The revival of Balkanization: How externally-driven reforms reinforce the fragmentation of governance in South Eastern Europe

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Abstract: What impact does the European Union (EU) and other international donors have on the development of good governance in South Eastern Europe (SEE)? The comparative analysis shows that the externally-driven good governance reforms improve substantive legality (the alignment of domestic legislation with international best standards), state capacity and efficiency but weaken formal legality (the inner morality of law), many aspects of impartiality and the coherence of state structures and policies. As a result, good governance is undermined. To explain the persistence and reproduction of bad (i.e. fragmented) governance, the author offers a "vicious reform cycle" explanation, in which a fragmented governance *structure* is reproduced by competing and factionalized *actors* and by fragmented and politicized reform and policy *processes*. The implication is that externally-induced reforms, instead of allowing to transition towards good governance, are reproducing Balkanization and "bad governance", i.e. fragmented, unaccountable, personalized and instable state structures, policies and formal rules. The main argument is supported by a mixed method study. A quantitative indicator-based analysis measures the development of good governance across six dimensions between 2003 and 2015. Qualitative interviews (with judicial and political representatives from SEE, the EU and international organizations), relevant data and secondary sources offer revealing insights on processes of hybridization and fragmentation.

Keywords: Good governance, corruption, rule of law, EU conditionality, fragmentation, Balkanization, pathologies of Europeanization, Western Balkans, Romania, Bulgaria

February 2017

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1. Introduction

What impact did the European Union (EU) and other international donors have on the development of good governance in South Eastern Europe (SEE)? Why do many good governance indicators do not show any significant progress, despite millions of Euros spent on anti-corruption, administrative and judicial reform in SEE (i.e. in the Western Balkans, Romania and Bulgaria)?[1] Does external (EU) conditionality facilitate or hinder the transition towards good governance? These fundamental questions have been debated by Europeanization scholars in a controversial way.

A first group of "EU-enthusiasts" has argued that the EU's impact is mainly positive, i.e. that the EU has democratization and transformative power (Ekiert et al. 2007; Vachudova 2005; Grabbe 2006), including positive effects for good governance (Noutcheva and Bechev 2008; Vachudova 2009; Spendzharova and Vachudova 2012). A second group of Europeanization scholars was less optimistic, arguing that there are limits to the EU's transformative power due to unfavorable domestic conditions (e.g. Pridham 2005; Dimitrova 2002; Magen and Morlino 2009; Mendelski 2012; Elbasani 2013; Dallara 2014). A third group of more pessimistic (or realistic) Europeanization scholars has more recently discovered "pathologies of Europeanization" (Börzel and Pamuk 2012; Mendelski 2014, 2016a, 2016b) and the "EU's pathological power" (Mendelski 2015).[2] This more critical strand of literature has argued that the EU conditionality has undermined the rule of law (Slapin 2015; Mendelski 2015), democracy (Börzel 2015), and the fight against corruption (Börzel and Pamuk 2012; Mungiu-Pippidi 2014), for instance by applying deficient and inconsistent methods of good governance and democracy promotion (see Schimmelfennig 2012; Tzifakis 2012; Börzel 2016; Börzel and van Hüllen 2014). These recent sobering evaluations of the EU's conditionality effectiveness (and its detrimental effects) reflect the "pathological turn" in Europeanization studies (Mendelski 2016a), which implies that EU-conditionality can undermine the rule of law under certain conditions.

[1] Freedom House's judicial framework and independence rating did hardly change between 2002 and 2014 for SEE, receiving scores in the median range (on scale from 1=best to 7=worst). The Bertelsmann Stiftung's Index rating on the rule of law decreased slightly from 7.7 to 7.1 between 2004 and 2012 for SEE (on scale from 1=worst to 10=best). Several other good governance indicators (Bertelsmann Transformation Index, Varieties of Democracy, World Economic Forum Executive Opinion Survey, Fund for Peace) indicate stagnation. See appendix.

[2] Pathologies of Europeanization can be understood as legal and political deficiencies which undermine the rule of law. They are generated or reinforced by EU-driven reforms and include, among others, legal instability and incoherence, lack of generality and enforcement, and increased politicization.

Thus, whether the EU's impact is negative (pathological) or positive (healthy) in a given country or area, is highly context-dependent. The EU's impact is conditioned on (1) the domestic conditions, and in particular, on institutional accountability checks o empowered reformers (see Mendelski 2014) and on (2) geopolitical conditions, particularly on the interplay with "cross-conditionality" by Russia, the US and other international organizations (Schimmelfennig and Sedelmeier 2004; Juncos 2011; Hageman 2013; Mendelski 2016b).

In this study, I evaluate the EU's impact on good governance in countries from SEE, a region where domestic conditions have been less favorable, resulting in deficiencies of good governance promotion (see Mendelski 2009, 2012; 2013a and b, 2015; Belloni and Strazzari 2014; Juncos 2011). My empirical analysis is based on an innovative set of indicators (see Appendix of this paper) which measure the development of governance across several dimensions and revealing insights from numerous qualitative interviews that were conducted in Trier (European Law Academy), Romania, Brussels and Strasbourg between 2011 and 2016 with national representatives from SEE (e.g. high ranking judges, prosecutors and civil society representatives), representatives from the European Commission as well as international organizations (e.g. Council of Europe).

I conceive of good governance as a multi-dimensional concept that relates to the legal, judicial, prosecutorial and administrative quality in a state, and in particular to (1) the existence of stable, coherent, general and enforced laws that are embedded in universal good governance standards, (2) capable, efficient, independent, accountable and non-fragmented state structures that are able to deliver effectively public goods and implement and prioritize (3) coherent policies. In contrast to the dominant conceptualizations of good governance as the presence of capable, efficient, effective, open-access and impartial state structures (see Rothstein/Teorell 2008; Fukuyama 2013; Rotberg 2015; Boardman; 2014; North et al 2009; Mungiu-Pippidi 2015), I include two additional key aspects that have been neglected in the governance debate: 1. the (internal and external) quality of laws and 2. the coherence of policies, actors and state structures.

I argue (and show empirically) that the EU's promotion of good governance in SEE, when combined with certain unfavorable conditions (social and political heterogeneity, detrimental political competition and presence of multiple cross-conditionalities by donors), leads to some

selective progress, but overall to persistence of bad, i.e. fragmented governance. I find that Europeanization processes (understood as the combination between EU, domestic and international influence), result in progress of *substantive legality*, *capacity*, and partly *efficiency-effectiveness*, but undermine *substantive legality*, *impartiality*, *coherence* (i.e. three key dimensions of good governance). In other words, reforms generate more substantive laws that are adapted to international/European standards (best practices), but at the same time the new laws become instable, incoherent (contradictory), hardly enforced and less general. In addition, reforms improve capacity (inputs) and partly efficiency (outputs) or effectiveness (outcomes), but undermine the procedural and structural aspects of government quality (impartiality, coherence), for instance through increased politicization and fragmentation of the state structures.

One of the key findings of this contribution is that EU-driven rule of law, administrative and anti-corruption reforms tend to reproduce fragmentation (Balkanization[3]) and thus cement the existing mode of bad (fragmented) governance. I explain the persistence of fragmented governance through an original vicious cycle theory in which a fragmented social and governance *structure*, fragmented/divided *actors* and the fragmented reform *process* reinforce each other in a circular and cumulative way. In particular I argue that the toxic combination of divided and competing domestic elites, the EU's inconsistent and partisan application of conditionality and the presence of multiple diverse donors (cross-conditionalities) result in pathological outcomes and the weakening of good governance.

The article is structured as follows. First, I present my multi-dimensional concept of good governance in a conceptual framework. In a second step I trace back the development of good governance along its key dimensions by relying on diverse quantitative indicators. In a third step I explain the persistence of bad (fragmented) governance in SEE (and the EU's role in it), by relying on a "vicious reform cycle" explanation. The final section concludes.

[3] *Fragmentation* is understood as the splitting of a coherent whole into many conflicting and incoherent parts. Fragmentation of governance implies the creation of parallel, incoherent and instable state structures, laws and policies which become dysfunctional. Fragmentation in a more conceptual sense is related to the presence of multiple conflictual modes of governance (e.g. monocentricity, polycentricty, reciprocity) which tend to increase transaction costs for decision making. *Balkanization* is much broader concept which includes not only processes of fragmentation into many incoherent parts but also reliance on informality, corruption and political and legal instability (see Todorova 2009). Despite the difference, I employ these two concepts at times synonymously.

2. Conceptual framework: A multi-dimensional concept of good governance

I propose a multi-dimensional concept of good governance, consisting of two main qualities and six distinct dimensions (see appendix, Figure 1). In particular I distinguish between *de jure* good governance (quality of laws), which consists of 1) formal legality and 2) substantive legality, and *de facto* good governance (quality of state structures/government), which consists of four additional dimensions 3) capacity, 4) impartiality 5) efficiency/effectiveness and 6) coherence. D*e jure* good governance reflects the quality of formal rules and the way how these rules are created and enforced. It can be assessed both in terms of formal legality, that is, the technical or formal quality of laws, and in terms of substantive legality, for instance, whether laws are good laws, whether they promote certain values such as justice and fairness, etc. D*e facto* good governance, on the other hand, reflects the quality of the government, and in particular the impartial, efficient, coherent adoption and enforcement of rules, policies and reforms by state structures (e.g. legislative, judiciary, administration etc.). Let me elaborate on the six key dimensions of good governance and their underlying sub-components in more detail below.[4]

2.1 Formal legality

Formal legality, which Lon Fuller called the "internal morality of law", requires that laws need to be general, promulgated, clear, non-retroactive, non-contradictory, possible to perform, relatively stable, and enforced (Fuller 1969: 46ff). I will concentrate in this study solely on three aspects: stability, generality and enforcement. Stability of law implies that the law remains stable or unchanged over a longer period of time to function as a necessary constraint and means of predictability. Too speedy and overzealous reforms can undermine stability by producing too many laws (amendments). Generality of law means that "the law must act impersonally, that its rules must apply to general classes and must contain no proper names" (Fuller 1969:47). In other words there must be general rules (general principles of conduct) which do not refer to individual persons, local, occasional and special interests. Otherwise, legislating would reflect a "series of sporadic and patternless exercises of power" (Fuller 1969:110). Reforms may affect negatively the generality of laws, for instance through the instrumentalization of new laws as "political weapons" (Maravall 2003) and "state capture", the effort of reformers to shape laws, policies and regulations to their own advantage (Hellman et al. 2003). Enforcement of law means that there must be "congruence

[4] A summarized justification and operationalization of the underlying concepts can be found in Table 7 (Appendix).

between official action and declared rule" (Fuller 1969: 46ff), i.e. that laws are enforced and implemented. In other words, the discrepancy between the rules of the books and the behavior in practice should be minimized. EU-driven reforms may result in lack of enforcement and implementation due to resistance of "veto players"[5] (Magen/Morlino 2009), producing empty shells and non-compliance (Noutcheva 2009) as well as disrespect of law (Slapin 2012).

2.2 Substantive legality

A thicker notion of good governance would include also a substantive quality of rules (*substantive legality*), i.e. the presence of good laws that ensure certain fundamental principles (e.g. justice, equality before the law, democratic decision-making etc.). These principles and rights are commonly associated with international best-practices of good governance (e.g. UN basic principles on the independence of the judiciary, United Nations Convention against Corruption, OECD Convention on Combating Bribery, Criminal Law Convention on Corruption of the Council of Europe). The adherence and alignment with these international best practices could be termed international governance embeddedness,[6] which denotes that countries are embedded in a (Western-dominated) international system of good governance standards. The process through which countries embed themselves in international standards is associated with treaty ratification and "legal approximation", i.e. the alignment with EU and international standards and best-practices, a concept which is employed by Europeanization scholars (e.g. Magen 2007).

2.3 Capacity

Capable state structures (courts, bureaucracies etc.) have been identified as necessary components of good governance (see Fukuyama 2013; Besley/Persson 2010; Anderson et al. 2005). The *capacity* dimension focuses on the inputs, means, and resources required to establish a capable judicial, administrative and integrity system. It is associated with the (cap)ability of a professional judiciary, prosecution and bureaucracy to enforce legislation in an efficient, timely, and effective way. In particular, capacity reflects the quantity and quality of financial, technical, and human resources, which are required to establish a capable governance system. Capacity can be broken down into several sub-components: 1) human resources (e.g. the number of professional judges, prosecutors, civil servants, the quality of

[5] Veto players are institutional or political domestic actors whose agreement is necessary to change the status quo. They are typically reform opponents who tend to oppose EU-induced judicial and anti-corruption reforms and the way how these reforms are conducted.

[6] Simmons (2009) uses the term (legal or treaty) embeddedness with regard to human rights (Simmons 2009).

their education and training); 2) financial resources (e.g. the judicial and administrative budget, the salary level of magistrates and bureaucrats); 3) level of Computerization (e.g. the number of computers, availability of internet). Higher judicial and bureaucratic capacity does not lead automatically to good governance, especially if we consider that more resources (e.g. new computers, more prosecutors, funds) can be misused to further particularistic interests. This suggests that the next dimension of impartiality is crucial.

2.4 Impartiality

The *impartiality* dimension of good governance refers to the unbiased actions of state officials (judges, civil servants, politicians etc.). It is a "procedural norm" (see Rothstein/Teorell 2008) and refers thus to the process quality of good governance. Impartiality focusses on the processes of good governance, merit-based selection of judges, prosecutors and bureaucrats, judicial procedural practices (e.g. fair trial, impartial decisions-making), institutional guarantees (e.g. judicial independence, accountability) and the impersonal provision of public services (including the impartial enforcement of law) by independent, non-corrupt, and accountable bureaucrats and magistrates. Thus, impartiality also implies the absence of corruption, as well as other personal relationships of informality (clientelism, patronage, nepotism, political favoritism, particularism) (Mungiu Pippidi 2006). The sub-components belonging to the impartiality dimension include the following principles (1) Independence of state structures (judiciary, prosecution, public administration), (2) Accountability of state structures, (3) Corruption, (4) Favoritism , (5) accountability towards the law (a broader concept that is related 'government bound by law' and prosecution of office abuse), (6) state capture (diversion of public funds) (see Mendelski 2015).

2.5 Coherence

Coherence can be understood as the presence of well-coordinated, coherent and integrated (autonomous) state units, structures and policies (OECD 1997; Weaver/Rockman 1993; Fukuyama 2013). Incoherence, in contrast, is associated with fragmentation, overlap, duplication and detrimental competition (Mendelski 2013b; 2016b). Fragmented (i.e. incoherent) states are weakly coordinated and dysfunctional, characterized by multiple rival societal or regional groups, entities (e.g. as in Bosnia), political parties, ministries or agencies, which often produce incoherent policies. Thus, coordination and cohesion/coherence were pointed some years ago out as fundamental (but often neglected) principles of good

governance (see OECD 1993, 1997).[7] Good governance is therefore reflected in good coordination. But how to achieve coordination and which conditions facilitate it?

