

Policy Brief

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Identifying Inconsistencies in the 2022 European Commission's Country Reports for WB6

Functioning of Democratic Institutions in the Spotlight

Introduction

The European Commission's annual reports on the state of play of reforms within negotiating chapters, applicable to all (potential) candidates, play a pivotal role in evaluating their commitment to EU integration. Moreover, these reports serve as the basis for the EU Council's decisions to open clusters or close chapters during the negotiation process. Yet, in practice, there is an increasingly evident rift between these two EU institutions. It has now become a customary practice for the Council to diverge from the Commission's opinions in cases where it positively assesses a country's progress in reforms and recommends advancing its accession process. Although, at times, the Council's lack of affirmative decisions can be attributed to the unilateral misuse of the process by a single member state, member states continue to demonstrate a notable level of mistrust when it comes to the Commission's approach to reform monitoring and assessment.¹ This is compounded by the fear that the Commission's reports tend to paint a brighter picture than what is observed through the individual and separate scoping missions of member states.² Similarly, civil society organisations (CSOs) from the region have also actively and repeatedly called for the Commission's findings to become consistent and evidence-based, in order to render the annual reports more objective, accurate, impartial, verifiable, and comparable.³ It is, therefore, crucial to improve the Commission's approach to tracking reforms and ensure greater credibility of its reports.

In an effort to provide clarity, the Commission has traditionally labelled the level of preparedness for each assessed chapter, ranging from "early stage of preparation" up to the "well advanced" level. Yet, this paper highlights the Commission's reluctance to apply such categorisation when evaluating the *functioning of democratic institutions (FoDI)*. Addressing this issue is of high importance, particularly considering that the 2020 Revised enlargement methodology has identified the FoDI as one of the key sub-areas of the *Fundamentals* (Cluster 1).⁴ As the progress in the *FoDI* can determine the overall pace of a candidate's negotiation process, in conjunction with other essential areas covered by chapters 23 and 24, the continuation of the current practice of inadequate assessment in this sub-area risks further undermining the credibility of the Commission's country reports. Furthermore, it diminishes the likelihood of the Council taking appropriate actions to advance the candidates' accession based on assessed progress. Therefore, this paper concentrates on uncovering the key omissions or deficiencies of the Commission's assessment of the functioning of democratic institutions. It achieves this by conducting a comparative analysis of reports for all Western Balkan (WB) countries. The subsequent conclusion drawn is that varying degrees of (in)consistency exist among the reports, moderately impeding their comparability and effectiveness. As a result, this paper offers recommendations with the aim of further improving the overall consistency levels in the Commission's reports.

Methodology

Considering the overarching importance of the FoDI, the following parts of the paper focus on examining whether, and to what extent, its components are effectively analysed, assessed, and presented in the Commission's country reports. These reports represent a starting point for a comprehensive analysis of the nuanced variations and

1 Milena Lazarevic and Strahinja Subotic, "Monitoring Reforms in the EU Accession Process: A Western Balkan Civil Society Contribution", European Policy Centre (CEP), 2023, available at: https://cep.org.rs/wp-content/uploads/2023/06/Monitoring-Reforms-in-the-EU_-A-WB-civil-society-contribution.pdf

2 Milena Lazarevic and Sena Maric, "Curbing the executive bias in EU enlargement policy for a stronger democracy in the Western Balkans", Think for Europe Network (TEN), 2019, available at: <https://www.thinkforeurope.org/research-analysis/policy-brief/curbing-the-executive-bias-in-eu-enlargement-policy-for-a-stronger-democracy-in-the-western-balkans>

3 Think for Europe Network (TEN) and Centre for European Policy Studies (CEPS), "The Enlargement Impasse and the Necessity for its Transformation", 2021, available at: <https://cep.org.rs/en/publications/the-enlargement-impasse-and-the-necessity-for-its-transformation/>

4 European Commission, *Enhancing the accession process - A credible EU perspective for the Western Balkans*, 2020, available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-02/enlargement-methodology_en.pdf

commonalities in the Commission's approach, fostering a clearer understanding of its efficacy and consistency in addressing the FoDI-related concerns. As a pilot attempt to start assessing the level of consistency of the Commission's approach across Western Balkan countries in the FoDI sub-area, the paper's scope remains confined to the analysis of the most recent 2022 enlargement package.⁵

Assessing the degree of consistency in the reports within the FoDI sub-area holds significance for several reasons. Firstly, and most importantly, the assessment of consistency significantly amplifies the ability to conduct precise and meaningful comparisons among countries. The consistency within and across reports signifies a commitment to a standardised and cohesive methodology for evaluating reforms. Secondly, the importance of consistency lies in the fact that developments (both progress and potential regressions) over time could be effectually monitored. Lastly, a consistent approach ensures the establishment of a fair assessment framework, minimising the potential introduction of bias or subjectivity that could otherwise impede the impartiality of the evaluation process. In short, this analysis lays the groundwork for the cultivation of a reporting approach that is both more dependable and uniform. Such an evolution, in turn, can greatly magnify the credibility of the reports and, in a broader context, fortify the Commission's capacity to offer objective, balanced, and comparable insights into the dynamic landscape of reform progress within all (potential) candidate countries.

In order to assess the level of consistency across the country reports, a meticulous measurement process was undertaken, involving a several-step procedure:

- (1) The process commenced by mapping and tabulating the key policy elements covered within each sub-chapter of the FoDI in the six analysed country reports (2022). Based on the mapping, a "maximalist" list of policy elements was created, which served as a basis for calculating two types of consistency:
 - a. *Country-level consistency* was determined by calculating the ratio of the number of elements present in a single country's report (thematic coverage per sub-chapter) to the total number of elements listed in the "maximalist" list.
 - b. *Regional-level consistency* was determined by calculating the averages of the results for country-level consistency observed in each sub-chapter of the FoDI across the six country reports.

