

Loose and shallow Europeanization¹ of the Western Balkans: Corruption in Montenegro and Serbia

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Executive summary

- *Corruption, as one of key priorities in the EU accession process, has not so far been properly tackled and is still rampant (not only) in Montenegro and Serbia (but in the whole region also).*
- *Without stronger EU initiative aimed at primarily realization of anti-corruption measures in the region, no progress in meeting rule of law agenda, central to European integration, shall be made.*
- *If Western Balkans is to get closer to the EU, Brussels needs to introduce changes in its regional approach by pushing regional elites to lay much heavier emphasis on law implementation, thus keeping the regional democratization on track and not allowing the region to gradually slip towards authoritarianism again*

Montenegro: Anti-Corruption Measures Going Wrong

Shortly after declaring its independence from Serbia in 2006, Montenegro positioned itself as a frontrunner among the Western Balkan countries in the process of the European integration. More precisely, as of 13 December 2016, 26 negotiating chapters, including the Rule of Law chapters, 23 – Judiciary and fundamental rights and 24 – Justice, freedom, and security, have been opened, and two Chapters, 25 – Science and research and 26 – Education and culture, have been provisionally closed.²

¹ On the issue of negative impacts of the Europeanization process, see scholarship developed by, among many others, Börzel, Mendelski, and Pamuk.

² Delegation of the European Union to Montenegro,
<http://www.delme.ec.europa.eu/code/navigate.php?id=56>

In accordance with the defined priorities of the EU towards the rule of law requirements, decisive fight against corruption has remained one of the fundamental political accession conditions for those Western Balkan states who are willing to join the EU. Additionally, effective implementation of the anti-corruption policy and measurable results stands out as one of the most important conditional principles within the EU enlargement policy, following the process of association and alignment with the Copenhagen Criteria, and accession negotiations along with the newly established integration dynamics chiefly focusing on chapters 23 and 24.

In that regard, Montenegro has clearly strengthened its legislative framework for a short period of the integration process. Correspondingly, for the purpose of providing a credible track record needed for combating corruption, Montenegro has made significant progress towards enhancement of its legislative framework by adopting these laws: Criminal Code (2003/2013)³, Criminal Procedure Code (2011/2015), Law on State Prosecutor (2003/2013), Law on Courts (2016), Law on Civil Servants and State Employees (2013), Law on Preventing Conflict of Interest (2009/2011), Law on free Access to Information (2012), Law on the Prevention of Money Laundering and Terrorism Financing (2007/2012), Law on Public Procurement (2011/2015), Law on Financing of Political Parties (2011) and Codes of Ethics for Legislative, Judicial and Executive Authorities (2015).⁴

In addition, apart from the adopted legislation, the small Adriatic country has been fully dedicated to strengthening anti-corruption measures through building a strong institutional framework and strategic policies. Correspondingly, within the area of prevention of corruption, an independent Anti-Corruption Agency (2016) was established, taking over the staff and responsibilities of the previously founded Commission for the Prevention of Conflicts of Interests and the Directorate for Anti-Corruption Initiative, which both ceased to exist.⁵ By the same token, a new Special Prosecutor`s Office became operational in 2015, holding the jurisdiction for the fight against corruption, organized crime, war crimes, terrorism, and money laundering.⁶ In addition, the new parliamentary Anti-corruption Committee was introduced in 2013, allowing members of the Committee to access classified data without prior permission.⁷ And finally, within the strategic framework, a number of annual of anti-

³ The numbers represent a year of law adoption and latest amendments.

⁴ See: The European Commission Progress Reports for Montenegro for 2012, p. 11; for 2013, p. 44; for 2014, p. 46; for 2015, p. 15.

