized to achieve an electoral advantage for the parties in power. Similarly, as the state is still the biggest employer in Western Balkan countries, public administration employees are often asked to attend the governing party's political rallies; transport, food, drinks and even per diems are sometimes provided, either at the expense of the enterprises or the donors. In some countries, an increase or the promise of an increase in pensions or other social welfare entitlements has become an integral part of electoral campaigns.

Public opinion survey companies can greatly influence public preferences in electoral campaigns. Some political parties have their own survey companies, while others contract specialized opinion survey companies. The financing of such activities and the specific favourable targeting of the results need particular scrutiny. Considering the wide use and impact of social media and surveys, this is an area of urgent and increased concern.

All country reports noted the need to reform the political financial reporting system into a transparent, interactive, user-friendly and easy-to-monitor electronic system. Thus, the creation of online platforms to host all the data so that it could be found and easily monitored and analyzed would be of great help. Online political finance reporting and disclosure systems are part of broader transparency efforts to make official data more available and accessible to the public, and they contribute to efforts to increase the capacity and professionalism of candidates and political parties. As such, they are important modern technological tools to strengthen the political financing information database and allow systematic and transparent control and oversight.

The influence of organized crime on politics in WB6 countries has been addressed in a previous series of GI-TOC reports, Infrastructure of Integrity, but it is worth underlining that the impact during elections has become more sophisticated. Often, hidden support is provided to political parties by placing organized crime associates from certain professions or families on the electorate list. In some cases, members of organized crime or hooligan groups have been used to maintain order and discipline

among political supporters or at protest demonstrations for political parties or movements. The financing of political parties and elections is still subject to corruption and organized crime, which is becoming more intricate and difficult to trace.

The financing of political parties in all WB6 countries is regulated by law and distinguishes between government budgetary financing at the state, regional and municipality levels. Other financing in some countries, mainly BiH, Serbia and Kosovo, also comes in the form of membership fees, donations, income from property and events, inheritances, legacies and bank loans. The maximum funding that a political entity can collect from private sources depends on various parameters. According to available data, countries are harmonizing legislation with EU standards, but implementation is problematic. In principle, budgetary funding is not a problem, except for parties that do not reach the funding threshold and have non-parliamentary party status. Financing from private funds, especially donations, is more ambiguous and problematic, as it allows for more creativity and concealment of funds and cash flows. Prohibitions on funding from international individuals, foreign legal entities, political parties and NGOs are a grey area. Sanctions are also problematic in the analyzed countries, as they are mostly only monetary and have no political effect.

When it comes to the implementation of legislative provisions, several shortcomings and deficiencies are noted. Many contracts are awarded not on the basis of merit but rather on the basis of political affiliation. In all the Western Balkan countries, public procurement systems face multiple deficiencies, and these are in line with those identified by national audit offices, such as the National Audit Office of Kosovo, in their annual auditing reports.¹⁹⁴ These deficiencies include the conclusion of contracts without committed funds; extensive and complex conditions; a lack of open procurement procedures; the adoption of criteria that favour certain operators; the biased evaluation of tenders; the conclusion of contracts with abnormally high prices; a lack of qualified personnel at contracting authorities and economic operators; insufficient time to prepare offers; and major corruption risks in emergency procurement systems.



Management and employment opportunities

Public SOEs are some of the largest employers. But in contrast to the private sector, public SOEs are subject to the vulnerabilities of markets and political and economic fluctuations. The relatively secure employment provided by SOEs is attractive for ordinary people, offering a degree of job security not often seen since the fall of socialist regimes. In exchange, loyalty to the job provider – a political party and its leadership – is an unwritten but well-established contractual clause. This is one of the most powerful and efficient methods of securing unquestionable loyalty and permanence in power; it is also one of the most sustainable ways of buying social peace and assuring political trust. As a result, SOEs are the ‘election prey’ and ‘ATMs’ of ruling parties. Influence and control over public procurement is a part of the corrupt mainstream political culture, as well as of organized corruption.