(2) The next step involved identifying the level of (in)consistency of country reports by pinpointing whether the selected elements were *explicitly* present in the reports for some WB countries or all of them. Doing so was supposed to shed light on the clarity of the Commission's approach to assessing and presenting the key findings in the FoDI sub-areas. Notably, this step yielded the first results in terms of country and regional levels of consistency within the FoDI subarea.

(3) Subsequently, analysis was carried out to ascertain whether the policy elements are at least partially or *implicitly* covered in all or some reports (see Legend). The term 'implicitly covered' refers to the assessment of specific policy elements without directly replicating the wording across various country reports. Introducing this to the calculation additionally enriched the depth of analysis of the FoDI landscape consistency assessment. Building upon the results from Step 2, the outcomes for both country-level and regional-level consistency were reevaluated correspondingly.

(4) Then, a critical aspect of the process encompassed the process of critical evaluation of the *justifiability of the absence of specific elements* from the reporting. To account for different national contexts and potential reasons for the absence of these elements in the Commission reports, the authors conducted expert interviews with specialists from each Western Balkan country for this purpose (the Annex provides authors' descriptions and insights into why some policy elements were deemed unjustifiably missing from the reports by the Commission). Following the results from Step 3, percentages of country-level and regional-level consistency were recalculated accordingly.

(5) Upon collecting the results, the consistency evaluation process entailed a precise classification and assignment of consistency levels of the Commission's reports (using the following scale: "low level", "some level", "moderate level", "good level", and "advanced level"). This was done in each sub-chapter of the FoDI (i.e., "parliament", "elections", "governance", "civil society", and "civilian oversight of security forces"). This methodical approach

allowed for the derivation of precise assessments of regional and country average consistency (refer to the scale below), a crucial metric that reflects the coherence and uniformity across and among the country reports.

Following this holistic perspective, the authors formulated recommendations for enhancing future Commission reports in terms of better monitoring, assessing, and presenting the state of reforms in the FoDI sub-area.

⁵ European Commission, *2022 Enlargement Package*, October 2022, available at: https://ec.europa.eu/commission/presscorner/detail/%20en/ip_22_6082

Legend – Coverage of policy elements in the Commission's reports

☑	element present and explicitly assessed in a country report
☑	element partially present or implicitly assessed in a country report
✗	element justifiably missing from a country report
▲	element unjustifiably missing from a country report

Scale for rating the level of consistency

Rating	%	Description
Rating 1	0-20	Low level
Rating 2	21-40	Some level
Rating 3	41-60	Moderate level
Rating 4	61-80	Good level
Rating 5	81-100	Advanced level

Measuring the Consistency Levels – the Functioning of Democratic Institutions

The European Union is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy, and the rule of law.⁶ These principles underpin *all* aspects of the internal and external policies of the EU, exemplified by provisions such as Article 2 and Article 21 of the Treaty on EU. They are, thus, also at the “heart of the EU’s enlargement policy”.⁷ Ensuring that democratic institutions are functional, coupled with core reforms in chapters 23 and 24, is a requirement for accession that was solidified in the 1993 Copenhagen criteria. Besides “the economic criteria”, which require the development of a functioning market economy, and “the legal criteria”, which emphasise the importance of the ability to take on the obligations of membership, “the political criteria” calls for the stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities. This way, the “democratic conditionality” of joining the EU has been officially and legally materialised.⁸

Although this type of conditionality is all-encompassing and horizontal in nature, since the process of democratisation can be traced back to each chapter, the Commission’s country reports concentrate within the FoDI sub-chapter on “elections”, “parliament”, “governance”, “civil society”, and “civilian oversight of security forces”. By pinpointing these sub-chapters and grouping them under a specific sub-area, the reports essentially prioritised consolidation of those policy elements that are not necessarily covered by the EU *acquis* but are nevertheless essential for the overall legal alignment and implementation to take place. Informed by the Commission’s approach, the following parts, therefore, analyse the level of consistency in reporting on Western Balkans per sub-chapter.

Sub-chapter 1: Elections

In the realm of political theory, free and fair elections represent the first precondition for a minimalist democracy.⁹ Following the minimalist definition of democracy, the Commission reports on general democratic standards, such as whether elections are free, fair, regular, competitive, and inclusive, administrative procedures regarding administering elections, constitutional and legal framework, electoral reform, etc. (see Table 1). However, considering that the

6 Council of the EU, *EU Strategic framework and Action Plan on Human Rights and Democracy*, 2012, available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

7 Ibid.

8 Democratic Progress Institute, “The role of European Union accession in democratisation processes”, 2016, p. 9, available at: <https://www.democraticprogress.org/wp-content/uploads/2016/06/The-role-of-European-Union-accession-in-democratisation-processes-PROOF1.pdf>

9 See more at: Joseph Schumpeter, “Capitalism, socialism and democracy”, Routledge, 2013; and Adam Przeworski, “Minimalist conception of democracy: a defense”, *Democracy’s values*, 1999.

EU aspires to be a community of functioning democracies, achieving the minimal democratic criteria is insufficient to become an EU member state. That is why the Commission goes beyond general democratic standards when reporting on elections, by including gender balance, minority representation, dominance of one party, campaign financing, etc. (see Table 1). By adopting this comprehensive approach, the Commission ensures that its assessments reflect the multifaceted nature of democratic processes, contributing to a more holistic understanding of democratic development within aspiring EU member states.