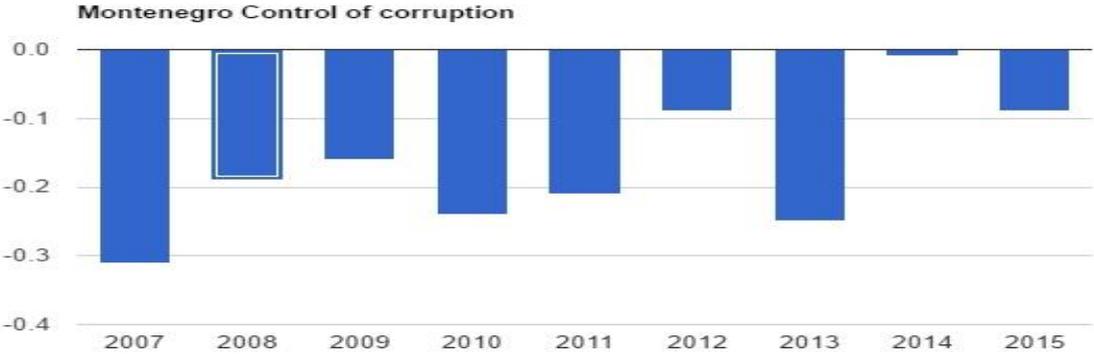
⁵ See: The European Commission Progress Reports for Montenegro for 2016, p. 16.

⁶ See: The European Commission Progress Reports for Montenegro for 2015, p. 15.

⁷ In March 2013, parliament adopted amendments to the law on data secrecy, allowing members of the Anti-Corruption Committee to access classified data without prior permission. For more information see: The European Commission Progress Reports for Montenegro for 2013, p. 43.

corruption strategy documents along with the Action plan for Chapter 23 were adopted, indicating government`s intention to conduct comprehensive reforms to prevent and combat corruption.⁸

However, although Montenegro has made sufficient progress towards establishing well-grounded legal and institutional framework, it is evident that the problem of corruption in Montenegro remains prevalent in many state institutions and public areas, and continues to be a serious burden to the country in transition. Thus, the corruption issue in Montenegro remains widespread and continues to be a serious cause for concern, hindering the EU transformative power on domestic policy changes. This claim has a particular stronghold within Progress Reports of the European Commission (EC) indicating that the EU impact on the anti-corruption measures is severely limited. Correspondingly, Montenegro has demonstrated a limited effort towards achieving a credible track record on effective investigation, prosecution, and final convictions in corruption cases, including high-level cases, but also within areas of repression and prevention of corruption activities, while, on the other hand, number of seizures and/or confiscation of assets ordered to battle corruption offences remains considerably low.⁹



Source: TheGlobalEconomy.com, The World Bank (govindicators.org)

Figure 1: The control of corruption in Montenegro
 Source: <http://info.worldbank.org/governance/wgi/index.aspx#doc>

These findings suggest, therefore, that the control of corruption in the country has remained significantly low and that it is considerably lower compared to the last wave of enlargement when in 2013 Croatia became member of the EU. Correspondingly, based on defined indicators of control of corruption in Montenegro,

⁸ See: The European Commission Progress Reports for Montenegro for 2013, p.43; for 2015, p. 16, for 2016:16.
⁹ See: The European Commission Progress Reports for Montenegro for 2011, pp.12-14; for 2012, p.12; for 2013, p.16; for 2014, p.2; for 2015, p.14, for 16, p.15.

that is -2.5 weak and +2.5 strong according to the World Bank, the average value for this country during the time period from 2007 till 2015 was -0.26 points, with a minimum control of corruption of 0.31 points in 2007 and a maximum control of corruption of 0.01 points in 2014.¹⁰

