



**GLOBAL
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AGAINST TRANSNATIONAL
ORGANIZED CRIME

INFRASTRUCTURE OF INTEGRITY



**Corruption and anti-corruption pledges
in the Western Balkans**

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SEE-Obs is a platform that connects and empowers civil-society actors in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia. It aims to enable civil society to identify, analyze and map criminal trends, and their impact on illicit flows, governance, development, inter-ethnic relations, security and the rule of law. SEE-Obs supports civil society in their monitoring of national dynamics and wider regional and international organized-crime trends. SEE-Obs was launched as an outcome of the 2018 Western Balkans Summit in London, a part of the Berlin Process.

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EXECUTIVE SUMMARY



Corruption is one of the main challenges to the rule of law, life chances and people's livelihoods in the Western Balkans. It is both a cause and consequence of a criminal culture that permeates the region, and the way that corruption is linked to politics suggests a degree of organized corruption, and even elements of state capture, in a number of countries in the region.

Typical manifestations of high-level organized corruption in the six countries of the Western Balkans (WB6)¹ are Wild West-style selling and buying of public property by political elites and their associates in the business and criminal spheres; corrupt tendering for infrastructure projects (such as construction of roads); inside deals struck with loyal partners, either for procurement or privatization processes; concealment of ownership; fraud and embezzlement of public funds; non-disclosure (or false disclosure) of assets; money laundering (both locally and offshore); and abuse of public office.

The systemic threat posed by corruption in the region is also evident when individuals or entities finance political parties in return for favours. These include undeclared sources of funding; the buying of political support by handing out gifts and favours; and using public funds, and appointments in the civil service or state-owned enterprises as tools to build a patronage network of political dependency. In this way, political, business and criminal elites collude to preserve and protect their interests and influence over public functions and resources. These practices create a fertile environment for corrupt officials to operate with impunity.

Despite the severity of the problem, society in the region seems to have become inured to the reality of high-level state corruption. There is a pervasive sense that this is just the way things are and the system cannot be changed. This learned helplessness is perpetuated by a lack of independence or professional capacity within institutions whose role it is to tackle corruption. There are few convictions in high-profile cases of organized corruption yet draconian restrictions imposed by the authorities on the media, including threats and sanctions against those who speak out against corruption (especially large-scale corruption).

In the Western Balkans there is little research on corruption and organized crime, and there is near silence within academia and intelligentsia on the subject. Regionally, there is also limited engagement by civil society on the topic of corruption. Many initiatives, including this report, rely on external support.

This report is based on analysis provided by experts who examined corruption and its impact on governance in each country of the WB6, and reviewed each country's anti-corruption frameworks as well as government efforts to tackle corruption. In particular, it looks at how the governments of the six countries are implementing their own anti-corruption pledges made in the context of the Berlin Process, an initiative aimed at stepping up regional cooperation in the Western Balkans and aiding the integration of these countries into the European Union.² This report is designed to contribute constructively to the implementation and review process of the anti-corruption pledges made as part of the Berlin Process, and highlight areas where further progress is needed.

Methodology

A civil-society-led review of anti-corruption pledges made by the WB6 governments in the run-up to the London summit in 2018 was initiated by the Global Initiative Against Transnational Organized Crime (GI-TOC) in September 2019 to be presented at the summit of the Berlin Process in 2020.³

National experts⁴ working in partnership with the GI-TOC Civil Society Observatory to Counter Organized Crime in South Eastern Europe analyzed corruption and its impact on governance in each WB6 country. Interviews were conducted with a number of stakeholders, including representatives of the criminal-justice sector, civil society, academia and the media.

In addition, a regional overview of corruption included analysis of reports prepared by the European Commission, the Council of Europe's anti-corruption monitoring body, known as the Group of States against Corruption, the UN Office on Drugs and Crime, the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, and Transparency International.

Findings and analysis

In preparing this report, the authors discovered that there was little knowledge of the anti-corruption pledges, both among the general public and even within government agencies responsible for their implementation. It was also not evident which government bodies were responsible or accountable for monitoring implementation of the pledges. This runs counter to the importance that leaders of the WB6 have attached to fighting corruption through the Berlin Process.