First, creating a coherent, well-coordinated state and national policy should be naturally easier when a society is less fragmented (e.g. ethnically, ideologically, regionally etc.) and when domestic elites are less divided (more consensual) (see Higley and Pakulski 1999; Way 2015; Lijphart 1977).[8] Second, cohesive and well-coordinated policy and reform process are facilitated when fewer international actors (e.g. international donors) are present and when they coordinate their activities, their diverse interest, goals and agendas (donor coordination). Third, the history of successful transitions to good governance shows that coherent and complementary governance systems were the result of different coordination modes (personal-informal, hierarchic-bureaucratic, centralized, decentralized etc.), suggesting that there are many different ways towards coherent (good) governance. These different ways of coordination are for instance reflected in Polanyi's forms of integration (reciprocity, redistribution, market exchange) (Polanyi 1944) and depend on the social order in which a country is located. Thus, the establishment of coherent (good) governance may be linked to the creation of one dominant mode of governance (be it based on impartial formal, polycentric rules, a centralized hierarchy etc.) as opposed to the hybrid, fragmented and thus dysfunctional "modes of coordination" in transition societies.

2.6 Efficiency-Effectiveness[9]

The efficiency-effectiveness dimension addresses quantitative outputs and (policy) outcomes (see Fukuyma 2013; 2016; Rotberg 2014, 2015). It refers to the efficient and effective provision of public goods (e.g. justice, services, health, education), including the low-cost and effective enforcement of legislation (North 1990). It is, however, debatable if efficiency

[7] Instead of coherently integrating and embedding different autonomous state agencies and units into a coherent whole (see Evans concept of "embedded autonomy"), the predominant policy and best standard prescription has focused on the creation of autonomous, independent islands (e.g. judicial councils, anti-corruption and integrity agencies, specialized courts, regulatory agencies, Central banks), which in many countries have become unaccountable enclaves.

[8] Interestingly, the Baltic States (especially Latvia and Estonia) have overcome social, elite and state fragmentation by factionally organizing their polities, i.e. by a de facto exclusion of ethnic Russians (non-citizens) from key public institutions (including the government, public administration, judiciary, prosecution). By so doing they avoided the in-betweeness and fragmentation which occurred in similarly ethnically, politically and regionally divided post-Soviet states, such as Moldova and Ukraine (see Mendelski 2016b)

[9] Public goods can be provided quickly and in a low-cost manner (efficiency) and in an effective way, satisfying the needs and values of citizens (effectiveness). Thus, the dimension includes both quantitative output-related aspects (number of roads) and more qualitative outcome-related aspects (quality of infrastructure provided by the state). While the former is an additive concept the latter is a multiplicative one (including for instance connections between different roads, their integration into existing networks etc.).

(outputs, outcomes) is inherent in good governance or simply a consequence of it. Fukuyama tends to see it as a consequence and rejects it as a measure of governance (see Fukuyama 2013). Several other authors (Rotberg 2015; Boardman; 2014) and most international organizations (especially the World Bank) include it. Also the Council of Europe (and especially the ECHR) has argued that justice (impartiality) has a quantitative, efficiency-based component, because "justice delayed is justice denied". The same could be said with regard to a not-provided public service by an inefficient public administration. Thus, while it makes sense to include efficiency as a dimension of good governance, it should be stressed that this quantitative dimension should always be balanced with the qualitative, procedural dimensions (formal legality, impartiality, coherence).

Overall, good governance is characterized by the balance of its six dimensions which are interdependent and which influence each other. First, good laws (both in terms of their formal and substantive quality) are normally made by good legislatures and implemented by capable, effective and impartial bureaucracies and third enforcement parties (judiciary, prosecution, law-enforcement agencies). Second, the quality of the state structures depends in turn on the quality of the existing laws. Thus, in order to function well, the judicial or administrative system requires both formal and substantive legality, i.e. stable, general and coherent laws. Otherwise, such internally bad laws can result in non-uniform jurisprudence (i.e. different verdicts in similar cases), inconsistent application of anti-corruption policies and policies, which in turn can negatively affect impartiality. In addition, instable and incoherent legal frameworks increase the discretionary power of judges to interpret legislation. There where monopoly and discretion meet (without accountability), possibilities of corruption arise (Klitgaard 1998), which can in turn undermine good governance. Third, the dimensions of capacity, efficiency and impartiality influence each other. On the one hand, efficiency and capacity-building measures can be undermined by a lack of impartiality, for instance when the increase in human resources (the selection of judges, prosecutors) is combined with a politicized, non-meritocratic selection process. On the other hand, impartiality can be undermined by a lack of capacity/efficiency, for instance when overburdened or inadequately trained judges/prosecutors do not ensure a speedy resolution of trials ("justice delayed is justice denied").

In sum, creating capable, efficient but not sufficiently impartial and coherent state structures (and vice versa) will not result in better good governance. Similarly, creating more

substantive laws (which are legally approximated to international standards) which exhibit a weak formal legality (i.e. laws which are unstable or not enforced) will not lead to good governance. Progress in good governance requires an improvement in all six aspects of it and additional the "right" combination of its dimensions (which is highly context-dependent). The next section will show that a combination of external and domestic factors, and principally externally (EU)-driven judicial and anti-corruption reforms, bring progress in some dimensions (substantive legality, capacity, efficiency), but not in others (formal legality, impartiality and coherence).

3. Empirical trends: The development of good governance in South Eastern Europe

This section provides empirical evidence in form of objective and subjective institutional indicators to trace back the development of good governance across its six dimensions. It also identifies the "potential" positive impact of the EU (and other international organizations) on selective dimensions.[10] All figures and information on methodology and measurement of each indicator can be found in the Appendix (Table 1-7). I assume that EU conditionality for all countries started officially in the late 1990s and was reflected in capacity-building and financial support in Romania and Bulgaria during pre-accession as well as the activities under the Stabilisation and Association Process (SAP) which was launched in June 1999. External conditionality for the Western Balkans was then reinforced in June 2003 at the Thessaloniki Summit by taking over elements of the accession process[11] and in March 2004, when the European partnerships were signed. In Romania and Bulgaria EU conditionality was considerably intensified after 1. January 2007, when the Cooperation and Verification Mechanism (CVM) imposed very detailed demands concerning judicial, anti-corruption and organized crime issues. All countries from SEE have been subject to detailed pre- or post-accession conditionality[12] and one would expect progress in most governance dimensions, which was not always the case.

[10] To determine the "real" impact of Europeanization (which is often interlinked with other external and domestic factors) on the development of governance, more detailed case studies based on process-tracing would be required. Due to space constraints, however, this is not possible here. I have done this partly elsewhere (see Mendelski 2012; 2013; 2014).
[11] http://ec.europa.eu/enlargement/policy/glossary/terms/sap_en.htm.
[12] In Croatia this was the case until 1 July 2013, when it became a EU member.

3.1 Substantive legality: Considerable improvement

The first part of Table 1 presents the main indicator to measure the development of the substantive legality dimension for SEE and in particular the region's embeddedness in international good governance standards.[13] I measure substantive legality by relying on a proxy indicator (good governance treaty ratification) which measures international good governance embeddedness. It consists of the country-specific scores obtained on the ratification of the five more important good governance conventions (e.g. UN convention on corruption). The development of the indicator suggests one key observation: There has been considerable progress in this dimension. The indicator quadrupled between 2001 and 2011. When looking at country level data, Romania (while starting with some delay) has managed to sign all 5 conventions by the year 2004. Other countries, although starting to align earlier with international governance standards, managed to ratify all 5 conventions only some years later: Croatia in 2005, Albania and Bulgaria in 2006, Macedonia in 2007, Montenegro and Serbia in 2008, and Bosnia in 2011.

3.2 Formal legality: Lack of progress and pathological development

The second part of Table 1 presents several indicators to measure the development of formal legality. The first indicator (legislative output) which I use as a proxy to measure *legal instability*,[14] shows a considerable increase (by 91%) of adopted laws per year between 1995 and 2014. Two main patterns can be observed for this period: First, the legislative output increased in all countries, except for Bosnia (where legislative output remained low due to the application of vetoes by entity representatives in a highly fragmented political system but which was compensated by High representative decisions).[15] Second, while legislative output has been growing quite steadily, there have been two periods of accelerated growth: first around the year 2000, and more recently in 2013. The first acceleration of legislative output (and instability) can be attributed to Romania's period of pre-accession, in which legislative output increased by 480% (from 135 to 782 adopted laws between 1995 and 2001) and was halved after Romania joined the EU in 2007. The second increase in legislative output occurred after 2007 and can be attributed to several Balkan States (Serbia, Croatia and

[13] See Simmons 2009 for a similar approach, focused on the legal embedding of human rights.
[14] The decision of using legislative output as a proxy for legislative stability can be justified by the very common practice that most of the newly adopted laws are in fact amendments to the existing legal framework.
[15] However, with growing political deadlock (between the main parties) the High Representative became more and more active in adopting decisions, which rose between 1998 and 2002 from 12 to 153 decisions per year and declined afterwards steadily towards 28 decisions per year in 2014. Calculations made on data available at http://www.ohr.int/?page_id=1196.

Macedonia) which were engaged in accelerated legislating and EU-demanded reforms. Country-level data indicates that legal instability was most pronounced in Macedonia (where it tripled between 2009 and 2015), Croatia (where it doubled between 2010 and 2013) and Serbia (where it rose from 48 to 2010 adopted laws between 2008 and 2010).

The second indicator, *legislative corruption*, is based on data from Transparency International. It is used here as a proxy for the generality of rules which normally tends to decrease when legislatures are captured by reformers with particularist interests. For SEE, the average score of legislative corruption decreased slightly from 2.3 to 2.1 between 2003 and 2015, suggesting that reforms and EU conditionality were not able to improve the generality of laws. Worst performers were Albania (-1.5) and Kosovo (-0.9) on a scale from 1 (worst) to 5 (best). Macedonia experienced the only meaningful improvement (+0.7).

The third indicator, *regulatory enforcement*, is based on data from the World Justice Project. It is used here to measure whether de jure formal institutions (laws and regulations) are enforced in practice. The indicator (which is available only for a short time period) shows a lack of progress for all countries from SEE which have values in the median range (0.5) on a scale from 0 to 1. This suggests that the pathology of lack of enforcement has not been overcome in SEE.

3.3 Capacity: Progress across the board

Table 2 presents selected indicators to measure the development of judicial capacity in SEE. On the whole, considerable progress can be observed among all countries from SEE, thus suggesting an overall beneficial potential impact of EU-driven reforms. Three main observations can be made regarding the development of judicial capacity indicators. First, in terms of financial resources, judicial budgets p.c. (+110.8%) increased in almost all countries, especially until 2008, experiencing afterwards only small backslidings. Second, there has been a positive trend in human resources. The number of judges was raised by 13.3%, the number of prosecutors increased by 20.9%. Third, there has been an overall progress with regard to computerization (e.g. IT instalment of computer hardware, IT systems), as well as in the establishment and improving of court management and information systems (automation) (see Mendelski 2015).

3.4 Impartiality: No improvement, except for judicial independence

Table 3 gives an overview of several impartiality indicators for the period between 2002 and 2014. At first glance, two important observations can be made. First, the indicators of impartiality did not experience a similar progress as the capacity dimension. Development of the sub-components has been mostly stagnant, with the exception of judicial independence which improved. Second, there have been opposing trends in terms of judicial independence (+0.5), judicial accountability (-0.1) and irregular payments to the judicial system (-0.4), suggesting that EU-driven reforms empowered the judiciary which in many countries has been perceived as more independent but also less accountable and more corrupt. Also several indicators of integrity (favoritism in decision making, political corruption, diversion of public funds) indicate lack of progress and suggest that EU-driven reforms were not transformative enough in improving impartiality and integrity.

3.5 Coherence: Towards increased fragmentation

Table 4 offers an overview of several agency and process-related indicators of coherence. First, the elite factionalization indicator by the Fund for Peace shows a decline (-0.8), suggesting that domestic elites in SEE continue to be divided. Second, this division among elites is reflected in the fragmented, polarized and instable party system. The Bertelsmann Transformation (BTI) Index *party system indicator*, which measures the level of political fragmentation, polarization and stability, shows lack of progress between 2004 and 2014. Third, the BTI policy coordination indicator, which measures the ability of the government to coordinate conflicting policy objectives, shows a stagnant and fluctuating development between 2004 and 2014. This overall slightly positive trend (+0.3) is mainly due to positive development in Albania and Macedonia which improved by +2.0. All other countries showed not significant progress. Lack of potential policy coordination is also reflected in the fragmentation of the executive. SEE shows a much higher number of ministries (on average 23), as compared to advanced countries from the Visegrad State (16), Slovenia (17) and Estonia (15).[16] Overall, the indicators for SEECs on the coherence dimension indicate the continuing divisions between political elites, fragmentation of state structures and the lack of policy coordination.

[16] Calculated by author on the basis of government websites and Wikipedia.

3.6. Efficiency-effectiveness: Selective progress within broad stagnation

This dimension exhibits mixed development. There has been some selective progress across some aspects of efficiency and effectiveness but also regress and stagnation. On the one hand, red tape was considerably reduced. This is reflected in the number of start-up procedures to register a business which was reduced by 5.3 and the time required to start a business, which declined by 28 days. On the other hand, wastefulness of government spending and efficient use of assets did not experience progress. As for government's effectiveness, we can observe some improvement in the provision of public goods (security, infrastructure, public services) but also slight regress in terms of performance of democratic institutions and the quality of higher education (see Table 6).

3.7 Potential explanations for positive trends in good governance

How can the positive trends in governance development be explained? Social phenomena (including institutional change) are often the result of a mixture of multiple causes. In particular, it could be argued that reforms, change and selective progress with regard to formal legality, capacity and selective aspects of efficiency/effectiveness and impartiality was driven by "transnational coalitions" (Jacoby 2006) between the EU, domestic actors and other international donors. Thus, in contrast to author who highlight the "twin forces of domestic and EU influence" (Spendzharova/Vachudova 2012, see also Pridham 2005), governance development in SEE (and in particular in Western Balkans) has been additionally influenced by the "cross-conditionality" of multiple bilateral and multilateral donors as well as international financial institutions. It would thus be more reasonable to speak of "triple forces of Europeanization": 1. EU conditionality, 2. Domestic influence, 3. Cross-conditionality by diverse international donors). Whether this process of hybrid pluralist influence can be still called Europeanization, *sui generis* Europeanization, Internationalization or hybridization is debatable. Let me briefly present how these triple forces contributed to the positive change at three improved dimensions of good governance.