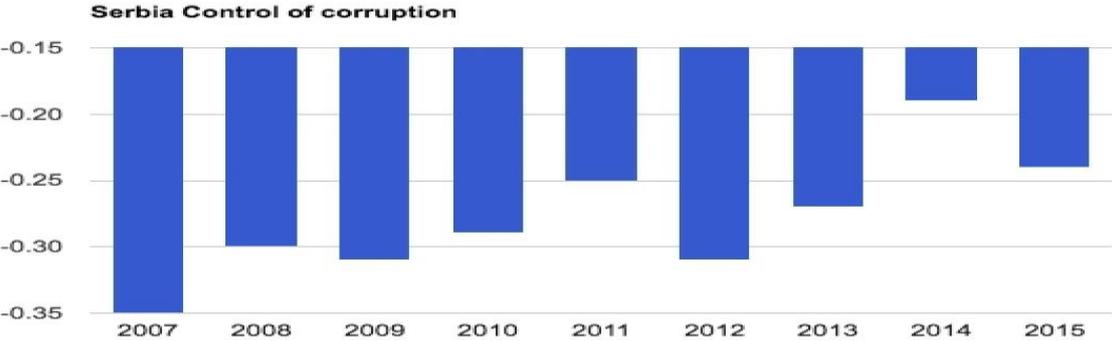
In that respect, the World Bank results indicate that the EU impact on domestic policy changes within the anti-corruption agenda has been limited. Hence, it may be concluded that the level of Europeanization of Montenegro is visible, but, at the same time, it is unequal and insufficiently effective. The case study of Montenegro shows that the EU transformative power on domestic structural changes within the anti-corruption policy is unbalanced and followed with noticeable fluctuations during whole EU integration process. Namely, the EU impact on domestic anti-corruption policy seems to vary mostly depending on an assessment whether domestic political elites should effectively comply with the EU political accession requirements. If the domestic adoption costs are too high for Montenegrin political elites to align with the complex and demanding EU political conditions, as can be seen in the case of corruption, then we are witnessing a situation where the government refuses to effectively induce transformational changes. Particularly in the period between 2007 and 2013, the government decided not to decisively fight against prevailing corruption in Montenegrin society. Rather, it chose to cover its own reluctance toward functional implementation and enforcement of the EU standards through the formal adoption of the EU rules and norms within the anti-corruption policy.

Apparently, the EU impact on domestic political changes in Montenegro has been seen in few separate cases, such as (1) visa liberalization process (2009), so far the strongest conditionality mechanism towards the Western Balkans; (2) opening of the accession negotiations between Montenegro and the EU (2012); and, finally, (3) during the period of time when the public demanded more concrete and measurable results within the decisive fight against the corruption (2014, 2015, and 2016), consequently resulting in the establishment of the Anti-Corruption Agency and the Office of the Special State Prosecutor, and opening a number of individual criminal cases against high-ranking persons from the ruling party. To sum it up, the EU external initiative on anti-corruption policy is visible in Montenegro, but still it is not strong enough. Rather, the real effects of the EU transformative power on domestic political changes largely depend on other conditions, in particular to the cost-benefit calculations of the political elite and strong influence of the veto players.

¹⁰ The Worldwide Governance Indicators, <http://info.worldbank.org/governance/wgi/index.aspx#reports>

Serbia: Anti-Corruption Policy Going Slow

Very much like the case of Montenegro, Serbia can also be seen as an example of a country where anti-corruption measures as taken by the government have been insufficient as such. Although in domain of domestic politics all (recent) governments rhetorically laid considerable emphasis on fighting corruption, little has been done to actually achieve this promise in practice. It is, however, true that Serbia has formally laid out legal framework aimed at fighting corruption in terms of ratifying “all major international instruments against corruption,” having developed an anti-corruption strategy and an action plan for the period of 2013-2018, and also having put in place an Anti-Corruption Agency, with the aim of enforcing national strategy to fight corruption.¹¹ The country is additionally “a signatory to the Council of Europe's Civil Law Convention on Corruption and has ratified the Council’s Criminal Law Convention on Corruption, the United Nations Convention against Transnational Organized Crime, and the United Nations Convention Against Corruption. Serbia also is a member of the Group of States against Corruption (GRECO), a peer-monitoring organization that provides peer-based assessments of members’ anti-corruption efforts on a continuing basis.”¹²



Source: TheGlobalEconomy.com, The World Bank

Figure 2: The control of corruption in Serbia
 Source: http://www.theglobaleconomy.com/Serbia/wb_corruption/

However, as highlighted by the latest EU Progress Report, this is not enough since the country lacks institutional capacity to properly tackle corruption, needs further amendments to its Criminal Code, law behind the Anti-Corruption Agency, and respective laws on conflicts of interest, as well as regulation behind lobbying in

¹¹ See: The European Commission Progress Reports for Serbia for 2016, p.16.
¹² See: State Department's Office of Investment Affairs' 2015 Investment Climate Statement. available at: <https://www.export.gov/article?id=Serbia-Corruption>

general.¹³ Thus, it is no wonder that the country is ranked as 72nd in Corruption Perception Index of 2016 by Transparency International, whereby 176 states were taken into consideration.¹⁴ This is mostly the result of the fact that Serbian governments since 2000 have at best been rather selective in their anti-corruption approach, and, in addition, have mostly kept away from tackling major corruption cases. Last couple of years several major anti-corruption charges have indeed been in play, but little has so far come out of these.

