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Strengthening the rule of law in the Western Balkans

January 2021

Rule of law is one of the fundamental values on which the EU is founded. Promoting the rule of law is a key part of the EU's agenda in its relations with non-EU countries and it is a necessary condition that countries must comply with before acceding to the Union.

The EU's support for the rule of law in enlargement countries is provided mainly through political and policy dialogue. In addition, during the accession process, candidate countries receive financial and technical assistance to help them implement the legal reforms required for Union membership.

The European Court of Auditors is currently conducting an audit to assess how effective the EU's measures to support the rule of law have been in the Western Balkans, an area in the EU's immediate neighbourhood. The audit is covering all four candidate countries (Albania, North Macedonia, Montenegro and Serbia) and two potential candidate countries (Bosnia and Herzegovina and Kosovo) in the Western Balkans.

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Contents

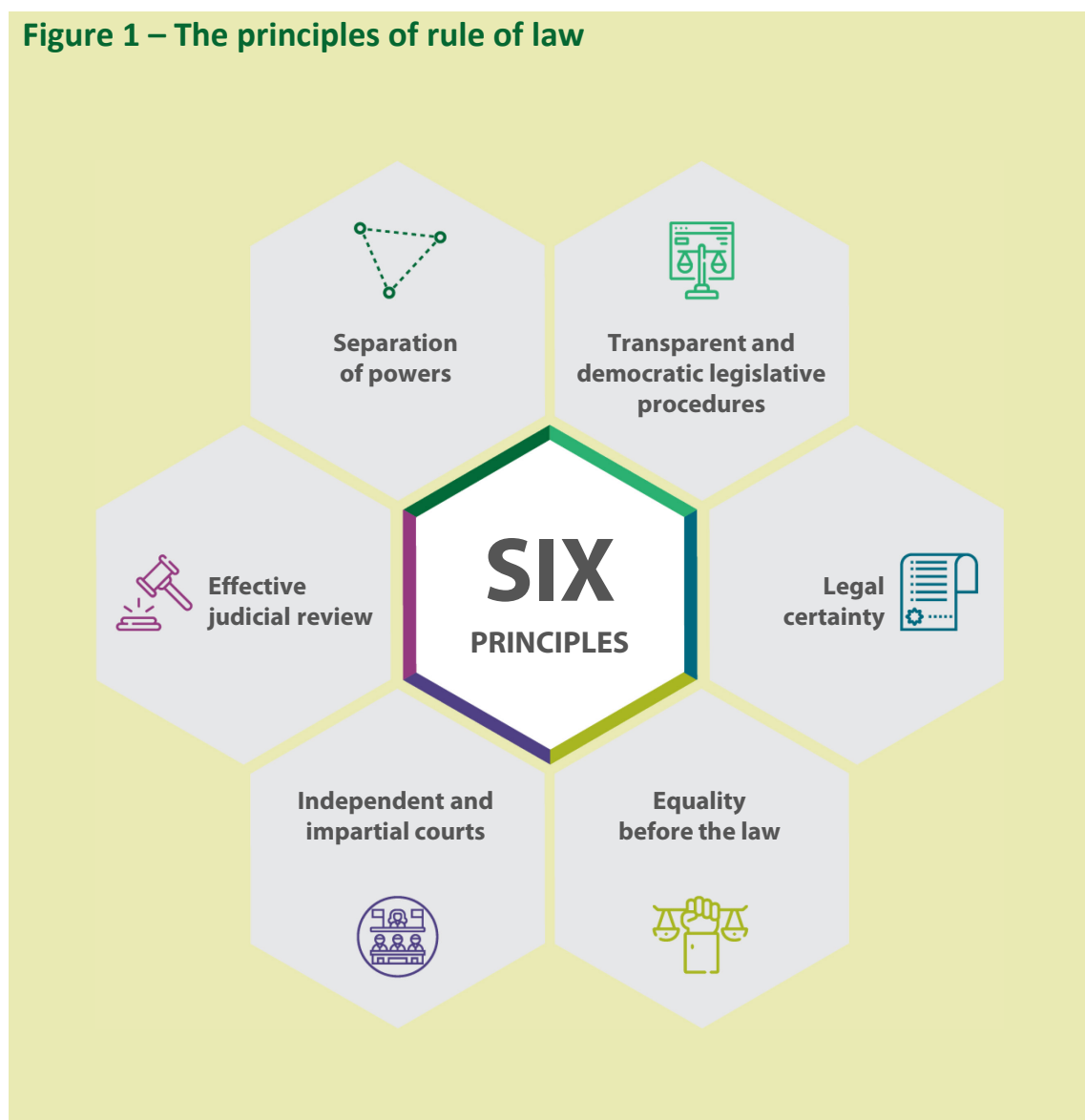
The rule of law principle	4
EU support for the rule of law in the Western Balkans	5
Roles and responsibilities	8
Focus of the audit	9

The rule of law principle

The “rule of law” principle is a key characteristic of all liberal democracies. Broadly speaking, it means that laws apply equally to all members of a society, whether they are private citizens, companies or government bodies. It is also one of the fundamental principles on which the EU is founded.