First, *substantive legality* improved considerably as a result of external influence. Progress at this dimension could be interpreted as the desire by the international community to re-integrate of the Western Balkans into European structures (from the influence of national politics and Russian influence), which was done through a strategy of legal re-embedding in

good governance and human rights treaties.[17] During this post-conflict and pre-accession period (i.e. after 2000), elites from SEE signed and ratified increasingly more international good governance and human rights conventions. They altered domestic legislation to introduce *de jure* provisions of judicial independence, anti-corruption and integrity, and a fair judicial trial. This period of increased ratification and legal reform corresponds to the intensification of EU membership conditionality during Romania's and Bulgaria's EU pre-accession period and the start of the strengthening of the Stabilisation and Association Process (SAP) for the Balkans after the Thessaloniki Summit (June 2003). Europe's strong and aligning impact was additionally reinforced by non-European international organizations (e.g. USAID, ABA/CEELI, UN), legal experts, and bilateral donors.[18]

Second, improved (state) *capacity* levels (as reflected in higher judicial budgets), reflect the general trend towards higher salaries or infrastructural reforms (e.g. court building and refurbishment), which more than often resulted from demands by the EU and international donors (and in particular USAID, Council of Europe). The quantitative increase in human resources can be for instance attributed to structural reforms (e.g. creation or liquidation of new courts) and capacity building, two requirements that were often demanded by international donors. In most cases, such externally demanded reforms introduced new court and prosecutorial structures, such as anti-corruption agencies, specialized courts (e.g. for combating organized crime), and new positions (e.g. court managers) (see Mendelski 2015). Of course the positive effect of EU conditionality and external funding by donors was facilitated by improved economic conditions which were beneficial (at least until 2009). However, even despite the worldwide financial crisis from 2009 and declining GDP p.c. figures afterwards, judicial budget continued to grow. A plausible explanation for this may be the continued pressure for reforms by the EU (and other international donors) and the need of domestic governments to maintain legitimacy abroad.[19] Under external conditionality (in form of coercive and mimetic isomorphism), domestic reformers were thus able to increase external legitimacy and to obtain benefits and resources (funds, credits) from the EU and international

[17] This legal re-embedding process was a remorseful attempt of the West to improve governance and human rights after an illegal NATO-led war and an imposed embargo against Yugoslavia, had reinforced smuggling, organized crime, corruption and the disrespect of law (see Andreas 2004; Skendaj 2016).
[18] Interviews with international legal experts, representatives from the ECtHR, the Council of Europe, and the EU.
[19] Interview with an international legal consultant.

organizations (including the IMF and the World Bank) (on the case of Romania, see Ban 2016).

Third, selective progress at the efficiency/effectiveness dimension can be attributed to a mixture of improved economic conditions (until 2009), EU and international donor conditionality (disbursement of aid), which improved also efficiency for business (reduction of red tape) and the provision of public goods (effectiveness), including the reduction of organized crime and improved infrastructure.

Finally, the increased judicial independence ratings may be attributed to trends in judicialization of politics (Hirschl 2009), and in particular the *de jure* empowerment of the judiciaries, which was reflected in the strengthening of legal safeguards and judicial councils (see Bobek and Kosar 2014; Coman 2014; Mendelski 2015). This empowering of the judiciary, as I will argue in the next section, was however not always sustainable and many SEECs experienced backsliding, reflected in increased politicization and polarization (Mendelski 2012; 2013a, 2013b; Seibert-Fohr 2012: 1325; Coman 2014).

Overall, good governance developed unevenly across its six dimensions, suggesting a differential/uneven impact of the EU-driven reforms in SEE. With regard to the *de jure* good governance, SEE experienced progress in substantive legality and a regress in formal legality. Thus, while laws became more similar to European and international standards, they became at the same time less stable, less general, and less enforced. As regards the *de facto* good governance, capacity (of the judiciary) was considerably improved but this was not reflected in indicators of impartiality, which mostly stagnated or declined. These uneven trends suggest that the EU had potentially a differentiated and reinforcing impact. This result is unexpected, as a relatively detailed and specific EU conditionality in SEE did not lead to transformative change in key dimensions of good governance (impartiality, formal legality, coherence) and resulted even in deterioration. The reasons for this unexpected lack of progress (and partial decline) will be explored in the next section, which presents a causal explanation for the persistence of bad governance in SEE. In particular, I will show how structural, agency-related and process-related factors reinforce each other in a negative way and result in a vicious reform cycle of fragmented governance.

4. Explaining persisting bad governance: The vicious reform cycle of Balkanization

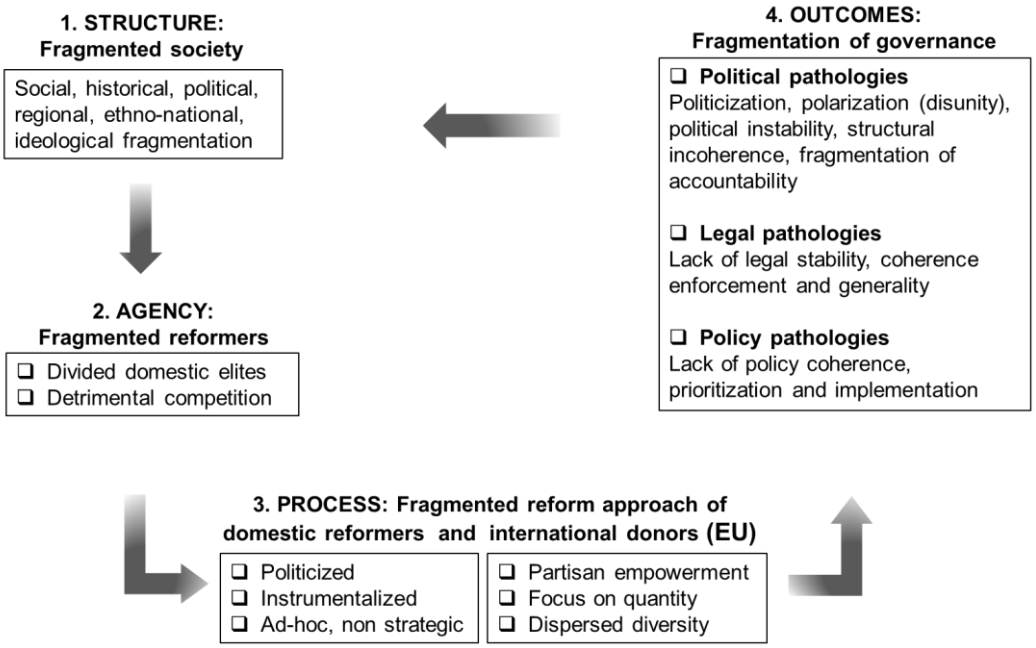
Why did most countries from SEE not transition towards good governance despite considerable reform efforts and financial aid from abroad? Why did EU-driven good governance reforms not result in transformative progress and even in deterioration in several key dimensions of good governance (formal legality, impartiality, coherence)? I explain persisting bad (fragmented) governance by highlighting the cumulative and circular reinforcement (Myrdal 1957) between domestic *structure*, external and domestic *agency*, and the reform *process* (Figure 2), resulting in negatively reinforcing dynamics that can be conceptualized as a *vicious reform cycle of Balkanization*.

The main causal relationships of this vicious cycle can be summarized as follows: STRUCTURE ($t_{0)}$: (1) Social heterogeneity/fragmentation (historical, regional, ethnic-national and ideological fractionalization) → AGENCY: (2) Divided and competing domestic elites (reformers) that are embedded in a heterogeneous society → PROCESS: (3) Pathological reform approach of domestic reformers, which involves excessive politicization and instrumentalization of state structures and the law → (3) Pathological and fractionalizing power of the EU and multiple international organizations which is related to the partisan empowerment of reformist elites, a focus on quantity and dispersed and uncoordinated diversity → OUCTOMES: (4) Creation/reinforcement of several reform pathologies, such as legal instability, legal incoherence, increased politicization and fragmentation (balkanization) → (5) Undermining of formal legality, impartiality and coherence, thus weakening of good (coherent) governance → STRUCTURE ($t_{1)}$ (1) Persistence of bad (fragmented) governance, structures and elites.

To clarify, I do not argue that social, cultural or ethnic heterogeneity is bad *per se* for the quality of government. However, when the inherited (or newly created) pluralism is combined with the partisan empowerment of divided elites by external actors (bipolar or multipolar cross-conditionalities) it may result in a pathological and fragmented form of political and legal pluralism that undermines the rule of law. This may be especially true when empowered domestic elites engage in state capture, misuse of state agencies and state laws during reforms. This tendency towards politicization, instrumentalization and undermining of the rule of law has been a feature of "divided societies" i.e. societies which exhibit considerable historical, social, regional and political divisions (Katchanovski 2006; Way 2015; Mendelski 2015, 2016b). History (as well as the analysis of more recent events) show that processes of

polarization and balkanization (including fragmentation of governance) are recurrent phenomena that have occurred mainly in borderland-countries (Ukraine, Moldova, Western Balkans, Baltic States) which have been situated between major Empires (e.g. between the Ottoman and the Habsburg Empire, between Russia and the West). Most of these regions are culturally rich and beautiful (because of their diversity) but also characterized by fragmented structures, elites and reform processes. In the next section I describe in detail the process of fragmentation and argue that it has been reinforced during reforms.

Figure 2: The vicious reform cycle of fragmentation



Source: Author

4.1 STRUCTURE: Fragmented society

In SEE, EU-driven good governance reforms have been conducted in a domestic environment which can be characterized by considerable *social heterogeneity and fragmentation* (see Table 8). This contrasts, for instance, with the more advanced Visegrad states, which exhibit lower levels of ethnic and linguistic fractionalization.[20] To be clear, I do not advance a historic,

[20] The Visegrad states (Czech Republic, Poland, Hungary, Slovakia) have for instance lower average scores of ethnic (0.2116) linguistic (0.1637), but not necessarily religious (0.4800) fractionalization. This data and my interviews with citizens from SEE confirmed that religious cleavages do not play a dividing role in SEE. Although the Baltic States (and in particular Estonia and Latvia) show considerable ethnic fractionalization (due

ethno-culturalist argument here (arguing that societies are condemned to live in bad governance because of their historical legacy or their ethnic composition), but rather a functionalist one, which stresses coherence and unity as systemic aspects of transformation towards good governance.[21] Thus, social fragmentation should not only be understood as fractionalization along linguistic, religious or ethnic lines (as indicated in Table 8 by the three proxy indicators). Rather this concept refers to several potential "dividing factors" (cleavages) among members of a society, such as socio-economic, historical, regional, national, cultural and ideological ones (e.g. liberal vs. conservative-nationalist), which sometimes correlate with ethnicity or religion, but not always. The distinct "dividing factors" in a society may be (or not) linked to the organization of the state and thus may become "factors of limiting access" (see North et al. 2009). Access to political, legal and economic positions (and thus to power, status and capital) may become conditioned on ethnicity, kinship, political and ideological orientation, regional factors and language. Thus, the different means of inclusion and exclusion vary across countries. Also, the nature of dividing boundaries may differ. For instance, ethno-national and linguistic dividing social factors may be reflected in a sharp, factional organization of the state (as in Bosnia & Herzegovina) or may be blurred and permeable, linked to politico-ideological divisions as in most SEECs. In SEE, the fragmented social structure has translated into fragmented and divided domestic elites (and vice versa), who have engaged in detrimental competition. Let me describe this fragmentization process in more detail.

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to their large Russian minorities), they were able to overcome state fragmentation by applying a strategy of partial exclusion (see Mendelski 2016b).

[21] My functionalist assumption is that more (social, political and legal) unity is better for the development of good, i.e. coherent governance. The idea of coherence and unity is not new. It has been reflected in Plato's call for "social, political and legal unity" (Plato, cited in Gouldner 1965), Rawls idea of creating social unity through "overlapping consensus", (Rawls 1997), the concept of "embedded autonomy" (Evans 1995), or "institutional complementarity" (Hall/Soskice 2001).

Table 8: Ethnic, linguistic and religious fractionalization in SEE

Country	Date (Ethnicity Data)	Ethnic	Language	Religion
Albania	1989	0.2204	0.0399	0.4719
Bosnia and Herzegovina	1991	0.6300	0.6751	0.6851
Bulgaria	1992	0.4021	0.3031	0.5965
Croatia	1991	0.3690	0.0763	0.4447
Macedonia	1994	0.5023	0.5021	0.5899
Romania	1998	0.3069	0.1723	0.2373
Serbia/Montenegro (Yugoslavia)	1991	0.5736	.	.
Yugoslavia (pre 1991)	1995	0.8092	0.4050	0.5530
SEE (average)		**0.4767**	**0.3105**	**0.5112**

Source: Alesina et al 2003.
Note: Scale between 0 and 1. The higher the score, the more fractionalized the society. The fractionalization variables were computed by Alesina et al. 2003 computed as one minus the Herfindahl index of ethnolinguistic group shares, and reflect the probability that two randomly selected individuals from a population belong to different (religious, ethnic and linguistic) groups.

4.2 AGENCY: Fragmented reformers

Elites in SEE have been characterized as divided or fragmented (see Higley and Pakulski 1999; Goati 1997) a feature with historical roots. The disunity of domestic elites was already apparent during Ottoman/Habsburg rule in the Balkans and during communist rule, above all in the strongly decentralized and fragmented Socialist Federal Republic of Yugoslavia. The division of political elites into opposing camps (e.g. nationalist-centralist vs. European pluralist; federationists vs. confederationists, reformist vs. anti-reformist) reappeared during post-communist transition in all SEECs and was related to statehood decisions, the organization of the political economy, modes of transition from communism and EU-driven reforms (see Bartlett 2007; Goati 1997; Bieber 2003). The divisions among elites over core values, national identity and goals/methods of reforms has been reflected in the "factionalized elites" indicator from the Fund for Peace (see Table 4), which deteriorated. The factional divisions were reflected in frequent power struggles among reformist "change agents" and anti-reformist "veto players" (see Mendelski 2012, 2015; Magen/Morlino 2009).[22] Political

[22] This contrast for instance with the success cases from Estonia, where successful anti-corruption reform "… was led by a structurally- and ideologically-cohesive, integrated, and young political elite lacking a communist background. This guaranteed consensus over goals…" (Kupatadze 2016:16).

competition is of course not always bad for democracy and good governance, as the work of several scholars has shown (see Grzymala-Busse 2007; Ginsburg 2003; Morlino and Sadurski 2010). However, under the conditions of social and elite fragmentation (as well as geopolitical in-betweenness etc.), political competition turned into "detrimental political competition" (Mendelski 2016b).[23] This in turn affected negatively the process of reforming and in particular the independence, stability and unity of state structures which became polarized along competing parties and (hidden) networks of power.