Nevertheless, the regional-level consistency in the “Elections” area barely passes the lower threshold for a *good* level of consistency, standing at 65% when accounting for policy elements that are explicitly covered by the reports (see Table 2). If elements that are implicitly covered by the reports are factored into the calculation, the level of consistency rises to 75%. The rate increases to 79% when the justifiably missing elements are omitted from the calculation. While this falls within the higher range of a good level of consistency, the disparities between the rates in the reports have yet to improve, especially given that the Serbian report boasts 100% consistency in terms of thematic coverage while the Montenegrin report only achieves 60%. All things considered, further improvement of reporting in this sub-chapter would send a message that the Commission considers that the free and fair elections indeed represent the bedrock of democracy.

Table 1 Elections – Identifying elements in 6 EC reports

	ALB	BIH	KOS	MKD	MNE	SRB
Electoral reform and oversight of campaign financing (e.g. addressing recommendations of OSCE/ ODIHR, EU election observation mission, Venice Commission, GRECO)	✓	✓	✓	✓	✓	✓
Involvement of local civil society or citizens– effectiveness of oversight	▲	✓	▲	▲	✓	✓
The dominance of the ruling party/coalition (access to media, pressure on the public sector, disparity in financing)	▲	▲	✓	✓	▲	✓
Current constitutional or electoral legal framework	✓	✓	✓	✓	✓	✓
Gender balance in the latest elections (regular or by-elections)	✓	▲	✓	✓	▲	✓
Minority/ethnic representations/discrimination and access to political power	▲	✓	✓	✓	▲	✓
Campaign (political party) financing and disparities	✓	✓	✓	✓	✓	✓
General democratic standards of latest elections (fair, competitive, free, regular, inclusive ...)	✓	✓	✓	✓	▲	✓
National electoral bodies (involvement, effectiveness or need to reform)	✓	✓	▲	✓	✓	✓
International influence	✗	✓	▲	✗	✗	✗
Administrative procedures (processes related to elections, procedural shortcomings, technical limits...)	✓	✓	✓	✓	✓	✓

Apart from the relatively positive overall scores in this sub-chapter, the cross-country report analysis reveals the presence of specificities that demand attention. In fact, only three out of eleven elements are explicitly covered in all six countries’ reports. Moreover, half of the countries are currently unjustifiably missing an assessment for the *involvement of civil society as part of their oversight function*, as well as whether the *ruling party/coalition dominates the public sphere in terms of access to media, pressure on the public sector, and disparity of financing*. For instance, CSOs in Kosovo are very invested in following and monitoring local elections but have not been accorded a place in the EC’s report.¹⁰ As all countries are still facing “elements of state capture”, assessing the mentioned elements consistently across all country reports might be conducive towards a more transparent and effective fight against this trend.

10 Interview with a representative of the civil society in Kosovo concluded on 20.04.2023.

Table 2 The level of consistency in the sub-chapter of Elections

	ALB	BIH	KOS	MKD	MNE	SRB	Regional average
Elements explicitly covered	5/11 (45%)	9/11 (82%)	7/11 (64%)	8/11 (73%)	4/11 (36%)	10/11 (91%)	Good level of consistency (4) 65%
Elements (explicitly&implicitly) covered	7/11 (64%)	9/11 (82%)	8/11 (73%)	9/11 (82%)	6/11 (55%)	10/11 (91%)	
Elements explicitly&implicitly covered without the elements that are justifiably missing	7/10 (70%)	9/11 (82%)	8/11 (73%)	9/10 (90%)	6/10 (60%)	10/10 (100%)	Good level of consistency (4) - Upper threshold 79%

Sub-chapter 2: Parliament

As the supreme representative body in each state, parliament plays the role of the cradle of democracy and represents the primary deliberation arena. Despite the diversity of democratic practices, the parliament maintains the central role in any democratic political system.¹¹ The Commission, accordingly, recognises the importance of a parliament as a central institution in enabling the proper functioning of democracy. Therefore, some of the key elements of the parliament's work, such as control over the executive, consultation with civil society, appointing officials, the exercise of its constitutional functions, and more, have been encompassed by the Commission's reports.

When it comes to the Commission's reporting in the "Parliament" sub-chapter, the average level of consistency across all six Western Balkan countries is *good*, registering 70% when observing the explicitly covered elements. The percentage increases to 75% if implicitly/partially covered elements are accounted for, and further rises to 78% when justifiably missing elements are excluded. Despite the overall favourable score, the gap in terms of levels of thematic coverage across the reports is significant, as, for example, the Macedonian report has a 94% rate, whereas the one on BiH has only 56%. This represents a substantial difference, with the former being categorised as *advanced* and the latter as *moderately good*. Therefore, while the Commission's assessment of this sub-chapter is relatively satisfactory, the variations between national reports are yet to be properly addressed.

Table 3 Parliament - Identifying elements in 6 EC reports

	ALB	BIH	KOS	MKD	MNE	SRB
Summary of the latest parliamentary election	✓	✓	✗	✗	✓	✓
Share of women among MPs / gender equality	✓	▲ ¹²	▲ ¹³	✓	✓	✓
Political parties - changes in the distribution of political power compared to the previous period	✓	✗	✗	✓	✓	✓
Oversight function over executive (interpellations, annual reports...)	✓	✓	✓	✓	✓	✓
Parliament's role in the EU integration and Committee for the Stabilisation and Association process/ EU Integration Committee	✓	✓	✓	✓	✓	✓
Transparency (pandemic response, live streaming, publication of parliamentary documentation, statistics)	✓	▲	✓	▲	✓	✓
Parliament's consultation with civil society	✓	▲	▲	✓	▲	✓
Electing/ appointing officials	✓	✓	✓	✓	✓	▲
Inquiry committees	✓	✓	✓	✓	✓	✓
Exercising constitutional function (legislative output initiative)	✓	✓	✓	✓	✓	✓
Ethical standards / Code of Ethics/ Inflammatory / inappropriate language / physical altercation	✓	▲	✓	✓	✓	✓
Registration and political parties funding	▲	✓	✓	✓	✓	▲

¹¹ See more at: Beetham, David, ed. *Parliament and democracy in the twenty-first century: A guide to good practice*. Inter-Parliamentary Union, 2006.