Though there is no formal definition in place at EU level, rule of law is generally understood to include the following principles (see [Figure 1](#)).

Figure 1 – The principles of rule of law



Source: ECA, icons made by Pixel perfect from <http://www.flaticon.com>.

The rule of law is also a key condition for economic growth. Studies have shown that there is a strong correlation between effective state institutions and a legal system that upholds property and contractual rights, with an effective and efficient market economy.

Moreover, strengthening the rule of law is intrinsically linked with the fight against corruption, which represents one of the major threats to the rule of law. Corruption leads to abuse of powers and undermines citizens' trust in the institutions.

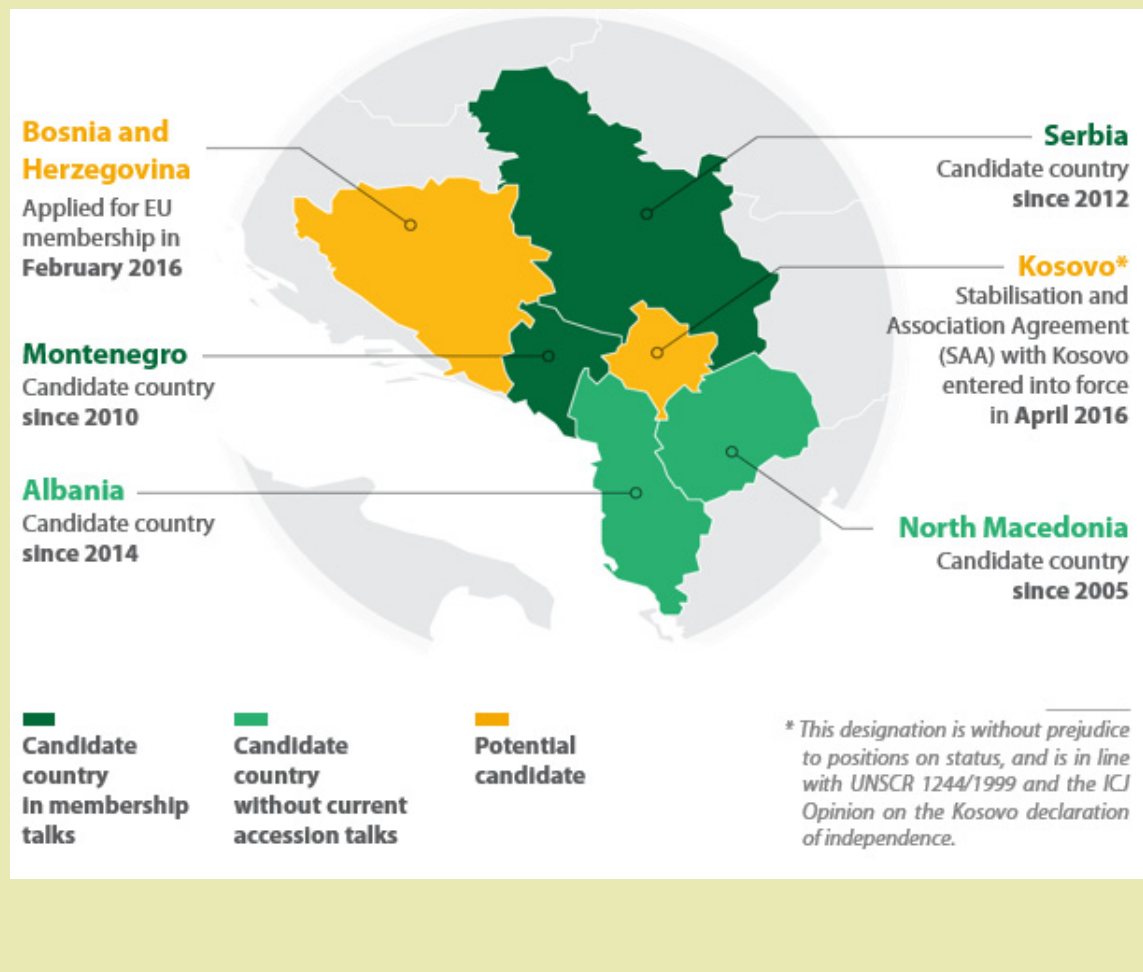
Finally, addressing issues with the rule of law is central to the EU's geostrategic interests, also in view of the Western Balkans' possible future within the EU¹.

EU support for the rule of law in the Western Balkans

The EU's accession policy and the rule of law

There are currently five candidate countries for accession to the European Union (Albania, North Macedonia, Montenegro, Serbia and Turkey) and two potential candidate countries (Bosnia and Herzegovina and Kosovo²). All of these – except Turkey – are in the Western Balkans region (see [Figure 2](#)).

Figure 2 – Candidate countries and potential candidates for EU membership in the Western Balkans region



Source: ECA.