4.3 PROCESS: Fragmented reform process

4.3.1 The reform approach of competing domestic reformers: Politicization, instrumentalization and non-strategic ad-hocness

As a consequence of detrimental competition among elites, good governance reforms were conducted in a politicized, instrumentalized and non-strategic, *ad-hoc* way. First, competing domestic elites have politicized good governance reforms and newly created or empowered state structures (e.g. anti-corruption agencies, specialized courts, judicial councils, regulatory agencies). Regular changes in government lead to fights over key positions, frequent reforms and counter-reforms, increased politicization and polarization of judicial structures and horizontal accountability institutions (see Mendelski 2013b; Bozhilova 2007; Coman 2014; Capussela 2015; Beširević 2014; Kuzmova 2014). Several wiretapping scandals (e.g. Romania, Bulgaria, Macedeonia) reflect the misuse of anti-corruption and security structures to control independent journalist, judges and political enemies from the opposition (see Priebe 2015).[24] There were also several allegation of politicization, disrespect of fundamental rights and problems with accountability of anti-corruption structures and of newly created specialized courts (e.g. Transparency International Romania 2012; Ivanova 2013; Kuzmova 2014; Clark 2016). Similarly, newly empowered or created judicial councils (the best practice EU-model of court administration), evolved into politicized, unaccountable, and non-transparent bodies (see Bobek and Kosar 2014; Seibert-Fohr 2012; Coman 2014; KIPRED 2011; OSCE 2009, 2012; Sigma Montenegro 2012: 5; Preshova et al. 2017). Last but not

[23] This qualitatively lower political competition, which Lucan Way calls "pluralism by default", is the consequence "…of a fragmented and polarized elite and weak state unable to monopolize political control" (Way 2003:463).

[24] http://www.novinite.com/view_news.php?id=149848; http://www.novinite.com/view_news.php?id=149818; https://gazetadespania.es/ccr-spune-ca-interceptarile-facute-de-sri-pentru-dna-sunt-neconstitutionale/. http://www.bzi.ro/sua-critica-interceptarile-abuzive-din-romania-114776.

least, constitutional courts became in many SEE countries (and beyond) the embodiment of juristocracy (Hirschl 2009) and politicization (Popova 2012; Beširević 2014; Hipper 2015; Morlino/Sadurski 2010; Seibert-Fohr 2012; Coman 2014).

Second, rival domestic elites resorted also to the instrumentalization of laws. Rather than a constraint, law developed into a "political weapon" (Maravall 2003) in struggles for power, influence and capital. In several countries good governance reform (e.g. judicial and anti-corruption reforms) was promoted through fast track legislating, emergency ordinances, or presidential decrees without democratic oversight. Often, then, legislative changes were made according to the principle of 'who is in which position' and aimed to place loyal protégés in key positions.[25] Such personalized decisions through non-general laws included the selection of the heads of the anti-corruption agency and the prosecution in Romania (Mendelski 2012), the creation of a specialized criminal court in Bulgaria (Kuzmova 2014), the restructuration of the court system in Albania (Peshkopia 2014: 123), the bypassing of Constitutional Court's decisions in Bulgaria to fulfill EU demands for judicial reform (Bozhilova 2007) and the EU's advancement of reforms in Bosnia through extra-institutional emergency procedures as well as brokered agreements with party leaders instead of representatives of the state and entity institutions (Tzifakis 2012:142). The instrumentalization of law was for instance reflected in the continual amendments of anti-corruption legislation or in legislation on the organization of the judiciary.[26] As a consequence, legal stability and generality declined.

Third, non-strategic ad hocness (short terminism) was another feature of an inadequate reform approach of domestic and foreign reformers. While on paper mid-term reform strategies (for 5 years) existed in all countries under review,[27] in practice the strategic pursuit of governance reforms (e.g. anti-corruption policies, judicial reforms) based on a common and integrated vision was hindered by several factors:

1. Frequent changes in governments impacted negatively on staff turnover rates and overall reform continuity.[28]

[25] Interviews with Romanian, Bulgarian, and Moldovan judges.
[26] Interviews with several judges from SEE.
[27] This was partly also the result of EU conditionality which demanded to fulfil short-term and mid-term priorities.
[28] For instance, the frequent changes of Ministers of Justice in some countries (e.g. in Albania, Romania, Bulgaria and Croatia) resulted in changing visions and fragmented discontinuous reforms, reflected in new

2. The fragmented political composition of governments, consisting of multiple coalition partners with different aims, ideologies and interests.
3. The high fragmentation of the executive, with multiple ministries that developed into personal fiefdoms competing for scarce resources or donor aid and EU funding.
4. Excessive and increasing dependence on donors and international financial institutions, which provided foreign aid on an ad-hoc basis (and mostly in short-term projects).
5. Use of reforms as "signals" (see Andrews 2013:16) to gain and external support and legitimacy by the international donor community ("to impress outsiders"), but without offering long-term solutions to systemic problems of governance (e. g. lack of coordination, improvement of processes).

The consequence of social fragmentation, detrimental political competition and instability was an erratic, short term-oriented *ad hoc* approach to reform which was reinforced by the adverse effects of diverse external cross-conditionalities (including EU conditionality). The domestic approach to reform became in many ways inadequate, undermining key aspects of good governance (formal legality, impartiality, coherence). The next section shows how the deficient domestic way of reforming was negatively reinforced by the "pathological and fractionalization power" of the EU and the wider international community.

4.3.1 The fragmented reform approach of the EU and international donors: Partisan empowerment, focus on quantity and dispersed diversity

4.3.1.1 Partisan empowerment

EU conditionality is based on the so-called "differential empowerment" of domestic actors (Börzel and Risse 2003), which empowers few selected "liberal", reformist change agents to the detriment of so-called "illiberal" reform opponents (veto players) (see Magen/Morlino 2009). This *partisan* empowerment has been for instance reflected in the EU's (and US) support for reformist but controversial and prerogatives-abusing political change agents[29] and reformist members (heads) of newly introduced or strengthened state structures (e.g. anti-corruption and integrity agencies specialized courts, Constitutional courts, judicial councils,

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reform priorities, many legislative amendments, and reform reversals. The number of Ministers of Justice between 1990 and 2013 were as follows: Albania (20), Romania (16), Bulgaria (16), Croatia (14), Macedonia (10), Serbia (10), Bosnia and Herzegovina (6), Montenegro (8). See http://www.rulers.org.

[29] Gruevski (Macedonia), Sanader (Croatia), Borisov (Bulgaria), Berisha (Albania), Basescu (Romania) and Thaçi (Kosovo). Interestingly, most of these heads are members of European People's Party or closely linked to it. See http://europeanmovement.eu/news/epp-leaders-meet-for-party-summit-ahead-of-european-council-in-meise/.

regulatory agencies). In Bosnia and Kosovo, external influence on politics was done through direct imposition of special representatives (High Representative in Bosnia and Special Representative in Kosovo) who pushed through reforms when domestic actors could not agree. Well, why should reformist change agents be a bad thing? Eventually they would propel required reforms and achieve desired outcomes (e.g. judicial independence, reduction of corruption and organized crime). One main argument against the partisan empowerment of a narrow group of selective change agents (that are put in key positions) is that such an agency-centred approach neglects the process of reform. International donors (and in particular the EU) have been so obsessed in promoting and empowering their own reformist and liberal "change agents" that the interests of other non-liberal (e.g. conservative, nationalist) elites that represented in many countries a considerable part of society were not taken into account. This exclusion of the *demos* was most visible with regard to externally-imposed policies of austerity, privatization and liberalization after the 2009 (e.g. in Romania) but also in the post-conflict rebuilding of international protectorates (Bosnia, Kosovo). The reform process was therefore described as "coercive" and "undemocratic" (see Belloni 2012:23; Ban 2016).

In SEE (and elsewhere) the EU tended to support reformist change agents, no matter how pathologically they conducted reforms or how undemocratically they behaved (Mendelski 2015). The EU (including its missions and delegations) not only empowered its change agents but was silent when the latter broke the rule of law, i.e. those rules and values that the EU tried to promote. This was for instance visible in Serbia (and Moldova), where the EU (together with the international community) granted "honey moon" periods to pro-Western elites (e.g. in Serbia after the ousting of Milosevic) i.e. free rein to bolster their power, in which questionable means of regime change were applied, such as the dismissal of judges, instrumentalization of law etc. (see Mendelski 2013b).[30] To counter Serbia's (Russia's) influence, the High Representative disempowered Serb bureaucrats and politicians (e.g. majors, ministers) through partisan dismissals (see Belloni 2008:31).[31] The EU's partisan

[30] In Serbia, after the 2001 regime change, the judicial system experienced considerable reshuffling. 150 out of 165 court presidents were dismissed and 166 new judges were appointed (Hadžić et al. 2008).

[31] A rapporteur in his report "Strengthening of democratic institutions in Bosnia and Herzegovina" noted that the power of the High Representatives "..run counter to the basic principles of democracy and are reminiscent of a totalitarian regime. Their use, no matter how seemingly justifiable on public interest grounds, has an extremely harmful effect on the democratisation process in Bosnia and Herzegovina, since it causes feelings of injustice and undermines the credibility of democratic institutions and mechanisms." See. http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10555&lang=EN.

empowerment can be also observed in the case of Kosovo. Here international EULEX prosecutors from the Special Prosecution Office of Kosovo have refrained from investigating and prosecuting serious crime in Kosovo when members of Kosovo's elite or important interests were involved (Capussela 2015). Also in Bosnia, 'deal among friends' opened possibilities to undermine the rule of law as well as the fight against corruption (Belloni and Strazzari 2014). In Bosnia, the EU's support for the multi-ethnic party coalition "Alliance for change" (2000-2002) could "…be explained by international agencies' willingness to turn a blind eye to patronage-style politics in the attempt to bolster politicians and coalitions nominally in favour of Western democracy and multi-ethnic politics." (Belloni 2008:175). In Bosnia, the EU has been perceived "as advancing the Bosniak partisan interests" to the detriment of the Serb minority (Tzifakis 2012:138; see Muhlmann 2008).

The EU's and the US's partisan support has been also visible in Romania where anti-corruption fighters were empowered selectively. Here, the EU's insistence on "track records" (concrete results in high-level corruption cases) and external incentives provided by the US embassy and the US Secrete Service for anti-corruption fighters (e.g. Woman of Courage award to Laura Kövesi, the chief of the anti-corruption agency, US secret service Certificate of Appreciation[32]) have generated a zeal to fight corruption at any costs, even at the costs of a fair trial, fundamental rights[33] and abuse of procedural aspects (e.g. abuse of wire-tapping, disrespect of immunity of judges, problematic pre-trial detention, fabricated files, controversial investigation methods of the prosecution[34], intransparent selection of judges[35], inconsistent notion of the abuse in office which resulted in inconsistent judicial decisions,[36] pressure and intimidation of judges by Romania's anti-corruption agency (DNA),[37] allegations of selective prosecution and influence of the secrete services (see Clark 2016).[38]

[32] http://romania.usembassy.gov/policy/charge/pr-04102014.html.; https://www.luju.ro/magistrati/dna/ofiter-si-cavaler-sefa-dna-laura-codruta-kovesi-s-a-impaunat-la-tribunalul-bucuresti-cu-distinctiile-primite-de-la-doi-presedinti-de-stat-sunt-decorata-de-presedintii-a-doua-state-unul-dintre-ei-nu-m-a-cunoscut-personal-niciodata-de-unde-inteleg-ca-a-luat.
[33] http://www.euractiv.com/section/central-europe/opinion/why-the-west-wants-romania-to-be-less-corrupt/
[34] http://www.tageswoche.ch/de/2016_9/international/712650.
[35] http://m.romanialibera.ro/special/investigatii/revolta-celor-300-din-justitie-181671
[36] http://www.evz.ro/opinii-pro-si-contra-ccr-decide-azi-pe-cine-baga-in-puscarie-abuzul-in-serviciu.html
[37] http://www.juridice.ro/31389/despre-societatea-pentru-justitie.html. http://www.hotnews.ro/stiri-opinii-19664715-despre-critica-adusa-unii-procurori-hotararilor-judecatoresti-definitive.htm
[38] The problematic and hidden influence on the prosecution system by secrete services (as well as other problematiques) was addressed by National Union of Judges in Romania, however not clarified sufficiently by the Supreme Council of National Defence. See http://www.unjr.ro/2016/09/08/memoriu-privind-situatia-justitiei-din-2016-votat-in-adunarile-generale/; http://www.unjr.ro/2017/01/16/document-csat-privind-relatia-dintre-serviciile-de-informatii-si-justitie. While evidence of politicization (and influence of the secret service) is

Despite serious procedural flaws in the fight against corruption, the EU continued to positively evaluate the work of Romania's integrity agency (ANI), the anti-corruption agency (DNA) and the High Court of Cassation and Justice (European Commission 2014, 2015, 2016). The EU, by turning a blind eye on the defective anti-corruption policy in Romania, and by ignoring critical voices from the opposition, the judicial system (including the Constitutional Court which from time to time declared certain anti-corruption laws as unconstitutional) has in fact contributed to the reduction of accountability over the main anti-corruption bodies and thus can be seen as a stumbling stone in the transition towards improved procedural quality.

Partisan empowerment (of liberal and reformist change agents) has been reflected in the EU's lack of a coherent and objective monitoring and evaluation methodology of the rule of law and anti-corruption policies. This methodological deficiency (which I have termed elsewhere the "EU's rule of law evaluation deficit" (Mendelski 2016a) opens the door for ad-hocness, leeway, partisanship and double standards. Why should a lack of objective evaluation be a bad thing? One main argument is that the selective and inconsistent evaluation methodology of EU conditionality cannot function as an impartial external accountability mechanism and can no longer discipline change agents. In fact the EU risks becoming an accomplice who turns a blind eye on the transgressions of change agents within newly created state structures which themselves may become 1.) politicized, captured, or controlled by influential and dominant politicians, transnational coalitions or informal and hidden networks, or 2.) that these autonomous state structures become so independent and powerful that they are no longer accountable to the law, democratic oversight and public scrutiny.