¹² Mentioned in the introduction of FoDI section.

¹³ Women representation covered in the introduction of FoDI section

Employing urgent/shortened procedures	▲	☑	☑	☑	▲	☑
Parliamentary representation of national minorities	▲	▲	☑	☑	▲	☑
Political polarisation (e.g. Interparty dialogue, effects on the functioning of Parliament)	☑	☑	☑	☑	☑	☑
Rules of procedure / technical innovations/administration processes	▲	▲	☑	☑	☑	☑
Internal party democracy	☑	▲ ¹⁴	▲	☑	▲	▲

Despite the overall good level of consistency, this section harbours additional potential for improvement in terms of reporting. Namely, only six out of 17 elements are covered for all six WB countries. Issues such as *transparency, consultation with civil society, code of ethics, party funding, the use of urgent procedures and minorities representation* are unjustifiably missing from some countries' reports. In addition, the fact that some policy elements are misplaced within the Commission reports creates confusion and makes the comparison among countries unnecessarily more difficult. A notable instance is *women's parliamentary representation* which is reported in the "Introduction section" of the FoDI in the reports on BiH and Kosovo instead of in the "Parliament section" as is the case in other WB countries. By addressing these issues, the reports could readily achieve *very good levels* of consistency within a sub-chapter that covers policy elements that face significant challenges in the region.

Table 4 The level of consistency in the sub-chapter of Parliament

	ALB	BIH	KOS	MKD	MNE	SRB	Regional average
Elements <i>explicitly</i> covered	11/17 (65%)	9/17 (53%)	11/17 (65%)	15/17 (88%)	12/17 (71%)	13/17 (76%)	Good level of consistency (4)
	70%						
Elements (<i>explicitly&implicitly</i>) covered	13/17 (76%)	9/17 (53%)	12/17 (71%)	15/17 (88%)	13/17 (76%)	14/17 (82%)	Good level of consistency (4)
	75%						
Elements <i>explicitly&implicitly</i> covered without the elements that are <i>justifiably missing</i>	13/17 (76%)	9/16 (56%)	12/15 (71%)	15/16 (94%)	13/17 (76%)	14/17 (82%)	Good level of consistency (4)
	78%						

Sub-chapter 3: Governance

Governance is often perceived as how the central government manages the executive branch, or more precisely, enforces decisions,¹⁵ and is frequently confused with public administration.¹⁶ However, governance is much more than that. While the country reports have a dedicated segment for public administration reform, the "Governance" sub-chapter encompasses a wider range of policy elements. These are elements such as government commitment to EU-related reforms, government effectiveness and coalition stability, legislative initiative, women representation in central and local government, coordination between central and local government, local self-government and their capacities, and many more (see Table 5). As this is the most extensive sub-chapter within the FoDI, a proper assessment of the intricate interplay of diverse elements has strong potential for uncovering the extent to which an effective landscape of effective decision-making and policy execution exists in the context of the EU integration process, extending beyond the realm of central government management.

Unlike the previous two, the sub-chapter labelled "Governance" exhibits a *mixture of moderate and good levels of consistency*. Namely, the regional consistency score stands at a mere 50%. It remains practically unchanged even when including elements that were implicitly/partially covered in the reports. Although the score increases by 10 percentage points if accounting for justifiably missing elements, the score is nevertheless at the lower edge of *good level*. In comparative terms, this sub-chapter is significantly worse off in terms of consistency. It trails the "Elections" sub-chapter by 18 percentage points and the "Parliament" sub-chapter by 16 percentage points. On top of that, the most notable issue lies in the stark disparity between reports' levels of thematic coverage, with Albania's exhibiting a *very good level* of consistency at 93% and Serbia's having a mere 31%, corresponding to *some level*. Considering that *Governance* is an all-encompassing sub-chapter, rectifying the weaknesses in reporting holds immense practical importance.

14 Internal party democracy in the case of BiH is reported under the Elections sub-chapter

15 See more at: Mark Bevir, "Governance: A very short introduction", OUP Oxford, 2012.

16 Peters B. Guy, John Pierre, "Governance Without Government? Rethinking Public Administration", *Journal of Public Administration Research and Theory*, Volume 8, Issue 2, 1998, p. 223–243.

Table 5 Governance - identifying elements in 6 EC reports

	ALB	BIH	KOS	MKD	MNE	SRB
Local self-government and decentralisation	✓	✓	✓	✓	✓	✓
National EU integration structures , i.e. Administration coordination, expertise and capacities on EU integration	✓	✓	✓	✓	✓	✓
Overall focus on EU-related reforms	✓	✓	✓	✓	✓	✓
Executive output (legislative initiative, legislative output)	▲	✓	✓	✓	✓	▲ ¹⁷
Opportunities for local participation and consultation	✓	▲	▲ ¹⁸	▲	▲	▲
Women's representation in local governments	✓	▲ ¹⁹	▲ ²⁰	▲	✓	▲
Women's representation in national government	✓	▲	▲	✓	✓	▲
Inter-ethnic relations	✗	✓	▲	✓	✗	✗
Coordination between central and local levels of governance	✓	▲	✓	✓	✓	▲
Transparency at the local level and communication to the public	✓	▲	▲	▲	▲	▲
Appointments made by the executive bodies	✗	✓	✗	✗	✓	✗
Local governments/administrative units, i.e. financial resources, administrative capacities, quality of services	✓	✓	✓	✓	✓	✓
Government effectiveness and coalition stability	✓	✓	✓	✓	✓	▲
Access to IPA by local governments	✓	▲	▲	▲	▲	▲
Local governments' involvement in EU integration	✓	▲	▲	▲	▲	▲
Territorial planning	✓	✗	✗	✗	✗	✗
Overview of Government's programme	✗	✗	✗	✓	✗	✗