The majority of public enterprise leaders are politically appointed and, more often than not, also politically dismissed. The middle management line is often politically dependent, as well; if not appointed, they are at least required to demonstrate political loyalty in order to keep their jobs. Commonly, the management and decision-making processes of SOEs are influenced by political factors and interests, rather than the pursuit of market, business or marketing strategies. Allegedly, the control and management bodies of SOEs, and specifically their senior members, are commonly appointed by the parties in power via executive power instruments.

The construction sector in the Western Balkans is vulnerable to corruption, with public procurement used for political control. © Andrej Isakovic via Getty Images

Even at lower levels, jobs are often given to people who are loyal to the ruling party. Electoral promises of providing good jobs are often realized via SOEs, and, as big employers, SOEs provide a very solid voter base. This has evidently led to the creation of nests for party employment. Furthermore, these enterprises, which are largely aligned with ruling political parties, provide a competitive advantage for these parties by engaging in corrupt activities and allowing their resources to be used to finance pre-election activities and political campaigns. This is also a part of corrupt mainstream political culture.

Many SOEs are often taking huge losses and are in significant debt – in one country up to 3% of annual GDP, for example. This is well-recognized and reported by state audits and various financial oversight mechanisms, but action is seldom taken against the management. Even when the parties in power change over after an election, they just inherit the state of affairs and, at best, pack posts in upper and middle management with their own political cronies. SOEs are an excellent illustration of the corrupt management and political culture in which governmental control and oversight bodies are not respected. This applies even to those bodies that are configured to the interests of the political parties in power. Seldom is any judicial action taken against top-level management or board members. Therefore, there is a high level of overall impunity: culturally, politically, financially, administratively and judicially.

Some organizational and operational problems that SOEs commonly face across the WB6 are: the signing of unfavourable contracts; problems with liquidity; over-employment, in some cases with overly favourable salaries heavily influenced by politics and nepotism; the duplication of positions; and irregular promotions.

Nepotism and political appointments ensure informal access to public resources. Even control and oversight institutions often lack the political independence, resources and staff needed to carry out their functions properly. Furthermore, there are no sufficient conflict of interest checks. Often many provisions are not made public, and so proper monitoring is absent or is carried out sporadically. Moreover, decisions and recommendations are at times not implemented. Seldom are judicial actions undertaken to remedy such situations.

The absence of proper public procurement planning and strategy is well-noted and was particularly evident during the COVID-19 crisis. The pandemic presented an unprecedented opportunity for corrupt actors and simultaneously highlighted important gaps in the legislation of Western Balkan countries regarding public procurement in states of emergency. States of emergency lead to expedited negotiations and the conclusion of contracts without transparent, fair or competitive public processes. Moreover, the lack of clearly defined criteria in the procurement process results in tangible consequences, as in North Macedonia, where protective equipment and other similar use products were released with considerable discrepancies. Exemptions from regular procedure and the absence of reporting indicate the extent to which the public procurement system is vulnerable to corruption.

There are many examples of improper public procurement management wherein the tender value was known to the bidders so that their bids almost ideally fit the offers. This is particularly noted at the local administration level and in PPP arrangements.

Similarly, in some countries, it is not uncommon for the number of bidders to be low and for similar bidders to win public contracts. For example, in Montenegro in 2021, procurement contracts worth approximate €335 million were signed, one fifth of which were concluded based on the submission of a single offer. It appears that there are instances of almost monopolistic position in terms of tender bidders and winners, indicating the existence of particularly privileged political positions and patronage.

On the other hand, favouring certain foreign investors is part of the procurement strategy and planning in some WB6 countries. Therefore, political investment choices in public procurement may be both an instrument of foreign policy and a way of bolstering wealth and power.

All in all, the public procurement sector is highly politicized and often used for political control of the public economy and favouritism of selected private or foreign partners. In the Western Balkan countries, public procurement stands as a good example of organized corruption and political influence and control over public financial instruments and economy. It is an important part of the prevalent pattern of the ruling establishment.