As in the case of Montenegro, while formally changing its anti-corruption agendas and respective legislature when influenced by the EU in the accession process, Serbian authorities have unfortunately not opted for laws being applied, but rather just formally adhered to. Considering the fact that the country suffers from rampant political corruption, it is no wonder that, for instance, “Serbia tops the Balkan states (and ranks 16th out of 143 countries) for illegal financial flows with an estimated US\$5 billion disappearing every year through illicit flows.”¹⁵ Last but not least, as further pointed out by Transparency International reports, both Montenegrin Agency for Prevention of Corruption and Serbian Anti-Corruption Agency have not engaged in prosecution of corruption cases, albeit in Serbian case there have been instances of partial investigation in this regard.¹⁶ Currently, Serbian Anti-Corruption Agency is essentially ignored by both Serbian government and parliament, cannot perform its function, and is, last but not least, also heavily understaffed.¹⁷ In that regard, it seems impossible not only for the Agency to perform its function, but unfortunately also the Serbian government sends a clear message that it is not interested in tackling corruption as such.

This sort of issue is unfortunately the result of both Serbian (and also regional) lack of political willingness to engage in tackling this problem at hand, which further on indicates not only domestic political developments going in truly undemocratic direction, but also the EU’s integrational approach that has in the last several years been aimed at chiefly sustaining stable rather than investing in democratic Western Balkans. In that regard, it can be said that in the case of both Montenegro and Serbia, and very much like in the rest of the region as well, domestic political elites have not put enough effort on reinventing their states, first of all, value-wise. Hence, without constant insistence on introducing set of democratic values socially, there can be no

¹³ See: The European Commission Progress Reports for Serbia for 2016, p.16.

¹⁴ See: Corruption Perception Index 2016 at:

https://www.transparency.org/news/feature/corruption_perceptions_index_2016

¹⁵ See: Serbia: Overview of Political Corruption, Transparency International, page 2.

¹⁶ See: Fighting Corruption in the Western Balkans and Turkey: Priorities for Reform, Transparency International, p.13.

¹⁷ See: <https://www.slobodnaevropa.org/a/srbija-korupcija/28572839.html>

true democratic advance. This has particularly been important in the last several years when even some states of the EU have found themselves facing democratic deficits and rise of illiberal social discourses. In addition to this, political elites have been very susceptible to chiefly domestic pressures coming from already mentioned veto players, often organized crime structures, various domestic tycoons, and both formal and informal state institutions. These pressures have in general been aimed at preventing (anti-corruption) law implementation and influencing governments to actually do nothing in this regard. It has often been the case with Serbia, for instance, that numerous individuals, in most cases tied, either formally or informally, to Milošević's regime, played a negative role in this regard. All this has, therefore, come to be at the expense of true democratic development of both Serbia and the region in general.

On the other hand, the EU has unfortunately not managed to find the appropriate policy in order to foster democratic developments in the region, since it has opted for the region that is far more stable than it is indeed democratic: this is now often referred to as 'stabilitocracy instead of democracy.'¹⁸ The EU's integration policy has undoubtedly produced many positive results so far, but what has not been managed in this regard is translating formal democratic developments and changes into practically applied measures in domestic politics of the region. Thus, the region has seen very little improvement, for instance, in the rule of law requirements that are much needed and often highly emphasized by the EU in terms of its integration agenda. The very fact that regional elites, like the ones in Serbia, are often only vocally committed to the European agenda is further on coupled with the EU's faulty approach to the region that has produced few very powerful and influential leaders managing states with rather weak judicial systems, ineffective, highly selective, and state power-driven law enforcement, and political systems that are often in service of parochial interests.¹⁹ This is clearly different than in the case of the EU accession of Central European States, where the EU did not have to deal with issues it has to tackle nowadays in the Western Balkans.

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¹⁸ See: <http://blogs.lse.ac.uk/europpblog/2017/05/05/west-is-best-how-stabilitocracy-undermines-democracy-building-in-the-balkans/>

¹⁹ See: <http://www.dw.com/en/eu-and-the-balkans-brussels-favorite-strongmen/a-39294081>