Considering that this section is, comparatively speaking, underperforming in terms of overall scores, the existence of several other specificities requiring attention adds a significant layer of concern. Namely, out of all identified elements, only four are assessed for all Western Balkan countries. The unjustifiably missing ones include critical elements such as *executive output*, *opportunities for local participation*, *women's local representation*, *local transparency*, and *local governments' involvement in EU integration processes*. In addition, as registered in the "Parliament" sub-chapter, there are instances of misplaced policy elements, needlessly complicating report comprehension and consistency. For instance, in the Serbian report, *executive output* was moved to the "Parliament" sub-chapter; in the one for Kosovo, *opportunities for local participation* was moved to the "Civil society" sub-chapter; while in the reports for both Kosovo and BiH, *women's participation* is positioned in the "Introduction" section of the FoDI. The analysis in the area of Governance showcased that there are many gaps and deficiencies which the Commission should cover and address in order to increase the overall level of consistency within this field.

Table 6 The level of consistency in the sub-chapter of Governance

	ALB	BIH	KOS	MKD	MNE	SRB	Regional average
Elements <i>explicitly</i> covered	13/17 (76%)	7/17 (41%)	7/17 (41%)	10/17 (59%)	10/17 (59%)	4/17 (24%)	Moderate level of consistency (3)
	50%						
Elements (<i>explicitly&implicitly</i>) covered	13/17 (76%)	8/17 (47%)	7/17 (41%)	10/17 (59%)	10/17 (59%)	4/15 (24%)	Moderate level of consistency (3)
	51%						
Elements <i>explicitly&implicitly</i> covered without the elements that are justifiably missing	13/14 (93%)	8/15 (53%)	7/14 (50%)	10/15 (67%)	10/14 (71%)	4/13 (31%)	Good level of consistency (3) - Lower threshold
	61%						

17 Covered in the Parliament section

18 Included in CSO section

19 Included in the FoDI intro

20 Included in the FoDI intro

Sub-chapter 4: Civil Society

The role of civil society in modern-day democracies has become increasingly important. A vibrant civil society serves the development, deepening and consolidation of democracy in many ways.²¹ Its main role in democratic transition and consolidation is a control function with the aim of limiting the power of political institutions.²² For that reason, it is vital to observe the work of the civil society in candidate countries. Country reports control for the legal and regulatory framework and stimulating environment for civil society organisations (CSOs), their co-operation with state institutions, financial support, and their involvement in the EU integration process, among others (see Table 7). Detailed analysis of country reports for six Western Balkan countries in the sub-chapter of civil society is provided in the following paragraphs.

“Civil society” is the fourth pillar of the functioning of democratic institutions. The regional-level consistency in this area varies from the *good* to *advanced* level. The explicitly covered elements account for 70% of consistency. There are no implicit or partially covered elements, which leaves the consistency percentage unchanged, unlike in other sub-chapters. What puts this sub-chapter at the top is the fact the score rises by 18 percentage points, to an *advanced level*, once justifiably missing elements are omitted from the calculation. In fact, this is the only sub-chapter which registers an *advanced level* of consistency. The manner of assessing policy elements in this sub-chapter serves as a positive precedent that can be emulated in other sub-chapters as well.

Table 7 Civil society - identifying elements in 6 EC reports

	ALB	BIH	KOS	MKD	MNE	SRB
Legal and regulatory framework for stimulating CSO environment	✓	✓	✓	✓	✓	✓
Impact of pandemic restrictions	✓	✓	✗	✓	✗	✗
Institutionalised cooperation between CSOs and state institutions	✓	✓	✓	✓	✓	✓
Institutional bodies voicing priorities of CSOs	✓	✓	✓	✓	✓	▲
State’s financial support to CSOs	✓	✓	✓	✓	✓	✓
Right to freedom of assembly and association	✓	✓	✓	▲	✓	✓
Attacks against CSOs	▲	✓	✗	✗	✗	✓
Consultations/Involvement of CSOs in EU integration process	✓	▲	✓	▲	✓	✓
Volunteering	✓	✓	✓	▲	✓	▲
VAT refund for CSOs	✓	✗	✗	✗	✗	✗

Although it has the top rating from a comparative perspective, assessment in this sub-chapter has nevertheless some space for improvement. For instance, the issue of discrepancy between reports is still present, with Albania having as much as 100% consistency and North Macedonia having a mere 63%. In addition, there are important elements that are unjustifiably missing from some reports, such as the questions of *institutional bodies voicing priorities of CSOs, consultations and involvement of CSOs in the EU integration process, or the right to freedom of assembly and association*. By addressing the identified gaps, and considering it has the lowest level of unjustifiably missing elements, this sub-chapter can be used as a good testing ground for attempting to maximise the potential of assessments.

21 Larry Diamond, “Civil society and the development of democracy,” *Estudio/Working Paper 101*, 1997, p. 36.

22 See more at: Samuel P. Huntington, “Will More Countries Become Democratic?” *Political Science Quarterly* 99, no. 2 (Summer 1984), p. 204.

See also: Seymour Martin Lipset, “Political Man”, in Robert Dahl, Ian Shapiro, Jose Antonio Cheibub, “The Democracy Sourcebook”, MIT Press, 2003, p. 52.