Concluding observations

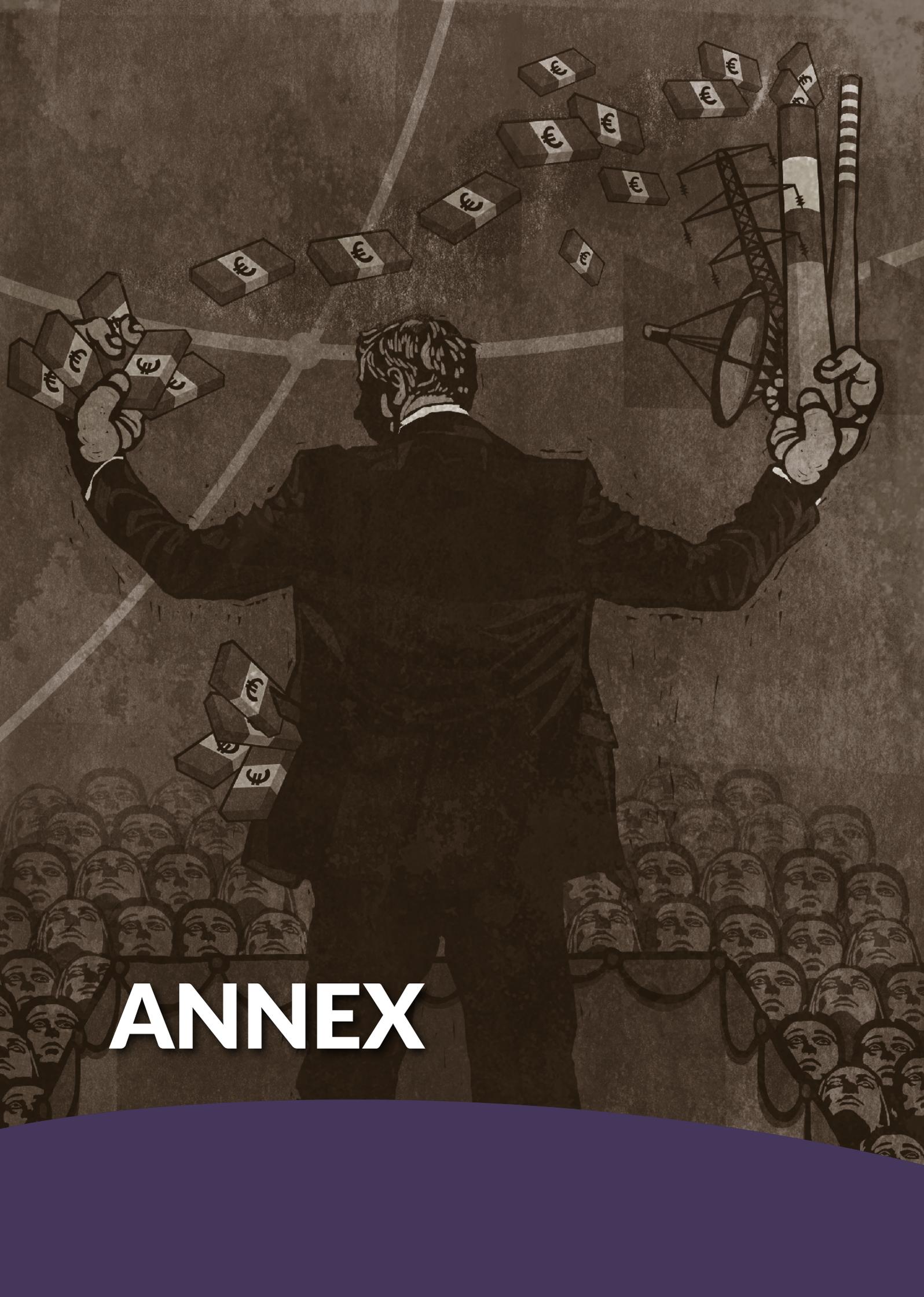
No law is implemented on its own, and there is no law that cannot be bypassed. A culture of integrity and lawfulness is vital for good governance. The Western Balkan countries are still in search of such a political culture of integrity.

Overall, the WB6 countries have made real progress towards regulating and controlling the financing of political parties and elections, SOEs and public procurement. The role of the international community, including the donor community, in providing guidelines and standards and periodic reviews has increased the compatibility of legislation with European and international standards. However, changes to the laws have not been sufficiently internalized in the political culture to make parties transparent, accountable and responsible servants for society or the state. This is the urgent task for all the actors – political parties, governments, parliaments and civil society members – in the promotion of a political culture of integrity.