The EU's evaluation deficit (of the rule of law) has been reflected in the several problematic issues (see Mendelski2016a): 1. Politicized progress reports that were artificially refurbished (leaving out negative information about change agents and including negative assessments of veto players) (see Dimitrov et al. 2014; Toneva-Metodieva 2014).[39] 2. One-sided "rhetoric

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difficult to prove, the statements by Darren White (former head of the US secret service in Romania) are revealing, although I am of course aware of potentially discrediting impact of such statements. See http://www.flux24.ro/acuzatii-explozive-ale-fostului-sef-us-secret-service-dna-face-dosare-politice-kovesi-nu-e-corecta-sri-si-sie-sunt-folosite-politic.

[39] <http://<www.nineoclock.ro/the-report%E2%80%99s-dangerous-omissions>. See letter by former president Constantinescu to the European Commission: <http://<www.nineoclock.ro/former-president-emil-constantinescu-writes-to-ec-president-jose-manuel-barroso/>. This was confirmed by the author's interview with an anonymous legal expert.

action" by members of EU institutions (e.g. the exaggerated "coup d'etat rhetoric" during the Romanian constitutional crisis). 3. A reactive "problem-based approach" which relies on the ringing of 'alarm bells' by Western-financed NGOs and a well-connected legal, liberal epistemic expert community, which avoids ringing the bells in the case of liberal, reformist governments.[40] 4. Considerable information asymmetry during screening activities in candidate and problematic member countries. 5. One-sided reliance on liberal advisors, and experts that have a liberal-constitutionalist perspective which emphasizes only selective aspects of the rule of law (e.g. independence of Constitutional Courts and judicial councils) to the detriment of accountability of these bodies and a systemic assessment of the rule of law as a socially, politically and historically embedded concept (see Carrerra et al. 2013).[41]

In sum, the main external accountability mechanism (i.e. EU conditionality), which could have disciplined domestic elites, became inconsistent, partisan and partly ineffective. The partisan evaluation and support of reformist change agents is a double-edged sword, however. It reduces accountability and potentially leads to the accumulation and misuse of power by change agents.

4.3.1.2 Quantitative focus on inputs and outputs to the detriment of reform processes

Another key problematique of externally-driven good governance promotion has been reflected in the EU's quantitative approach, which follows essentially a "the more the better" mindset in the assessment of progress (i.e. more transplanted laws are better than few laws, etc.) (see Mendelski 2016a). The EU's approach to good governance promotion and assessment thus emphasizes reforms which stress quantitative outcomes (more laws, more resources, more convictions, more arrests etc.) over the qualitative reform processes and procedures (i.e. how laws, arrests or convictions are made). An illustrative example from the Western Balkans might suffice here to elucidate the EU's quantitative approach. A typical Twinning Project evaluation fiche on organised crime and corruption in this region mentions the following quantitative indicators to measure progress: number of serious crime cases dealt with, number of witnesses coming forward, number of meetings, exchange programmes and participants, number of documents produced, number of technical arrangements, number of legislative standards, number of rules of procedure and guidelines drafted and adopted,

[40] Interview with a EU Commission representative.

[41] I have provided detail evidence on these problematic issues in Mendelski 2016b.

number of judges and prosecutors trained, number of national key and secondary legislation drafted and adopted, number of legislation and cooperation agreements in place, ratio of information on best practice successfully exchanged and applied, number of training courses provided, number of working groups established.[42] However, by relying on this kind of 'more is better' mindset, the EU (together with other international donors) was able to produce certain desirable outputs and outcomes (e.g. higher state capacity) but also several undesirable ones, such as new material opportunities to engage in corruption and rent-seeking (Mungiu-Pippidi 2014) and increased legal inflation/instability (see section 4.5.1).

4.3.1.3 Dispersed diversity

External good governance promotion in SEE has been characterized by dispersed diversity, i.e. a pluralistic, insufficiently coordinated reform approach by multiple international multilateral and bilateral donors with competing goals, interests, agendas and methods. Prominent Europeanization scholars argued that EU conditionality effectiveness can be reduced in the presence of cross-conditionality by other external actors (Sedelmeier and Schimmelfennig 2 2004:674). This important insight is especially valid for the Western Balkans, where we encounter multiple cross-conditionalities which are not always compatible and coordinated with each other. The presence of multiple competing conditionalities in the Western Balkans is one main reason (among others) why EU-driven good governance promotion results in pathological effects, and in particular in the hybridization, incoherence and balkanization of governance (see Juncos 2011; Belloni 2012, Tolksdorf 2014).

Multiple donors with different agendas and interests were mainly present in the post-conflict regions such as the Western Balkans and several post-Soviet states. Most of these donors employed similarly to the EU a non-strategic and quantitative approach to reform based short-term projects, perverse quantitative incentives (see Channel 2005). Coordination among donors was weak, reflected in sole information exchange rather than effective coordination of reforms.[43] Despite the laudable Paris declaration on better aid coordination, there is plenty of evidence that donors do not coordinate their activities, goals and strategies well enough, resulting in parallel structure, overlap and structural incoherence (see section 4.4.2).

[42] http://ec.europa.eu/enlargement/pdf/financial_assistance/ipa/2012/multi-beneficiary/pf5_ipa-2012_winpro-ii_final.pdf.
[43] Interview with an international legal consultant who worked in the Western Balkans See Mendelski 2013b.

The EU (and particularly the Western Europe) was described some decades ago as having no one, single tradition, but a "diversity of traditions" (Shklar 1964). This observation, which is still valid for the good governance agenda of the EU, has been highly problematic for good governance reforms. The EU, as a very heterogeneous union of multiple states, institutions and actors (all having diverse histories, cultures, institutional traditions and interests) never had one coherent understanding and model of governance (the rule of law etc.), nor a coherent strategy (see Tolksdorf 2014), which has made the EU's good governance promotion very dispersed, incoherent and fragmented. This was most evident in Bosnia where the EU had been represented by a variety of units (EU Delegation, the EU Special Representative, the EU peacekeeping force Althea, the EU Police Mission, the activities of EU member states). In Bosnia (and elsewhere) "… the EU frequently did not speak with one voice in its support for constitutional reform and has never appointed one particular actor in charge of coordinating the EU's activities in this area" (see Tolksdorf 2015:412). Similarly in Kosovo, lack of cooperation and contradictions of the mandates of the EU's agencies (e.g. between Special Representative and EULEX) hindered the effective promotion of the rule of law (Tzifakis 2013). The consistency of EU conditionality was undermined by lack of internal coordination, the presence of multiple cross-conditionalities[44], the (geopolitical) interests of its members (Schimmelfennig 2012), and the employment of national legal experts and consultants (e.g. Twinning advisors) which had different cultural and legal backgrounds. A special report from the European Court of Auditors has described the pathological effects resulting from lack of coordination between the EU Office (EUO) and US donors:

> The EU Institutions have made significant efforts to coordinate with the USA which is the largest bilateral donor in Kosovo. Nonetheless it remains difficult to achieve full co-ordination given the wide range of US actors involved in Kosovo in the rule of law field. Co-ordination is particularly challenging in the drafting of legislation, where the USA is very active despite Kosovo's interest in adopting the EU acquis communautaire and the fact that Kosovo's legal framework is based on European Continental law. For example, the new law on courts required around 50 drafts starting from 2004 and was only adopted by the Assembly in August 2010, the government blaming the significant delay on disagreement between EUO and USAID (European Court of Auditors 2012: 30).

[44] The European Court of Auditors has recently pointed out several issues of weak coordination. For instance, "Despite some efforts, there was no strict discipline in the coordination of early IPA projects with those of other donors with a view to ensuring complementarity and avoiding overlaps, notably in the rule-of-law sector" "Project 3, 'Judiciary system', is a clear example of poor coordination, from design to implementation. Indeed, the EU-funded case management system ran in parallel with another system funded by USAID. The lack of coordination and local ownership with regard to IT issues in the rule-of-law sector is demonstrated by the fact that major IPA IT investments have been implemented without a proper IT strategy." (European Court of Auditors 2014:14)

By offering their diverse, nationally embedded practices and solutions, the international community produced considerable legal and structural pluralism which absent of effective coordination undermined the coherence of governance.[45] The next section shows how the fragmented promotion of good governance by multiple and heterogeneous actors has resulted in several pathologies of Europeanization/Transnationalization, reinforced Balkanization and ultimately in the reproduction of fragmented (bad) governance.

4.4 OUTCOMES: Pathologies of Europeanization (Fragmentation, Balkanization, Politicization and Instability)

4.4.1 Legal pathologies

Three main pathologies of Europeanization can be identified: 1. legal, 2. political and 3. policy-related. First of all, EU-driven reforms resulted in the deterioration of *formal legality* and in particular of stability, generality and enforcement of laws (see Table 1). These declining and stagnating trends, and especially the increasing accelerating trends in legislative output (and instability) can be attributed to the zeal of reforming through unconstrained legislating and amending of existing legislation during the pre-accession period, which saw an increased reliance on fast-track formal legal changes (for instance in the form of multiple legislative packages), accelerated proceedings, executive-driven legislating, with few debates and accelerated procedures (Sadurski 2004; Tzifakis 2012; Risteska 2013).[46] While domestic, reformist "change agents" were directly responsible for this pathological development there is some evidence that the EU's focus on quantity produced and reinforced legal pathologies (see Mendelski 2015). For instance, the EU's demand for more transplanted laws and adaptation to international standards improved the external legality of law but at the same time fostered legal inflation, instability and incoherence (Mendelski 2015). The demand for more transplanted regulations increased discrepancy between formal rules and informal practice (Slapin 2012, 2015). The EU's partisan support of domestic change agents (which instrumentalized new legislation) undermined the generality of law.[47]

[45] On the negative role of Twinning advisors see Official Journal 2003:28.
[46] Confirmed during interviews with high-ranking judges from Serbia, Croatia, Bulgaria, and Romania.
[47] For instance, Romania's change agent Monica Macovei transferred the appointment competences for prosecutors from the CSM to the Ministry of Justice through Law no. 247/2005. This law was critically labeled

4.4.2 Political pathologies

Good governance reforms created and reinforced several political pathologies, which were reflected in increased politicization, polarization, structural heterogeneity and a general lack of progress in the dimension of *impartiality*.

First, politicization of state structures continued and partly even increased. Most anti-corruption reforms resulted in the politicization of anti-corruption agencies, which were instrumentalized by pro-EU change agents and anti-EU veto players in a harmful political struggle (see Mendelski 2015; Börzel and Pamuk 2012; Meagher 2005: 69).[48] Similarly, empowered constitutional courts which were guarantors of liberal democracy in the more advanced Visegrad and Baltic states, became considerably politicized in SEE and thus did not function as impartial guardians of the rule of law (see Schwartz 2000; Beširević 2014; Mendelski 2015).

The EU contributed to this pathological development. The demand for a "solid track record" in fighting high-level corruption cases increased the number of convictions, but lead also to more instability of anti-corruption legislation, misuse of newly established prosecutorial structures, including the violation of fundamental rights (Ivanova 2013; Capussela 2015; Clark 2016). EU accession, as a heavily bureaucratic process led to unintended consequences, such as opacity, more regulations, and increased discrepancy between formal rules and informal practice, as well as more opportunities to engage in corruption and rent-seeking (due to increased material resources in the form of EU funds) (Mungiu-Pippidi 2014). The EU's call for more judicial independence and the establishment and empowerment of judicial councils has resulted in more independent but less accountable councils as well as in polarization between its members (Coman 2014; Mendelski 2016a). Rather than being guarantors of judicial independence and the rule of law, most judicial councils from SEE evolved into politicized, unaccountable, and non-transparent bodies that tended to undermine the rule of law (see Seibert-Fohr 2012; Coman 2014; KIPRED 2011; OSCE 2009, 2012; Sigma Montenegro 2012: 5; Preshova et al. 2017). Overall, reforms (with few exceptions) did

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"Macovei's law" indicating the situational and opportunistic interests behind it. http://www.criticatac.ro/22167/legea-macovei-cronica-unei-dezamgiri-anunate/.
In Bosnia, the High Representative (European Union Special Representative) (mis)used the Bonn powers to manipulate electoral rules in favour of multi-ethnic political parties (Belloni 2008:95)

[48] Interviews with EU Commission representatives, as well as Bulgarian, Romanian, Serbian, and Moldovan judges, prosecutors, and lawyers. See also the available National Integrity System Assessments published by Transparency International for Kosovo, Bosnia & Herzegovina, Romania, and Bulgaria. See <http://<www.transparency.org/whatwedo/publications/doc/nis/>.

not result in the creation of independent accountability structures which could check political elites. Rather, judicial and horizontal accountability structures became, politicized, polarized and fragmented in nature. They have learnt to shift their loyalties and to calculate strategically as a result of political pressure and intimidation. Thus, in SEECs, horizontal accountability structures (e.g. Constitutional courts, Ombudsmen, anti-corruption and regulatory agencies) never acquired the necessary unity and independence as analogous oversight institutions in more advanced countries from the West.

Second, political instability increased. The partisan empowerment of politicized judicial and prosecutorial structures resulted in resistance by less reformist elites and veto players (e.g. accused politicians, oligarchs), who tried to dismantle the politicized agencies and structures or simply replaced their heads with their own loyal people (see Mendelski 2012; 2015). While political struggles and reshuffling after government changes has been a structural feature in SEE, BTI data and reports indicate that in some countries (e.g. Romania, Croatia, Albania) political competition, instability and fragmentation has increased. The polarization and fragmentation of the party system was reflected in the politicization of state and oversight structures (e.g. the secret service, media, constitutional courts and prosecution) and accompanied by mass protests and several political or constitutional crises (e.g. Bulgaria, Romania, Kosovo, Bosnia; Macedonia). These systematic pathological features of a fragmented political system (executive) reflect recurrent cycles of politicized reform and counter-reform by externally-empowered elites (see Mendelski 2016b).