Table 8 The level of consistency in the sub-chapter of Civil Society

	ALB	BIH	KOS	MKD	MNE	SRB	Regional average
Elements <i>explicitly</i> covered	9/10 (90%)	8/10 (80%)	7/10 (70%)	5/10 (50%)	7/10 (70%)	6/10 (60%)	Good level of consistency (4)
	70%						
Elements (<i>explicitly&implicitly</i>) covered	9/10 (90%)	8/10 (80%)	7/10 (70%)	5/10 (50%)	7/10 (70%)	6/10 (60%)	Good level of consistency (4)
	70%						
Elements <i>explicitly&implicitly</i> covered without the elements that are <i>justifiably missing</i>	9/10 (90%)	8/9 (89%)	7/7 (100%)	5/8 (63%)	7/7 (100%)	6/8 (75%)	Advanced level of consistency (5)
	86%						

Sub-chapter 5: Civilian oversight of security forces

Almost all countries in the world possess security forces which are used to maintain peace and order. However, security forces have historically been often misused by political elites for imposing non-democratic forms of government or even security forces taking over the government themselves. In order to prevent such scenarios, effective civilian oversight of law enforcement and other security forces is crucial. As such, this kind of oversight refers to “the impact of rules and institutions on internal security forces”,²³ implying drafting appropriate laws and regulations and developing the appropriate mechanisms in order to ensure the policing forces use their powers and tools in a manner respecting the law, individual rights and freedoms. This represents “an essential component of democratic societies”.²⁴ Therefore, the country reports examine executive and parliamentary oversight and the overall legal framework for the adequate functioning of security forces (see Table 9).

Table 9 Civilian oversight of security forces - identifying elements in 6 EC reports

	ALB ²⁵	BIH	KOS ²⁶	MKD	MNE ²⁷	SRB ²⁸
Parliamentary oversight	▲	☑	▲	☑	▲	☑
Executive and other institutional bodies oversight	▲	▲	▲	☑	▲	☑
Legal framework	▲	☑	▲	▲	▲	☑
Human rights and freedoms of defence personnel	✗	☑	✗	✗	✗	✗

The most disorganised state in the Commission’s country reports in the area of the FoDI is the sub-chapter of “civilian oversight of security forces”. Comparatively, it registers only *some level of consistency*, which ranks the assessment in this sub-chapter as the worst performing (Table 9). The total score for regional-level consistency is 33%. As there are no implicitly or partially covered elements, the score rises by ten percentage points only when accounting for the justifiably missing elements. The principal reason for such low scores stems from the fact that this sub-chapter is completely absent from three out of six countries’ reports. The reports on Albania, Kosovo, and Montenegro, for some inexplicable reason, are visibly completely missing this sub-chapter. No other sub-chapter has this issue. Meanwhile, in countries in which it is included, this section is very brief, hardly providing any relevant or sufficient information. Given the extent of disorganisation, the Commission should place particular emphasis on rectifying this part, so as to have all sub-chapters properly addressed.

23 Sebastian Roche, “What is Civilian Oversight of Internal Security Forces?”, UNDP, 2015, available at: <https://shs.hal.science/halshs-01683578>

24 EEAS, Third Phase of Civilian Oversight of Security Forces Launched, 2019, available: https://www.eeas.europa.eu/delegations/t%C3%BCrkiye/third-phase-civilian-oversight-security-forces-launched_en

25 The sub-chapter not present in the country report.

26 The sub-chapter not present in the country report.

27 The sub-chapter not present in the country report.

28 In this case, Civilian oversight was placed as 4th sub-chapter, instead of 5th as is the case with other reports.

Table 10 The level of consistency in the sub-chapter of Civilian oversight of security forces

	ALB	BIH	KOS	MKD	MNE	SRB	Regional average
Elements explicitly covered	0/4 (0%)	3/4 (75%)	0/4 (0%)	2/4 (50%)	0/4 (0%)	3/4 (75%)	Some level of consistency (2)
	33%						
Elements (explicitly&implicitly) covered	0/4 (0%)	3/4 (75%)	0/4 (0%)	2/4 (50%)	0/4 (0%)	3/4 (100%)	Some level of consistency (2)
	33%						
Elements explicitly&implicitly covered without the elements that are justifiably missing	0/3 (0%)	3/4 (75%)	0/4 (0%)	2/3 (67%)	0/3 (0%)	3/3 (100%)	Some level of consistency (2)
	40%						

Conclusion

Revisiting the premise laid out in the introduction, the assessment of regional-level and country-level consistency within the Commission's reporting in the *Functioning of Democratic Institutions* (FoDI) sub-area remains pivotal. The significance of improving the quality of reporting is underscored by the fact that it can facilitate more precise and meaningful cross-country comparisons, enable effective monitoring of developments over time, and establish an unbiased assessment framework. This analysis establishes the foundation for a more dependable and uniform reporting approach, ultimately bolstering the credibility of the reports and enhancing the Commission's ability to provide objective insights into reform progress across (potential) candidate countries.

In its country reports for (potential) candidates, the European Commission observes the state of play of democratic institutions within Cluster 1 – *Fundamentals*. This compartment of reports consists of five sub-chapters: *Elections, Parliament, Governance, Civil Society and Civilian oversight of security forces*. After detecting and analysing all policy elements in the FoDI subarea, the paper found a 61% consistency rate across the region if only explicitly mentioned policy elements are accounted for. This rate was just a single percentage point away from being categorised as a *moderate* level of consistency. However, the rating notably improves to a 73% consistency rate, when implicitly and partially covered elements are included, and the justifiably missing elements are omitted from the calculation. The Commission, thus, has ample space to improve the consistency levels in its FoDI reporting by systematically addressing policy elements with greater explicitness and comprehensiveness throughout all sub-chapters.

When it comes to the specificities of individual sub-chapters, there are different lessons to be drawn. "Civil Society" recorded the highest levels of consistency (*good to advanced*), while the "Parliament" and "Elections" achieved a *good level* of consistency as well. Consistency levels in Governance showed a notable level of variation, having a mix of a *moderate level* and a lower threshold of a *good level of consistency*. This sub-chapter suffers severely from country-level inconsistencies, with percentages ranging from 31% (for Serbia) to 93% (for Albania). Given the sub-chapter's complexity and broad-ranging impact, it is of utmost importance to raise its consistency, akin to the previously mentioned sub-chapters. Lastly, "Civilian oversight of security forces" is the most problematic sub-chapter with the lowest levels of consistency (*some level of consistency*) as half of the country reports do not cover it at all. In short, the findings affirm that, with the right level of attention and precision, the Commission's assessment of the FoDI can further increase in consistency and, thus, in comparability and overall quality.