The report looks at how the WB6 countries are faring in terms of implementing the pledges they have made in relation to EU accession requirements. The main

focus areas analyzed – and these correspond to the thematic areas covered by the pledges – are public–private partnerships; public procurement; tax; whistle-blowing; beneficial ownership information; the extractive industries transparency initiative; enforcement capabilities; asset recovery legislation; the role of the media; institutional integrity; anti-corruption education; and the international system.

To facilitate analysis, the anti-corruption pledges are divided into three main categories:

- Economic criteria – public–private partnership, public procurement, tax, beneficial ownership information, extractive industries
- Political criteria – whistle-blower protection, enforcement capabilities, media, institutional integrity, anti-corruption education, transparency initiatives
- Compliance with EU legislation – asset-recovery legislation, the international system

The report includes both an in-depth assessment of national responses to corruption, as well as a regional overview of the approach taken by the WB6 countries to fighting corruption, highlighting positive developments and shortcomings.

The results of this analysis show that, overall, anti-corruption legislation in the WB6 is in line with the UN Convention against Corruption and the relevant EU acquis.⁵ However, there are still deficiencies and loopholes in the legal framework, particularly in relation to access to and transparency of public information; money laundering; financing of political parties and electoral campaigns; public procurement; private-sector corruption, conflict of interest and illicit enrichment; and beneficial ownership. Some laws are applied selectively, while others have what could be described as corruption-facilitating provisions.

Furthermore, the findings show that there is too often a disconnect between good legislation on paper and weak implementation in practice. What has been described as 'legislative optimism' in the region must give way to executive realism. It is of the utmost importance to measure and show real impact of anti-corruption pledges. States will be judged by the promises that they keep, not just those that they make.

All the WB6 countries have adopted anti-corruption strategies. But some of these strategies are now out of date and others need to be evaluated. In addition, a lack of political will has undermined their implementation.

All the WB6 countries have established anti-corruption structures under different names and with somewhat different mandates. Most of these bodies have been given exceptional powers. Furthermore, it is worth noting that many were established through *lex specialis* as the result of a rapid procedure. Over the past 25 years, they have undergone a number of transformations. Too often they have been subject to political interference and influence.

A number of WB6 countries have established specialized law-enforcement or prosecution agencies or courts to deal with corruption cases. There are often conflicts in jurisdiction between regular and specialized law enforcement and prosecutorial bodies, and among the specialized anti-corruption organs. These bodies are occasionally subject to political or personal pressures and interference.

Organized political corruption is rife in the WB6. Yet high-profile cases of corruption against leading politicians rarely result in prosecutions. Even if initiated, there is seldom a final verdict or confiscation of assets.

The report includes a broader analysis of the regional political economy of corruption. It finds that clientelism manifests itself in political support through patronage networks, for example through control of social welfare, employment of political supporters in public administration and making political appointments in key positions in the state apparatus, including the criminal-justice system and state-owned enterprises. Loyalty to the political establishment opens doors to lucrative public contracts, foreign investment, Wild-West-style privatization and selective taxation. In short, corruption begets corruption.

Recommendations

Taking these factors into consideration, implementation of the Berlin Process anti-corruption pledges is vital. The process deserves a higher profile, greater visibility and firmer political commitment.

More specifically, the report calls for the dismantling of the corrupt nexus between the political, business and criminal establishments in the region. It underlines the need for systematic, well-funded and accountable corruption prevention at all levels of government. It argues that political and operational independence are essential for an effective criminal-justice response. And it emphasizes the importance of continued monitoring of the process of implementing these countries' anti-corruption pledges.

Since one of the main incentives for corrupt activity is financial gain, more needs to be done to tighten regulation of suspicious financial activity, to fight money laundering, and to freeze, seize and recover stolen assets.

Greater protection is needed for those in the media and civil society who raise a red flag on corruption, and for institutional whistle-blowers.