Yet there is no ample mandate for the control institutions in the Western Balkans to enable a comprehensive approach. Instead, as is the case in other areas, they are very narrow, fragmented and bureaucratically squeezed. Coordination and cooperation with other control structures is clearly absent.

Oversight is not only a matter for the control institutions, but also for civil society: NGOs, academics, investigative journalists and the media. Such a role for civil society in the Western Balkans is well recognized, and there are many examples of civil society publicly reporting, denouncing and protesting against political abuses and illicit financing. Yet there is no appreciation for such a role. Even in some electoral control processes, there is no parity between the representatives of the political parties concerned and the civil observers. Moreover, the role of parliaments in exercising an oversight function is very marginal in the Western Balkans. This is a huge obstacle to promoting institutional accountability. A political culture of integrity requires the institutionalization of civil society's oversight role.

Changing such a state of affairs requires deep reforms. Yet these reforms are not possible as long as the SOEs and much of the public procurement processes are under complete control of the political parties in power and considered to be electoral prey. Furthermore, the manner in which political parties seek to obtain funds and maintain power through control of economic and employment opportunities is a matter for society as a whole. It is a call to arms for the democratic values of transparency and, above all, honesty and devotion to the state. Therefore, in all WB6 countries, a change in the political culture is needed, and organized corruption must be dismantled as a prevalent pattern of the ruling establishment.



ANNEX

WB6 POLITICAL PARTY FINANCING

Statements	Albania	Bosnia and Herzegovina	Kosovo	Montenegro	North Macedonia	Serbia
Supervisory authorities	Three-tiered approach <ul style="list-style-type: none"> ■ Central Election Commission (CEC) 1. State Election Commissioner 2. Regulatory Commission 3. Complaints and Sanctions Commission 	<ul style="list-style-type: none"> ■ Central Electoral Commission (CEC) → Special Audit Service 	<ul style="list-style-type: none"> ■ Central Electoral Commission (CEC) 	<ul style="list-style-type: none"> ■ Agency for the Prevention of Corruption ■ State Audit Institution (SAI) 	<ul style="list-style-type: none"> ■ State Commission for the Prevention of Corruption (SCPC) ■ State Audit Office (SAO) 	<ul style="list-style-type: none"> ■ Agency for the Prevention of Corruption ■ State Audit Institution
Number of control mechanisms	3	1	1	2	2	2
PPF legislation	<ul style="list-style-type: none"> ■ Constitution ■ Law on Political Parties ■ Electoral Code ■ Law on Decriminalization 	<ul style="list-style-type: none"> ■ Law on Financing of Political Parties and Election Law (applied only to financing of election campaigns) ■ Law on Budget Execution in Federation BiH entity ■ Law on Financing of Political Parties from the Budget of the Republic of Srpska Entity, City and Municipality ■ Law on Financing Political Parties from the Budget of the Brcko District of BiH ■ Internal acts of political parties 	<ul style="list-style-type: none"> ■ Law on Financing of the Political Parties (LFPP) ■ Law on General Elections (LGE) ■ Law on Local Elections 	<ul style="list-style-type: none"> ■ Law on Financing of Political Entities and Election Campaigns 	<ul style="list-style-type: none"> ■ Law on Political Parties ■ Law on Financing of the Political Parties (LFPP) ■ Electoral Code ■ Law on Prevention of Corruption and Conflict of Interest 	Law on Financing of Political Activities
Number of laws regulating PPF	Two main laws, within an existing legal framework of five laws	Several different legal instruments – complex constitutional structure of BiH	Two main laws and the Constitution	One main law	Four main laws and the Constitution	One main law
Overall value limit of funds (private, public)	  Threshold of public funds; unlimited private donations		  Limit when it comes to public funds, but not private			 Limited individual private donations, but overall funds from private sources not capped