Recommendations

General Recommendations

Having in mind all previously said and shown in the tables above, several recommendations can be proposed for the Commission to enhance its reporting in the area of the FoDI.

- During the next reporting cycle, the Commission should actively prioritise, among other things, addressing the observed inconsistencies highlighted in this paper. This includes the necessary efforts to make the papers more comparable, by addressing same/similar policy elements (wherever and whenever possible) and to do so as explicitly as possible. Doing so would not only improve the overall consistency rates but also mitigate the conspicuous inter-report disparities across various sub-chapters.
- Several elements contribute to reader confusion when scrutinising the country reports, warranting remediation. First, the absence of certain policy elements in country reports raises ambiguity regarding whether they have been evaluated at all by the Commission or intentionally excluded from reporting due to the absence of issues. Instead, the Commission should adopt a more comprehensive approach, recognising both the backsliding and progress when applicable. Second, numerous policy elements are only implicitly or partially covered by the Commission, while others are, in some places, misplaced. This inconsistency disrupts the uniformity and expected structure of the reports, potentially resulting in confusion, a limited grasp of the subject matter, and a diminished capacity to extract meaningful insights from them. Considering the paramount importance of the FoDI for citizens, the assessment should be both professional and reader-friendly. Lastly, it is evident that not all sub-chapters are given equal importance by the Commission; however, efforts should be made to achieve equilibrium to prevent the perception of certain sections being addressed merely as part of a technical exercise.
- By taking care of the aforementioned concerns, the end goal should be to start providing *membership preparedness assessments for the FoDI area*, as is the case of the other two sub-areas within the Fundamentals (the PAR and the Economic Criteria). Doing so would not only enhance the overall coherence and consistency of the country reports but also serve as a vital means for the Commission to communicate that this area holds equal importance to membership as other fundamental areas. It would also send a distinct and clear message to all stakeholders regarding the actual state of play in the analysed country. Moreover, this would also allow for all parts of the report to become quantifiable and systematically evaluated, a point long emphasised by the civil society organisations from the Western Balkans.

Specific Recommendations

a. Recommendations for “Elections”

- Increase the number of explicitly reported elements.
- Include coverage of the *involvement of civil society and its oversight function* for all countries.
- Report on the *dominance of the ruling party*; explicitly state its absence if not observed.
- Add *gender equality on a local level* in future reports on Montenegro.
- Ensure consistent reporting of *minority representation and access to political power* across all countries.
- Encompass *campaign and political party financing* across all country reports.
- Include the *activity of the national electoral body* in future assessments of Kosovo.

b. Recommendations for “Parliament”

- Include gender equality (*gender representation in the parliament*) assessment for Kosovo and Bosnia and Herzegovina.
- Report *transparency of parliament* for BiH and North Macedonia.
- Assess *ethical standards in the work of parliament* in future reports of BH
- Explicitly report on *registration and political parties funding* in Albania and Serbia.

- Evaluate the utilisation of urgent/emergency procedures in Albania and Montenegro.
- Develop a consistent reporting of *parliamentary representation of national minorities*.
- Report consistently on *technical* innovations in the work of parliament.
- Conduct a comprehensive evaluation of *internal party democracy* across all countries.

c. Recommendations for “Governance”

- Report on *executive output* in forthcoming Albania and Serbian reports.
- Ensure coverage of *inclusiveness of the decision-making process* in BiH, Kosovo, Montenegro, North Macedonia and Serbia.
- Evaluate *women’s representation in executive bodies* in BiH, Kosovo, and Serbia.
- Report on *inter-ethnic relations* should be reported in Kosovo.
- Develop a consistent reporting on *transparency and communication to the public* in...
- Address *inter-party cooperation* in Serbia’s report.
- Include *access to IPA by local governments* to reports of BiH, Kosovo, Montenegro, North Macedonia, and Serbia.
- *Local governments’ involvement in EU integration* should be included in the reports of BiH, Kosovo, Montenegro, North Macedonia, and Serbia.

d. Recommendations for “Civil Society”

- Report on *institutional bodies focusing on CSOs* for Serbia.
- Assess the *CSO’s right to freedom of assembly and association* for North Macedonia.
- Include *CSO involvement in the EU integration process* in reports for BiH and North Macedonia.
- Evaluate *volunteering* for North Macedonia and Serbia.

e. Recommendations for “Civilian oversight of security forces”

- Add this sub-chapter to reports for Albania, Kosovo, and Montenegro.
- Emphasise more strongly the parliamentary oversight in all reports.
- Address executive oversight in all reports.
- Provide an analysis of the legal framework to depict civilian oversight structures in each country.

Annex - Unjustifiably missing policy elements in the European Commission's reporting on the Functioning of Democratic Institutions

This paper mapped a series of policy elements, categorising them as either present and explicitly assessed, partially or implicitly assessed, and (un)justifiably missing from report(s). Decisions on how certain elements would be categorised were based on interviews conducted with country experts. With the aim to encompass experts from each WB6, the authors conducted interviews with members of the Think for Europe Network (TEN) – a network which includes, besides European Policy Centre (CEP) from Serbia, think tanks such as European Institute for Democracy and Mediation (IDM) from Albania, Foreign Policy Initiative (FPI BH) from Bosnia and Herzegovina, Group for Legal and Political Studies (GLPS) from Kosovo, Institute Alternative (IA) from Montenegro, and European Policy Institute (EPI) from North Macedonia. In order to ensure a transparent and objective indication of the authors' decision to deem certain policy elements unjustifiably missing, the following therefore provides concise descriptions of the rationale, primarily drawn from the insights obtained through the aforementioned interviews.