Third, externally-driven reforms reinforced structural incoherence. By introducing multiple new organizational and institutional elements from more advanced (foreign) systems in a piecemeal way, the overall coherence and complementarity of the unitary state was undermined. This pathological outcome was some decades ago noted in the case of Latin America, where reforms created "structural heterogeneity" in the economy (Cordova 1973; Senghaas1975).[49] A similar phenomenon can be observed in SEE where structural heterogeneity in the polity was created by selectively transplanting Western practices, solutions and elements (e.g. self-regulation, outcome-based performance evaluation, specialized and autonomous agencies and courts etc.) into states/societies which were

[49] Structural heterogeneity refers to the "existence of several modes of production", creating an economy of enclaves (see Senghaas 1975:264). This concept has been applied to explain the deficient functioning of Latin American Economies.

governed by traditional forms of coordination and governance (e.g. particularism, informality, reciprocity, hierarchy). However, most of these newly transplanted "islands of excellence" (based on Western governance) did not spill-over to the entire system, but rather turned into externally-empowered "Western enclaves" which were embedded in a governance system based on particularism. In Romania (and elsewhere), new autonomous "islands of excellence" (1. Anti-Corruption Directorate, DNA, 2. National Integrity Agency, ANI, 3. Organised Crime and Terrorism Department, DIICOT) reinforced systemic incoherence (structural heterogeneity) of the prosecutorial (administrative) system.[50] This process of fragmentization began already in the 1990s, with the transplantation of several autonomous organs from abroad (e.g. Ombudsman, Judicial Council of Magistrates, Constitutional Court, introduction of multiple courts of appeal etc.). The problem here is not pluralism (of different units) *per se*, but the lack of unity (corporate ethos, unitary judicial and political decisions), cooperation and coordination of activities between the different government structures (state agencies, within ministries, judicial structures etc.) which results more than often in fragmentation, frictions, quarrels over competency and inefficiency of the governance system.[51]

Similarly, in the Western Balkans, incoherent strategies and actions of multiple international and bilateral donors produced incoherent, fragmented judicial and legal systems (see Mendelski 2013a, 2013b, 2015). It could be argued that "too many cooks spoiled the broth" and reinforced fragmented governance. In Kosovo, for instance, the "…simultaneous presence of several donors with sometimes different agendas has not always led to the necessary synergies", instead producing incoherence in the judicial system.[52] This was confirmed in a SIGMA report which stated that "The high dependence on external aid and expertise may jeopardize the efforts being made for creating a coherent legal system, in line with the prevailing legal tradition in Kosovo and that can be easily understood, implemented and assessed by the administration and the courts of Kosovo" (Sigma Kosovo 2011:11). Structural incoherence (heterogeneity) was additionally exacerbated by appointing foreigners to key domestic state structures (the Constitutional Court, the Central Bank, and the Commission on Real Property Claims). In Bosnia or Kosovo, for instance, judges from the US and Sweden

[50] Interview with an anonymous Romanian judge.
[51] Interview with a Romanian judge and an advisor to the Prime Minister.
[52] See Twinning project fiche. Improving the approximation of laws and coherence of the legal framework, KS 12 IB JH 02, Kosovo
http://ec.europa.eu/enlargement/pdf/kosovo/ipa/2012/ipa_2012_pf4_strengthening_rol_final.pdf.

with their different methodologies and legal backgrounds (common vs. continental law) would produce non-unitary decisions.[53]

In addition, the process of transplanting common law elements into continental systems (e.g. plea bargaining) produced incompatible "legal irritants" (Teubner 1998) and reinforced fragmentation. This was for instance the case in Bosnia, where the US-promoted plea bargaining (a common law element) was introduced into the traditional continental system.
A Sigma report on Bosnia noted that plea bargaining created "a mixture between legal styles from various continental as well as common law traditions...", which lead to "...incompatibilities amongst different laws and legal styles....", weakening the "...consistency, accountability and enforcement…" and hindering "the development and understanding of democracy, professionalism, transparency, and accountability" (SIGMA assessment Bosnia 2012:3).[54]

The EU's extensive outsourcing of intermediaries, foreign advisors, and legal experts (e.g. twinning) with different legal backgrounds exacerbated the incoherence of the judicial system (Sigma Kosovo 2011: 11; Sigma Bosnia 2012: 2.) Uncoordinated state and capacity building (between the US and EU) resulted in parallel and overlapping systems (e.g. IT systems, data management systems or court management systems) and incoherent institutional structures (e.g. private bailiffs next to public bailiffs in Serbia, introduction of court managers and specialized courts and agencies). In many SEE countries several anti-corruption agencies and specialized bodies (e.g. special police units, special court departments and the special prosecutor's office for organized crime) were introduced. The creation of parallel structures resulted in several problems (e.g. overlapping responsibilities, unclear competencies, and lack coordination of their activities) which undermined the effective functioning of these bodies.[55]
The problem of parallel structures was particularly severe in Bosnia and Kosovo where diverse international organizations (UN, EU, NATO) were responsible for the governance of the judicial system. In Bosnia and Herzegovina, the lack of coordination between 13 diverse police forces undermined not only the fight against organized crime but also the effectiveness and implementation of Twinning projects (Court of auditors 2009: 25). In Kosovo (and

[53] Interview with an international legal expert.
[54] There were also additional pathological effects of this failed transplanting, such as "violations of defendants' rights" which encouraged coercion of confessions, contributed to a negative public perception of the legal system, and problem with implementation (see Alkon 2010: 404).
[55] Interview with NGO representatives in Moldova.

elsewhere), too many independent institutions and agencies resulted in a complex and unaccountable governance system (SIGMA Kosovo 2012:4). Structural incoherence was additionally exacerbated by piecemeal approach to reform (e.g. selective focus on aspects of good governance, use of pilot courts etc.).[56] Finally, these telling examples all suggest that EU conditionality when combined with external cross-conditionalities (dispersed diversity), can result in pathological (negative) effects governance. This negative impact was also visible with regard to policies, which became incoherent, ad hoc and short-term in nature.

4.4.3 Policy-related pathologies

A fragmented polity and international community, embedded in a fragmented legal framework and society has produced three policy-related pathologies (1. lack of policy coherence, 2. Lack of policy prioritization, 3. Lack of policy implementation). As evidenced by several reports by the Bertelsmann Foundation (BTI), policies in SEE (with the exception of Albania) became incoherent, short-term oriented and not well-coordinated, nor implemented (see Table 9). Policy making in Western Balkans was described as "fragmented" and based on "blurred lines of responsibility" (Thomas and Bojicic-Dzelilovic 2015:6). Competition, lack of communication and coordination between ministries/agencies has become a pervasive feature of governments in SEE.[57] Detailed evidence on fragmentation, lack of prioritization and implementation of policies is provided in Table 9 (see Appendix). Although there have been selective instances when policies and strategies became well-coordinated (e.g. the recent anti-corruption strategy in Romania which assured regular meetings, policy learning and accountability[58] or the local public administration reform in Bosnia), in most cases, policies were undermined by divided political elites, dispersed diversity of donors and the politicization/fragmentation of state structures.

Overall, the inadequate reform approach of domestic and external reformers (which was embedded in a fragmented social structure characterized by detrimental competition) has resulted in the reinforcement and creation of several reform pathologies ('pathologies of Europeanization') (see Mendelski 2014, 2015) which have undermined formal legality,

[56] In Serbia, this kind of selective introduction resulted in "considerable discrepancies in procedures, interpretations and performance" See. Support to the Rule of Law System. Project Fiche – IPA National programmes / Component, p.15
http://ec.europa.eu/enlargement/pdf/serbia/ipa/2012/pf_1_support_to_the_rule_of_law_system.pdf
[57] Interview with an international government advisor working in the Western Balkans.
[58] Interview with a Romanian state secretary at the Ministry of Justice.

impartiality and coherence. The identified pathologies should not only be seen as short-term, temporary side-effects of externally-driven governance reforms, but as persisting systemic pathologies that are repeated in every new wave of recurrent reform and counter-reform cycles of competing and externally-empowered domestic elites. Thus, despite going through several waves of reform, the systemic deficiencies of governing and reforming are preserved and even reinforced. The constant reform cycle of reform and counter-reform can be seen as a vicious cycle of Balkanization that undermines the creation of impartiality, legality and coherence, i.e. three crucial elements of good governance. The overall outcome is the preservation and even reinforcement of bad (fragmented) governance. It can be argued that externally-driven "good" governance reforms actually cement the existing hybrid, instable and fragmented social order, a social order which is based on the presence of multiple modes governance, external cross-conditionalities, disunited domestic elites, fragmented state structures, rules and policies. The consequences of fragmented and dysfunctional state structures seems to be the emergence of compensating informal practices (e.g. reciprocity, blat, corruption) which partially alleviate but also reproduce fragmented governance.

5. Conclusion

This study empirically measured the development of good governance in SEE and explored the potential impact of the EU (and other donors) on it. The first finding is that good governance developed unevenly among its six key dimensions. While substantive legality and capacity improved considerably, formal legality, impartiality and coherence remained unchanged or even regressed. The efficiency-effectiveness dimension experienced a mixed development. The findings suggest that the EU (together with the help of domestic reformers and international donors) had a (positively and negatively) reinforcing effect across the six dimensions of governance. On the one hand, EU-driven reforms had a positive impact on substantive legality (alignment of legislation to international standards), state capacity and some aspects of effectiveness (e.g. quality of public services, infrastructure). On the other hand, reforms have undermined formal legality (e.g. the stability and enforcement of law), impartiality, aspects of efficiency and particularly the coherence of state structures and policies. Overall, the analysis suggests that there is no transition towards good governance in SEE. Rather, externally-driven reforms reinforced fragmentation (balkanization) and thus reproduce the already existing mode of fragmented governance, i.e. an instable, particularist and fragmented social order.

The persistence of fragmented (bad) governance in SEE was explained through a *vicious reform cycle of Balkanization* in which structure, agency and the reform process reinforce each other in a circular way. This circular and cumulative cycle attributed the persistence of fragmented governance to three interrelated factors: 1.) fragmentation of society 2.) divided and competing domestic elites who have instrumentalized, politicized and fragmented state structures and the reform process. 3.) pathological effects of multiple donor cross-conditionalities (including EU conditionality). I argued that the EU, together with other international donors, has reinforced the process of fragmentation and Balkanization by applying three questionable strategies: (1) The *partisan empowerment* of pro-Western reformers by the EU (and US) has resulted in the accumulation of misuse of power, the reduction of accountability and the undermining of impartiality (2) A *focus on quantity* (to the detriment of quality), generated improved outputs (e.g. capacity, enhanced adaptation to best standards, more convictions, selective delivery of infrastructure/capacity) but undermined the procedural quality of legislating, prosecuting, adjudicating and governing. (3) *Dispersed diversity* of multiple international governance promoters (as reflected in diverse cross-conditionalities) has increased problems of coordination and reinforced the fragmentation of state structures, laws and policies. This sobering finding about external governance promotion may be unexpected but confirms and adds to recent research findings from the Europeanization literature which identified "pathologies of Europeanization" in the area of the rule of law and anti-corruption (Börzel and Pamuk 2012; Mendelski 2014, 2015, 2016a, 2016b).

How can the EU's good governance promotion be improved? First, the EU should refrain from partisan empowerment of reformist, liberal change agents, particularly when they instrumentalize the law, disrespect procedural aspects and human rights and misuse their prerogatives to fight competitors. The EU's empowerment strategies are probably helpful to push reforms and to attain certain geopolitical goals, but they also undermine the establishment of the rule of law (and good governance). Rather than focusing on a small group of selected liberal change agents, the EU should reward elites and movements who have gained domestic legitimacy, foster domestic consensus and unity and regard the law as a necessary constraint rather than a tool. By supporting a small minority of delegitimized and abusive change agents, the EU may further reinforce the polarization of polities and societies in SEE. Similarly, the EU needs to improve the currently flawed and inconsistent methodology of governance (rule of law) evaluation, which opens the doors to bias and

double standards. An enhanced approach requires a more objective, qualitative and multiplicative methodology, which pays attention to reform and policy processes. In addition, the EU's progress reports should contain more detailed references and all relevant sources of information in a large appendix (e.g. containing original screening reports by experts, documented interviews, opinions of the respective government and opposition etc.) More objectivity and validity through triangulation and transparency of the evaluation methodology could help to diminish the "EU's evaluation deficit" and the pathological effects it generates.

Second, EU conditionality should be re-focused from quantitative outcomes towards qualitative processes. In particular, the EU should not link conditionality to specific reform outcomes or benchmarks (e.g. bringing war criminals before the court, increasing the number of high-level corruption cases, adoption of specific laws or one-size-fits-all solutions). Rather, the EU should link conditionality to the reform process itself which underlies these outcomes. This enhanced, process-related and qualitative approach should pay attention to formal legality, coherence of state structures and interdependencies between dimensions of governance.

Third, the diversity of external donors and conditionalities has to be reduced. Coordination of aid activities has so far not worked as intended. Competing donor conditionalities and agendas have fragmented reforms, policies, the law and governance. Too many cooks have spoiled the broth. The policy implication would be therefore to get rid of the majority of donors and to centralize donor aid in one main national strategy and vision offered by one key donor. This reliance on one key donor (the US) is historically reflected in the Marshall Plan which avoided many pitfalls of fragmentation in the rebuilding of Western Germany after WW II. Whether such a one-donor-solution is still feasible in SEE is however debatable.

How to make a transition towards good (non-fragmented) governance? The transition is naturally a highly context dependent process, but the main policy advise for domestic reformers would be to avoid fragmentation, fractionalization and too much heterogeneity. Instead, national reformers should seek to creat e coherent and unitary state structures (1) by emphasizing a common identity and generally accepted values and (2) by constraining or channelling the "fractionaliziation power" of external actors (e.g. US, EU, Russia, international donors). Only after building unity in the core, more pluralism at the periphery may be sensible. History shows that social, legal and political fragmentation (in-betweenness)

has been a recurrent phenomenon that occurred in borderland-countries (Baltic States, Ukraine, Moldova, Western Balkans) -located between major Empires (e.g. between the Ottoman and the Habsburg Empire, between Russia and the West)- where processes of Balkanization have created (for most of the time) fragmented societies, laws and political economies, which are culturally rich and beautiful (because of their diversity) but often dysfunctional. Future research should explore ways and means how to overcome and mitigate the fragmentation of governance.