WB6 political party financing						
Statements	Albania	Bosnia and Herzegovina	Kosovo	Montenegro	North Macedonia	Serbia
Regulation of foreign funding	✓		✓ Forbidden foreign monetary or non-monetary support (challenging issue remains the direct/indirect financing of K-Serb parties by the Serbian government)	✓ Forbidden, but not regulated properly, especially in-kind campaign contributions	✓ Foreign donations not allowed	✓ Forbidden
Law covering print, online and social media	✗	✗	✗	✓ ✗ Social media not regulated	✓	✗ Free media space on public media for all political parties equally
Politicism in public administration	✓	✓	✓	✓	✓	✓
Successful implementation of EU standards and recommendations in PPF laws and practice	✗ Partly in amendments to law	✗	✗	✗	✓ Improvement of legislation	✓ Legislation compatibility
Problems in the financial reporting of political parties	✓ Unclear prescription for preparation of financial reports	✓ Insufficient capacities for comprehensive annual control of political party reports	✓ Trends have started to improve	✓ Do not report, misrepresent costs and compensate with funds for regular operations or through unrecorded cash payments	✓ Delays in issuing financial reports No unified form of reporting	✓ Delays in publishing reports
Role of sanctions	Questionable	Meaningless, small and illogical	No clear definition of sanctioning; meaningful fines (Laws superficially define situations requiring fines related to each of financing provisions)	Mild sanctions that do not fulfil their purpose: political corruption still pays off in Montenegro	Mild sanctions	Criminal sanctions envisaged by law for illegal financing of political parties (up to five years in jail) and for violence, threats and discrimination of party donors (up to three years in jail), but the norm is void and unapplicable Misdemeanour fines are not a deterrent

WB6 political party financing						
Statements	Albania	Bosnia and Herzegovina	Kosovo	Montenegro	North Macedonia	Serbia
Fines	<ul style="list-style-type: none"> Sanctions cover lack of cooperation with the CEC, failure to report, lack of transparency, refusal to make transparent the source of funding, missed financial reporting deadlines, receiving non-public funds above the threshold outside the banking system, accepting funds from prohibited donors, exceeding the spending limit, etc. Fines varies from around €415 to €415 000 	<ul style="list-style-type: none"> Fines for breaches: €250–€5 100 The CEC can impose a fine of up to three times the amount of funds received for a misdemeanour if the political party received funds in excess of the highest determined annual income, in excess of the highest determined voluntary contributions or in a manner prohibited. The CEC can also impose a fine if the political party does not report or pay into the state budget excess amounts stemming from voluntary contributions that exceed the determined limits, as well as voluntary contributions from unnamed (anonymous) sources. 	<ul style="list-style-type: none"> Maximum: €50 000 Accountable party officials: €1 000–€5 000 Natural persons: up to €300 Legal persons: up to €1 000 Late submission of annual reports: up to €5 000 	<ul style="list-style-type: none"> Political entities: €5 000–€20 000 Responsible persons in a legal entity and responsible persons in political entity: €500–€2 000 Legal persons for violating the law: €5 000–€20 000 Natural persons: €500–€2 000 	<ul style="list-style-type: none"> Not publishing financial reports: €5 000–€10 000 <p>PROBLEM: It cannot be applied because the LFPP does not oversee the report authority</p>	<ul style="list-style-type: none"> Political entity: €850–€8 500 More serious violations of law: €1 700–€17 000
Transparency	Questionable	No recent progress made	No transparency rules for obligations on reporting financial incomes	Lack of transparency	Need further strengthening of transparency of funding	Legislation insists on full transparency of party funding
State effort for improving transparency and cultural political integrity	✓	✗	✗ Amendment of the Law on Financing of Political Parties in process	✗	✗	✓
Relationship between regulation of the financing of regular political party work and the financing of election campaigns	Regulated in both laws	Legal framework applies equally	Regulated in both main laws, but highly contradictory; laws are problematic	Same regulation and provisions for presidential and local elections	Separate laws, but parties can use funds for regular financing for the campaign	Regulated separately
Weak or non-existing control and oversight	✓ Favours major political parties	✓ Question of CEC capacity due to quite broad authority competences; weak	✓ No control body with competences to audit political party finances	✓ Biased, politicized institutions in charge of oversight	✓ Exists and is not weak, but there is a question of resources	✗ Control focused on formal aspects of financial reports

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NOTES

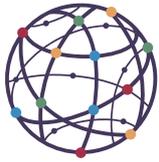
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