To accede to the EU, candidate countries must demonstrate that they are fully able to take on the obligations of EU membership. The key requirements of EU membership are set out in the Copenhagen criteria, a series of conditions laid down at the June 1993 meeting of the European Council in Copenhagen³. The first of these criteria requires candidate countries to have developed stable institutions which guarantee democracy, the rule of law, human rights and respect for and protection of minorities.

In this accession process, the EU's existing rules are divided into 35 different policy fields (chapters). Each of these is assessed separately. Two of these policy fields are

aimed specifically at supporting the rule of law: Chapter 23 – “Judiciary and Fundamental Rights”, and Chapter 24 – “Justice, Freedom and Security”.

Under the “Fundamental First” approach⁴, the rule of law is at the heart of the accession process. It represents a fundamental and necessary pre-condition for EU membership. Issues related to the rule of law should be tackled early in the accession process and the speed of negotiations depends on progress made in this area by the candidate country.

Many countries in the Western Balkans have sound economic potential, but this is hampered by weaknesses in the rule of law. Their institutions function poorly, and excessive state involvement hampers their economic development⁵. It also makes them less compatible with the existing body of EU legislation, which candidate countries for accession to the EU must apply. In 2019, large-scale public protests over corruption issues took place in all the Western Balkan states.

The EU has policies in place to help candidate countries to achieve this compatibility by gaining political stability and moving towards a market economy. In February 2018, the European Commission adopted its strategy for “A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”⁶, with six flagship initiatives targeting specific areas of common interest, including the rule of law, to be implemented by 2020.

The EU’s Stabilisation and Association Process

The EU’s relations with the Western Balkan countries take place within a framework known as the Stabilisation and Association Process (SAP). The SAP has three aims supporting the gradual rapprochement of the Western Balkan countries with the EU:

- stabilising the countries politically and encouraging their swift transition to a market economy;
- promoting regional cooperation; and
- preparing for membership of the EU.

The EU’s financial and technical assistance to support the rule of law

The EU’s support for the rule of law in enlargement countries is provided mainly through political and policy dialogue. In addition, during the accession process,

candidate countries receive financial and technical assistance to help them implement the reforms required for Union membership.

The EU assistance covers a broad spectrum of rule of law-related areas (see [Figure 3](#)).



Source: ECA, icons made by Pixel perfect from <http://www.flaticon.com>.

This financial assistance is mainly channelled through the Instrument for Pre-Accession (IPA II)⁷. Additional assistance is provided through other EU instruments, such as the Instrument Contributing to Peace and Stability or the European Instrument for Democracy and Human Rights. Overall, for 2014-2020, about 0,7 billion euro has been allocated to the Western Balkans to support the rule of law and Fundamental Rights, which represents about 16 % of the EU bilateral assistance to these countries.

Roles and responsibilities

The Directorate General for Neighbourhood and Enlargement Negotiations (DG NEAR) is responsible for taking forward the EU's enlargement policies. It develops and implements the stabilisation and association policy of the EU as defined by the European Council. DG NEAR manages the bulk of the Union's financial and technical assistance to the enlargement countries.

Important decisions related to the accession process, from granting the applicant “candidate status” to the opening and closing of negotiation chapters, are taken by the Council, acting by unanimity. In practice, the General Affairs Council configuration supervises the EU enlargement process and accession negotiations.

Focus of the audit

This audit aims to assess how effective the EU’s measures to support the rule of law have been in the Western Balkans, an area of strategic interest in the EU’s immediate neighbourhood. In particular, we will examine whether

- the design of EU support for the rule of law was appropriate, i.e. the extent to which the Commission targeted the most relevant areas, given the national context and needs;
- EU support was well used to address the key issues identified (i.e. administrative capacity, political will, etc.); and
- EU support resulted in concrete and sustainable improvements in the rule of law, in line with EU standards.

The audit is covering all four candidate countries (Albania, North Macedonia, Montenegro and Serbia) and two potential candidate countries (Bosnia and Herzegovina and Kosovo) in the Western Balkans.

ABOUT ECA SPECIAL REPORTS AND AUDIT PREVIEWS

The ECA's special reports set out the results of its audits of EU policies and programmes or management topics related to specific budgetary areas.

Our audit previews provide information in relation to an ongoing audit task. They are based on preparatory work undertaken before the start of the audit and are intended as a source of information for those interested in the policy and/or programme being audited.

Since we identified the issues underlying these areas of enquiry before the audit work commenced, they should not be regarded as audit observations, conclusions or recommendations.

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- ¹ “Corruption in the Balkans is impeding EU Membership”, A. Ben-Meir and A. Xharra, 17.1.2019.
 - ² The designation Kosovo is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.
 - ³ European Council, Conclusions of the Presidency, 21-22.6.1993.
 - ⁴ The approach was first developed in the Enlargement Strategy and Main Challenges 2013-2014, has been continuously repeated since then and strongly reaffirmed in the revised enlargement methodology adopted by the Commission in February 2020.
 - ⁵ European Commission, “A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”, COM(2018) 65 final, 6.2.2018.
 - ⁶ COM(2018) 65 final, see before, 6.2.2018.
 - ⁷ Regulation No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II).

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