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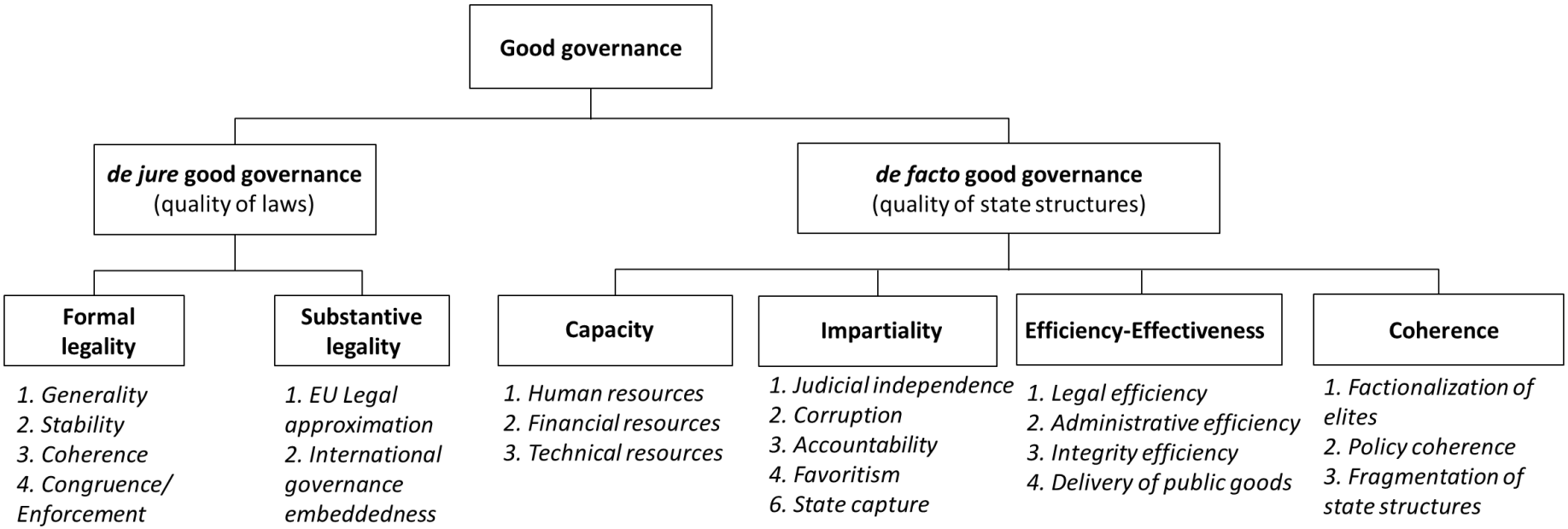
Figure 1: A multi-dimensional concept of good governance



Source: Author.

Table 1: Development of substantive and formal legality in SEE (average scores)

	1995	1997	1999	2001	2003	2005	2007	2009	2011	2013	2015	Absolute change (1995-2012)	Relative change in % (1995-2012)
1. Substantive legality													
Good governance treaty ratification Author, Scale: from 0 (worst) to 5 (best).	0.13	0.25	0.38	1.25	2.63	3.75	4.38	4.88	5.00	5.00	5.00	**+0.37**	**+3900**
2. Formal legality													
Legislative output **(legal instability)** Number of yearly adopted laws	104	108	137	216	180	149	151	170	183	191	199	**+95**	**+91.0**
Legislative corruption **(lack of generality)** TI, Scale: from 1 (worst) to 5 (best).					2.3	2.3	2.1	2.1	2.1	2.1		**-0.2**	**-9.7**
Regulatory enforcement **(lack of enforcement)** WJP, Scale: From 0 (worst) to 1 (best)								0.50	0.50	0.50	0.50	**0**	**0**

Sources: World Justice Project (WJP); Transparency International (TI); National parliaments.

Table 2: Development of capacity in SEE (average scores)

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Absolute change (1998-2012)	Relative change in % (1998-2012)
Judicial budget p.c. (EUR), CEPEJ	14.2		16.2		20.1		27.6		26.1		27.2		31.1	+15.8	+110.8
Number of professional judges per 100000 inhabitants CEPEJ	26.7		27.1		28.0		28.8		29.5	84	31.3		30.1	+3.5	+13.0
Number of public prosecutors per 100000 inhabitants, CEPEJ	10.4		11.5		11.8		11.8		12.5		12.5		12.9	+2.5	+24.2
E government development index UN Scale: from 0 (worst) to 1 (best)		0.42		0.44			0.50		0.51		0.60		0.55	+0.13	+31.0

Source: CEPEJ 2004; 2006; 2008; 2010; 2012. See http://www.coe.int/cepej; United Nations (UN) E-Government Knowledge Database);
Notes: The original TI scores were reversed, so that higher values indicate less corruption.

Table 3: Development of impartiality in SEE (average scores)

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Absolute change (1998-2012)	Relative change in % (1998-2012)
Favoritism in decision making WEFEOS, Scale: from 1 (worst) to 7 (best)	2.6	2.5	2.5	2.6	2.6	2.7	2.8	2.9	2.9	2.8	2.8	2.8	2.7	**+0.1**	**+6.9**
Irregular Payments to the judicial system WEFEOS, Scale: from 1 (worst) to 7 (best)	3.8	3.8	4.0	3.7	3.5	3.4	3.4	3.4	3.4					**-0.4**	**-8.8**
Diversion of public funds WEFEOS, Scale: from 1 (worst) to 7 (best)	3.0	2.8	3.0	3.3	3.4	3.4	3.3	3.2	3.2	3.2	3.1	3.1	3.1	**+0.1**	**+3.4**
Judicial independence WEFEOS, Scale: from 1 (worst) to 7 (best)	2.6	2.6	2.7	2.9	3.0	2.9	3.1	3.1	3.0	3.0	3.0	3.1	3.1	**+0.5**	**+18.2**
Judicial accountability, V-Dem Scale: from 0 (worst) to 4 (best)	1.9	1.8	2.0	2.1	2.1	2.3	2.3	2.3	2.4	2.4	1.7	1.8		**-0.1**	**-5.5**
Prosecution of office abuse BTI Scale: from 1 (worst) to 10 (best)		6.1		6.4		6.0		6.0		6.3		6.1		**0**	**0**
Political corruption, V-Dem Scale: from 0 (worst) to 1 (best)	0.4	0.4	0.4	0.4	0.4	0.3	0.4	0.4	0.4	0.4	0.4	0.4		**0**	**0**

Sources: World Economic Forum's Executive Opinion Survey (WEFEOS); Bertelsmann Transformation Index (BTI); Varieties of Democracy (V-Dem);
Note: Original FH and TI scales were inverted so that higher values reflect better performance.

Table 4: Development of coherence in SEE (average scores)

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Absolute change (1998-2012)	Relative change in % (1998-2012)
Policy coordination, BTI Scale:1 (worst)- 10 (best)		5.8		5.8		6.1		6.0		5.9		6.1		+0.3	+5.0
Party system (stability, polarization, fragmentation) BTI Scale:1 (worst)- 10 (best)		6.7		6.2		5.9		6.9		6.7		6.7		0	0
Elite factionalization FfP Scale:1 (worst)- 10 (best)		5.3		5.1		4.8		4.6		4.6		4.5		-0.8	-15.1

Table 6: Development of efficiency/effectiveness in SEE (average scores)

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Absolute change (1998-2012)	Relative change in % (1998-2012)
A. Efficiency															
Wastefulness of government spending WEFEOS, Scale:1 (worst)- 7 (best)	2.7	2.5	2.6	2.9	3.0	3.0	2.9	2.9	2.8	2.7	2.9	2.7	2.7	0	0
Efficient use of assets BTI, Scale:1 (worst)- 10 (best)		5.7		5.9		5.4		5.6		5.8		5.3		-0.4	-6.7
Start-up procedures to register a business (number), WB Doing business	11.4	11.3	11.3	10.6	10.4	9.1	7.9	7.4	7.4	6.8	6.3	6.2	6.1	-5.3	-48.5
Time required to start a business (days) WB Doing business	44	43	41	34	34	31	27	26	24	22	19	17	17	-28	-65.3
2. Effectiveness															
Performance of democratic institutions BTI, Scale:1 (worst)- 10 (best)		7.4		7.6		7.3		7.1		6.8		6.8		-0.7	-8.8
Quality of Education system WEFEOS, Scale:1 (worst)- 7 (best)	3.6	3.6	3.6	3.6	3.5	3.5	3.6	3.6	3.4	3.5	3.7	3.4	3.4	-0.2	-6.9
Quality of overall infrastructure WEFEOS, Scale:1 (worst)- 7 (best)	2.6	2.6	2.7	2.7	2.6	2.9	3.3	3.4	3.6	3.8	3.9	3.7	3.7	+1.1	+44.2
Organized crime WEFEOS, Scale:1 (worst)- 7 (best)	3.7	3.5	3.7	4.3	4.7	4.9	5.0	4.7	4.7	4.7	4.5	4.5	4.3	+0.7	+17.9
Public Services FfP, Scale:1 (worst)- 10 (best)		5.6		6.1		6.2		6.7		6.8		7.2		+1.6	+29.5

Sources: World Economic Forum's Executive Opinion Survey (WEFEOS); Bertelsmann Transformation Index (BTI); Fund for Peace (FfP);
Notes: The original FfP scale was inverted so that higher values reflect better performance.

Table 7: Justification and operationalization of theoretical concepts

Theoretical concept (author)	Indicator	Measurement	Source
1. Substantive legality			
International governance embeddedness (Mendelski), "external morality" (Fuller 1979), "legal embeddedness" (Simmons 2009), thick or substantive rule of law (Hart 1958, 1961)	Good governance treaty ratification	The proportion of the 5 more important anti-corruption conventions ratified by each state (1. United Nations Convention against Corruption, 2. CoE Civil Law Convention on Corruption, 3. CoE Criminal Law Convention on Corruption, 4. CoE Additional Protocol to the Criminal Law Convention on Corruption, 5. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.	Author (based on treaty ratification data from UN, CoE)
2. Formal legality			
Stability of laws (Fuller 1969)	Legislative output	Number of adopted laws per year in the national parliament.	Mendelski 2016a (based on data from national parliaments)
Generality of laws (Fuller 1969)	Legislative corruption	To what extent do you perceive the following institutions in this country to be affected by corruption? Parliament/Legislature	Transparency International
Congruence/Enforcement of Laws (Fuller 1969)	Regulatory enforcement	Measures the extent to which regulations are fairly and effectively implemented and enforced. Strong rule of law adherence requires that: 1) these regulations and administrative provisions are enforced effectively; 2) government regulations are applied and enforced without improper influence; 3) administrative proceedings are conducted timely, without unreasonable delays; 4) due process is respected in administrative proceedings; and 5) there is no expropriation of private property without adequate compensation.	World Justice Project
3. Capacity			
State capacity (Fukuyama 2013; Besley/Persson 2010); Judicial capacity (Anderson et al. 2005)	Judicial budget p.c. (EUR),	Annual approved public budget allocated to the functioning of all courts, in EUR	CEPEJ, Council of Europe
	Number of professional judges per 100000 inhabitants	Total number of professional judges (sitting in courts)	CEPEJ, Council of Europe
	Number of public prosecutors per 100000 inhabitants,	Total number of prosecutors	CEPEJ, Council of Europe
Computerization	E-government development index		UN

4. Impartiality			
Favoritism, clientelism, particularism (Ledeneva; Mungiu-Pippidi 2006; Rothstein/Teorell 2008)	Favoritism in decision making	In your country, to what extent do government officials show favoritism to well-connected firms and individuals when deciding upon policies and contracts?	WEFEOS
State capture (Hellman et al. 2003)	Diversion of public funds	In your country, how common is illegal diversion of public funds to companies, individuals, or groups?	WEFEOS
Judicial corruption (Karklins 2001; Wallace 1998)	Irregular Payments to the judicial system	In your country, how common is it for firms to make undocumented extra payments or bribes connected with the following: Irregular Payments to the judicial system	WEFEOS
Judicial independence (Raz 1977; Larkins 1996; Ferejohn 1998)	Judicial independence	In your country, how independent is the judicial system from influences of the government, individuals, or companies?	WEFEOS
Judicial accountability (Buscaglia/Dakolias 1999; Hammergren 2002; Burbank 2003; Voigt 2012	Judicial accountability	When judges are found responsible for serious misconduct, how often are they removed from their posts or otherwise disciplined?	V-Dem
Political corruption	Political corruption index	How pervasive is political corruption? The corruption index includes measures of six distinct types of corruption that cover both different areas and levels of the polity realm, distinguishing between executive, legislative and judicial corruption. Within the executive realm, the measures also distinguish between corruption mostly pertaining to bribery and corruption due to embezzlement. Finally, they differentiate between corruption in the highest echelons of the executive (at the level of the rulers/cabinet) on the one hand, and in the public sector at large on the other. The measures thus tap into several distinguished types of corruption: both 'petty' and 'grand'; both bribery and theft; both corruption aimed and influencing law making and that affecting implementation.	V-Dem
Accountability towards the law and horizontal accountability(Guarnieri 2003; O'Donnell 1998; Schedler et al. 1999)	Prosecution of office abuse	To what extent are public officeholders who abuse their positions prosecuted or penalized? This question seeks to assess if public servants and politicians are held accountable by legal prosecution and public contempt when they break the law and engage in corrupt practices. It also includes conflicts of interest and ethical misconduct. The focus should be on the extent to which the rule of law is undermined by political corruption.	BTI
5. Coherence			
Policy coherence	Policy coordination	To what extent can the government coordinate conflicting objectives into	BTI

(Weaver/Rockman 1993)		a coherent policy? As many policies have conflicting objectives, reflect competing political interests and affect other policies, the government has to ensure that its overall policy is coherent. Successful coordination should: · assure that trade-offs between policy goals are well balanced · introduce horizontal forms of coordination to mediate between different departments of the state administration · ascribe responsibilities in a transparent manner to avoid the negligence of tasks, redundancies or friction between different government branches. Various coordination styles— hierarchic-bureaucratic, informal-network, personalist, centralized, decentralized etc. — are possible and may be functionally equivalent. What matters is their impact on policy coherence.	
Legislative polarization and fragmentation	Party system	To what extent is there a stable and socially rooted party system able to articulate and aggregate societal interests? To answer this question, please consider: · the extent to which parties are socially rooted and organizationally institutionalized · the degree of clientelism and the effects it has in promoting or inhibiting stability · the fragmentation of the party system · the level of polarization · the degree of voter volatility	BTI
Division and unity of elites (Higley and Pakulski 1999)	Elite factionalization	- Fragmentation of ruling elites and state institutions along ethnic, class, clan, racial or religious lines. -Use of nationalistic political rhetoric by ruling elites, often in terms of communal irredentism (e.g., a "greater Serbia") or of communal solidarity (e.g., “ethnic cleansing" or “defending the faith"). - Absence of legitimate leadership widely accepted as representing the entire citizenry	Fund for Peace
6. Efficiency/Effectiveness			
A. Efficiency (i.e. the ratio of useful output to total input, such as cost or time)			
	Wastefulness of government spending	In your country, how efficiently does the government spend public revenue?	WEFEOS
	Efficient use of assets	To what extent does the government make efficient use of available human, financial and organizational resources? In assessing the government’s resource efficiency, please focus on the executive, including the administration and the cabinet. Please consider the following indicators: Efficient use of government administrative personnel, Efficient use of budget resources, Efficient administrative organization	BTI