Fighting corruption is an attitude and a culture – it must go beyond what is merely statutory prevention and reach into civil society. Therefore, more needs to be done to promote education and awareness of corruption, and to nurture a broader societal culture of integrity. Civil society and academia in the region require greater support so that they are empowered and able to speak out against corruption and in a better position to carry out research to inform civil-society interventions. There needs to be greater understanding of and support for independent and competent institutions. And all parts of society should be involved in promoting a culture of lawfulness.

The report reveals that the private sector in the WB6 is only minimally engaged in preventing or fighting corruption – despite the fact that corruption is considered one of the biggest impediments to doing business in the region. In the WB6, the private sector seldom funds anti-corruption activities. This may be an indicator of a tacit acceptance of corruption as a way of doing business – but it also reflects a lack of a corporate culture of social responsibility. There is considerable scope for the private sector to become more engaged in fighting corruption, both in the corporate

environment and in its dealings with civil society and the government. Indeed, the engagement of business is crucial to the success of any anti-corruption strategy.

The report finds that the media are in a good position to provide one of the few counterbalances by exposing corruption in the Western Balkans. Investigative journalists have created international and regional networks, which are carrying out exemplary work. However, the media in the WB6 operate under severe constraints, and lack independence and freedom. There is an urgent need therefore to promote and protect freedom of the media, and to ensure transparency and unrestrained access to public information. Investigative-media initiatives are much needed and should be promoted and supported.

There are very few non-governmental organizations in the region whose mandate is to address organized crime and corruption, and they receive little support or cooperation from governments. Like the media, local NGOs are of crucial importance in promoting community resilience against organized crime and corruption. Greater regional cooperation among NGOs dealing with corruption could help mitigate it and foster resilience.

More generally, regional cooperation is a key element for comprehensive and impact-oriented strategies and approaches against corruption and organized crime. The WB6 need to place much more emphasis on exchange of experience, good practices and operational knowledge. Networking and regular contacts between all the stakeholders in the region are of utmost importance. Efforts on this front supported by the donor community need to be further promoted. There could, for example, be regional comparisons and cooperation as well as joint action on thematic issues. This process could also contribute to building trust in the region.

The report highlights how impact assessments are lacking, and it attempts to fill that void. This is vital since monitoring the implementation of anti-corruption pledges can enable a transparent and comprehensive framework, including benchmarks by which to measure progress. To that end, each pledge requires specific indicators to measure impact and demonstrate change. Such systemic monitoring cannot be a one-off exercise: it should be part of an inclusive, transparent and continuous process, one that involves all stakeholders, and in particular partnership between governments and civil society.

In conclusion, by implementing the anti-corruption pledges of the Berlin Process, the six countries of the Western Balkans can prevent and expose corruption, punish the corrupt and support those who have suffered from corruption. This will help foster integrity, support an independent and professional criminal-justice system, strengthen resilience to corruption and enhance a culture of lawfulness. The message must be that the law is equal for all.



NOTES

- 1 The WB6 are Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia and Kosovo. References to Kosovo are made without prejudice to positions on status, and are in line with UNSC Res 1244/1999 and the International Court of Justice Opinion on the Kosovo declaration of independence.
- 2 For more, see the Berlin Process, Information and Resource Centre, <https://berlinprocess.info/about/>.
- 3 The Berlin Summit was scheduled for July 2020 to be hosted jointly by Bulgaria and North Macedonia but due to COVID-19 it was postponed. It is hoped to be held in November 2020.
- 4 Krisela Hackaj (Albania), Eldan Mujanović (Bosnia and Herzegovina), Mentor Vrajoli (Kosovo), Dejan Milovac (Montenegro), Slagjana Taseva (North Macedonia) and Miodrag Milosavljević (Serbia).
- 5 The term 'EU acquis' refers to the accumulated legislation, legal acts and court decisions that make up the body of European Union law.



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The Global Initiative Against Transnational Organized Crime is a global network with over 500 Network Experts around the world. The Global Initiative provides a platform to promote greater debate and innovative approaches as the building blocks to an inclusive global strategy against organized crime.

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