	Start-up procedures to register a business (number)		WB Doing business
	Time required to start a business (days)		WB Doing business
B. Effectiveness (Outcome, quality of public goods)			
State capability/effectiveness	Performance of democratic institutions	Are democratic institutions capable of performing? This question aims to establish if democratic institutions exist and to what extent they perform their functions effectively and are free from extensive, counterproductive friction. Democratic institutions include national, regional and local governments, the parliament, the judiciary and the public administration.	BTI
Delivery of public goods, education (Rotberg 2015)	Quality of Education system	In your country, how well does the education system meet the needs of a competitive economy?	WEFEOS
Delivery of public goods: infrastructure (Rotberg 2015)	Quality of overall infrastructure	How do you assess the general state of infrastructure (e.g. transport, communications, and energy) in your country?	WEFEOS
Delivery of public goods: security (Rotberg 2015)	Organized crime	In your country, to what extent does organized crime (mafiaoriented racketeering, extortion) impose costs on businesses?	WEFEOS
Delivery of public goods (Rotberg 2015)	Public Services	Includes pressure and measures related to: Education provision, literacy, water & sanitation, infrastructure, quality healthcare and energy reliability.	Fund for Peace

Table 9: Evidence of (lack of) policy coherence, prioritization and implementation

Country	Evidence from BTI reports on policy coherence (coordination), prioritization and implementation
Albania	« Intra-governmental friction is limited. Even the various political parties represented in the government rarely present programs at odds with that of the dominant Democratic Party. » (BTI Albania 2010:24) « Since the end of communism, Albanian governments to the right and to the left politically have set priorities in line with the ultimate goal of European integration. Since the promise of EU membership in 2000, advancement of the country toward the European Union has become a common strategic priority of all relevant political actors and governments. This is among the few issues where Albanian politics overcomes its legacy of divisiveness and returns to the real issue at hand, the progress of reforms closely related to the EU integration project. » (BTI Albania 2014:26) "Intra-governmental frictions and competition are limited. Most government initiatives tend to come from the office of the prime minister. Ministers in the new cabinet are part of the prime minister's close circle of political loyalists. Replacements in key state institutions reinforce this pattern of control. At the same time the Rama government has moved to institutionalize mechanisms of policy coordination between different ministries, which is a big improvement compared to former centralization of all policy objectives in the office of the prime minister. Specifically, the creation of a new Department of Development, Programing and Foreign Financing at the office of the deputy prime minister aims to ensure that budget allocation, donor funding and strategic investments are consistent with key government priorities. (BTI Albania 2016:28) « Intra-governmental friction and competition are limited. The strong political profile of Prime Minister Sali Berisha, who as the leader of the governing majority and also historical leader of PD ensures a kind of controlled but also personalized rule. » (BTI Albania 2014:28) " …all Albanian governments (whether on the right or left) have set their priorities in line with the ultimate goal of integrating into European structures. This is among the few issues where Albanian politics avoids divisiveness and targets reforms closely related to the EU integration project. " "The reforms undertaken so far all attest to a coordinated and comprehensive effort to advance along the path of EU integration." "In Albania, legal commitments and implementation might well be two different things. As the EU annual assessments note on almost every occasion, deficient implementation and weak institutional capacities hinder the realization of declared objectives and priorities." (BTI Albania 2016: 26-27)
Bosnia & Herzegovina	"The uniquely complex and fragmented division of government functions leads to overlapping services, and inefficiencies are exacerbated by poor coordination and even poorer cooperation between different levels of government at both the policy-making and implementation stages…Even basic information sharing is often lacking between different levels of government. Coordination between the Federation and its ten cantons is also poor and politicized, and, during the period under review, contributed to the cancellation of a series of important meetings with EU officials – the so-called sub-committee meetings under the Interim Agreement with the EU. BiH authorities could not reach agreement on their collective position or division of competences." (BTI Bosnia 2016: 29) « According to the European Union's 2010 Progress Report, "reform implementation has been slow, due to a lack of consensus and political will, and to the complex institutional framework. A shared vision by the political leaders on the direction of the country and on key EU-related reforms remains essential for further progress toward the European Union." To that end, the EU report also points out that few European integration-related laws have been adopted to date. The report states that "the government institutions, at all levels, continued to

	be affected by internal political tensions and fragmented and uncoordinated policy-making." (BTI Bosnia 2012: 25) «… political elites showed little capacity to move beyond immediate concerns of electoral competition and gaining access to government positions. In this climate of political crisis and stalemate, strategic priorities and other pressing governance issues were ignored or sidelined. Multiethnic coalitions at the state and federation levels lacked basic common direction, and policy was reduced to lowest common-denominator issues. The country's strategic goal of integration with the EU was entirely sidelined by political infighting over the composition of governing coalitions and attempts to use EU conditions to rework constitutional arrangements….As with many other reform processes in BiH, strategic documents are usually developed under pressure from international organizations. Strategic planning coordination or cooperation between levels of government is inadequate and usually follows international pressure or guidance. Even the country's key goal, EU integration, is given little strategic direction.» (BTI Bosnia 2016: 30-31) « The complexity of the horizontal and vertical division of competences in BiH significantly hampers the ability of governments to implement policy effectively. In the reporting period, policy development and implementation were additionally hampered by shifting coalitions and attempts to reshuffle governments, particularly at the federal level as well as in the Federation. » (BTI Bosnia 2016:31)
Bulgaria	« In the 1990s Bulgaria had a bipolar party model with the socialists (ex-communists) and the new democrats opposing each other, while the MRF served as a balancing weight. Since the return of the former king in the new century, this bi-polar model has been broken and new, powerful political leaders and parties have begun to emerge. Until very recently, Bulgaria has not had any historical experience with complex coalitions. The lack of established practices for this form of political compromise has negatively affected coordination mechanisms.» (BTI Bulgaria 2010:34) "Yet government decision-making is still a chaotic process, which leads to widespread confusion within the citizenry. Opinion polls have shown that citizens in many cases do not understand or have little idea as to the direction or content of government decisions even after lengthy government discussions and debates." (BTI Bulgaria 2012:31) "Successive coalition governments, which have characterized Bulgaria's political system in the new century, share some common problems, including poor policy coordination. Coalition governments usually include ministers from different political parties, who have different policy agendas. This increases the complexity of policy coordination and ministerial control." (BTI Bulgaria 2016:33) «Overall, however, this period of political instability undermined the pursuit of long-term, strategic aims. At the end of January 2015, the second Borisov government produced an ambitious mandate. However, the government's critiques argue that this mandate is unworkable, as it combines too many incompatible policy proposals from too many political parties. » (BTI Bulgaria 2016:31)
Croatia	"The government tries to coordinate conflicting objectives, but friction, redundancies and gaps in task assignment are significant…The large number of ministers, the complex structure of the three levels of hierarchy of the cabinet, overlapping responsibilities and the absence of HSU and IDS leaders in the cabinet has caused major problems in political and policy coordination. " (BTI Croatia 2016:26) "…the government has shown deficits in prioritizing and organizing its policy measures accordingly….The quality of strategic planning has been relatively low, and the core executive lacks capacity and powers to evaluate and coordinate the activities of line ministries, relying mainly on informal coordination mechanisms. Prioritization is hampered by powerful vested interests that exploit rifts within the governing party and coalition, as well as departmental self-interests." "The government has limited success in implementing its policies. Powerful interest groups,

	an activist constitutional court, a heterogeneous governing coalition and conflicts within the main governing party, the SDP, have obstructed and derailed policy reforms. " (BTI Croatia 2016:24-25)
Kosovo	« Policy development in Kosovo is largely fragmented between and among national institutions and international stakeholders. Unlike previous governments, which used to be largely decentralized in terms of decision-making, the Thaci government is becoming increasingly centralized. This centralization has not improved steering capacity due to the lack of policy-making and coordination. However, the government lacks a central policy-making mechanism that would reconcile conflicting objectives into a coherent policy. At the same time, the government must coordinate its policy planning with the international presence, which is not always coordinated. This leads to conflicting policy priorities among all stakeholders in Kosovo, which in certain cases paralyzes policy-making altogether. Political agreements between the government and most powerful diplomatic missions in the country often resolve these states of paralysis. Moreover, the international community does not have comprehensive donor coordination in policy assistance and institution building. In the rare cases when it does happen, donor coordination affects only narrow sectors. » (BTI Kosovo 2010:29) « Policy development in Kosovo continues to be fragmented among the country's national institutions and international missions/organizations. » (BTI Kosovo 2012:29) "..friction, redundancies and gaps in task assignment were significant. Since the government consisted of Thaçi's PDK, the AKR and several parties representing ethnic minorities, policy coordination entailed striking a balance between the different interests of the governing parties. Political coordination occurred through informal meetings between the political leaders of these parties, who participated as deputy prime ministers (six in total) and ministers in Thaçi's cabinet. While there were efforts to address conflicting priorities, the allocation of ministries as fiefdoms to coalition parties prevented a more constructive collaboration." (BTI Kosovo 2016:28) « The government has been unable to translate its priorities into policy actions. Long-term objectives are subordinated to short-term political juggling and party benefits. This refers to the entire political elite – in the government, the Assembly and the opposition parties. …policies are drafted in an ad hoc manner by international consultants and donor agencies» (BTI Kosovo 2010:26) « Overall governance has been based more on ad-hoc decisions rather than on development strategies. » (BTI Kosovo 2012:29) « The government of Prime Minister Hashim Thaçi set strategic priorities, but sometimes postponed them in favor of short-term political benefits. » (BTI Kosovo 2016:30) « …due to political inertia, lack of capacity and often inefficient administration, reform concepts were not implemented as readily as intended. The Thaçi government failed to implement an anti-corruption policy that led to convictions in cases of high-level political corruption. Police, prosecutors and courts have not effectively addressed organized crime. The government was also unable to significantly improve the business environment to attract more FDI and increase employment. Political cooperation to speed up the reform process was often inhibited by disagreements. » (BTI Kosovo 2016:30)
Macedonia	"The government coalition is made of VMRO-DPMNE, a nationalist conservative party and observer member of the European People's Party (EPP), and DUI, a minority Albanian party. While they lack ideological congruence, and often politicize and deepen ethnic divisions, both parties want to cater to their electorate and have assumed a similar rigid and populist governance style. The prime minister maintains a very personalized and centralized policy coordination process… The partners in government sometimes have friction over interethnic issues." (BTI Macedonia 2016:31)

	"The government lacks strategic capacity to prioritize and organize policy measures, for example, gaining and organizing expertise, evidence-based policy-making, and implementing regulatory impact assessments and strategic planning units. » (BTI Macedonia 2016:28) "…the lack of political will to push for democratic reforms, to a great extent hinders the implementation of other strategic priorities." » (BTI Macedonia 2016:29)
Montenegro	"The government tries to coordinate conflicting objectives, with limited success. One of the reasons for this situation is that there is no clear center for coordination of strategic objectives and priorities on the administrative level. Even though the government has set up a system for coordination of policies that is in most cases consistent, the main challenges are measuring their effects and implementation. Some policies are often adopted without taking into account the effects they will produce on other policies, and without taking into account their potential impact (i.e., the quality of the regulatory impact assessment still varies between the creators of the legislation). In the EU integration process, the Ministry of Foreign Affairs and European Integration tries to serve as a body of horizontal coordination to mediate among different ministries and agencies, but some policies are introduced simply because they are required by Brussels administration, without prior investigation as to whether they might have counterproductive effects on other policies. » (BTI Monenegro 2016 :34) "Strategies and action plans often lack measurable indicators and realistic deadlines, followed by inadequate monitoring and evaluation in preparing new strategies. This results in limited success in implementation because new strategies are not based on detailed analysis of previous strategies. The strategic planning unit in the government exists within the Secretariat-General, but it does not meet the needs of the ministries in coordinating policy measures. This is clearly shown by the differences in the ministries' capacity to implement policies in achieving strategic goals." (BTI Monenegro 2016 :32) The government has had only limited success in implementing its policies. In order to harmonize Montenegrin legislation with the EU acquis, the government reforms laws but the implementation of legislation is still limited. This is in some cases caused by a lack of political will and/or by a lack of administrative and financial capacities." (BTI Monenegro 2016 :32)
Romania	"..policy coordination has been a low priority for the government..an increasingly assertive and independent judiciary wreaked havoc among their ranks, with a string of high-profile corruption investigations and convictions which led to endless cabinet reshuffles, instability and increasing bafflement among its regional and municipal leaders." (BTI Romania 2016 :24) "Strategies do exist – in fact, they are too numerous, both on the central and local levels – but are typically disconnected from the real locus of power, which is the budget process, and thus remain wish lists decoupled from reality. Despite guidance and prescriptions from international financial institutions (IFIs) and the European Union, Romania typically has either failed to implement well-designed structural reforms or has seen required legislation blocked as a result of political crises or prolonged election campaigns." (BTI Romania 2016 :22) "In many cases, follow-through on reforms has been the main problem. Even when the correct initial policy choices were made and accepted by domestic and international partners, the government failed to take the same care with actual implementation, instead allowing interest groups to sabotage strategic orientation through party politicking or simulated implementation. External pressure and conditionality declined after the country's EU accession and a sense of drift has taken its place. There is even the impression that strategizing and implementation capacity have paradoxically decreased, and not increased, in the past few years" (BTI Romania 2016 :22)
Serbia	« The Kostunica governments faced increasing difficulties in coordinating between conflicting objectives and interests as its supporting parties became more fragmented over the course of 2005 and 2006. In contrast with the greater extent of collective decision-making in the cabinets of Prime Ministers Djindjic and Zivkovic, Kostunica's first cabinet essentially operated as two semi-separate entities, one led by the prime minister, the other by the deputy

	prime minister and G17Plus politician Miroljub Labus, with each controlling the ministries affiliated with their respective parties. » (BTI Serbia 2008 :22-23) "In 2011 and the beginning of 2012, policy coherence and coordination in Serbia was weakened by the fact that the ruling coalitions were composed of multiple parties. The distribution of institutional power among coalition members usually impedes government effectiveness and efficiency, diminishes its ability to act with one voice, and cause overlaps and occasional frictions between the different ministries (like a public conflict between the Minister of Transport and Minister of Construction and urbanism in August 2012)." (BTI Serbia 2014 :22) « At the same time, the short-term political benefits, coalition parties' interests and electioneering gained advantage over long-term aims, hampering their fruition. » (BTI Serbia 2012 :22) « However, internal political sensitivities, intra- and inter-party differences and disputes involving deeply rooted stakes occasionally slowed down the adoption of the new laws (e.g., the law on restitution). » (BTI Serbia 2012 :27)

Source: Bertelsmann Transformation Index (BTI).