Elections

Involvement of local civil society - effectiveness and oversight

This element is missing in reports on Albania, Kosovo, and North Macedonia, while interview representatives coming from there confirmed that there were relevant activities of civil society that deserved to be mentioned in their respective country reports. For instance, in Albania, there are a handful of CSOs regularly monitoring elections. However, the government often disregards the recommendations coming from civil society when it comes to conducting elections.

The dominance of the ruling party/coalition

In Albania, there is evidence of the dominance of the ruling parties in the process of preparing elections, while the Central Electoral Commission (CEC) recently adopted a new regulation in this regard. Meanwhile, representatives of BiH and Montenegro have confirmed that it would be useful to clearly state in the report whether the dominance of a ruling party of the coalition was present in the most recent elections.

Gender balance in the latest election

The interviewed representative of Montenegro explained that there was a gender quota for party lists in Montenegro that provided for gender balance. This could and should have been reported by the Commission. It should be noted that this element has been reported in the 2021, 2020, and 2019 reports, but omitted in the 2022 report.

Minority representation and access to political power

This policy element requires reporting, as, for example, Montenegro is a multicultural state, characterised by large ethnic communities of Serbs, Albanians, and Bosniaks. In recent years, in which ethnic tensions have been present, Montenegro had an Albanian as Prime Minister, while pro-Serbian political parties facilitated government change after decades of rule by the DPS. Though Albania is more ethnically homogenous, the legal framework for securing political representation for minorities is in place. However, in practice, only the Greek minority is using this framework to access power, while Macedonians and Roma have very limited or no access to political power.

General democratic standards of elections

Even in cases when general democratic standards are not contested by parties participating in elections, it would be useful for these facts to be acknowledged in the case of Montenegro.

National electoral bodies

The work of the Central Electoral Commission of Kosovo was not contested by any party, which should be acknowledged in the report.

International influence

Considering the ongoing geopolitical developments, it is necessary to report on this aspect, whether it is present or not in WB6. For example, with respect to Kosovo's special status in terms of its statehood and institutional setup, and the fact that it is a young and developing democracy, reporting on international influence in elections should be considered an important piece in the puzzle.

Parliament

Share of women among MPs

The omission of this element in reports for BiH and Kosovo may be justified by the fact that there were no parliamentary elections in the observed period. However, changes in the parliament seats can happen after the resignation, impeachment, or death of an MP, which can affect gender balance.

Transparency

The transparency of parliament's work in North Macedonia, although on a good level, can be improved and certainly deserves its place in the report. In the case of BiH, considering the complexity of institutional setup, further transparency in parliament's work is much needed.

Electing/appointing official

The harmful practice of appointing acting directors in many public institutions and companies is widely criticised in Serbia. The inclusion of this phenomenon under the economic criteria of the report points to how much the FoDI sections overlap. This confirms the necessity of reporting on the election of public officials done by the parliament. This element should be reported for Serbia, as it is for all other WB countries.

Registration and political parties funding

The funding of political parties in Serbia has faced continuous public scrutiny due to reported instances of donations to the matching specific amounts. The Commission should monitor this policy element closely in future reports. Meanwhile, Albania is missing the law on political party funding, which the Commission mentioned only in Chapter 23. Despite the fact that the existing law regarding the registration of parties is good, practice varies. There was an example of denying registration of an opposition political movement as a party by dragging procedure until CEC's deadline for registration for local elections passed. This is an example of how the registration new political parties is denied in practice.

Parliament's consultation with civil society

The role of civil society and their consultation with national parliaments is lively in Kosovo and Montenegro, but missing in their respective reports. This element is also unjustifiably missing in BiH's report.

Employing urgent/shortened procedures

In all of the reports except for Albania and Montenegro, the exact numbers of laws adopted following shortened or urgent procedures are provided. Even though these numbers are small, this should be acknowledged as a positive development. For instance, in the case of Albania is much more serious. It does not have a large number of urgently adopted laws; however, the government is completely circumventing the Parliament by ruling by decrees, as the number of decrees has multiplied in recent years.

Parliamentary representation of national minorities

All WB countries are multi-national, with significant parts of their population being national minorities. While, in some countries, these minorities have reserved seats in Parliament, in others, they do not. Therefore, the representation of minorities in national parliaments should be traced in reports. In the case of Albania, the political interests of Roma and Macedonians are under-represented.

Rules of procedure/technical innovation/administration procedures

In Albania and BiH, there are regular of examples of ruling majorities refusing to place items on the agenda of the plenary that come from opposition parties or engaging in other types of obstruction in the plenary meetings. In Albania, there are efforts to digitalise parliamentary work supported by international organisations.

Internal party democracy

All experts agreed that party democracy is an important prerequisite for establishing functional democracy on a state level. Because political parties in the WB generally struggle with securing democratic processes within them, it is essential to assess this element in reports as well.

Governance

Executive output

The executive output of the government has been recognised as an important element for the functioning of democratic institutions by experts of Albania and Serbia, and as a necessary part of future reports. The vast majority of laws in these two countries are proposed by the government directly. Citizens' initiatives are mostly ignored. In the case of Albania, some citizen initiatives are carried out by political parties.

Women's representation in local governments

While gender balance is mostly measured on a national level, assessing gender representation locally can better capture the full situation. Therefore, adding this policy element to reports of BiH, Kosovo, and Serbia would be rendered useful.

Inter-ethnic relations

Considering the constant ethnic tensions between Serbs and Albanians living in Kosovo, and the profound influence this has on the work of the government and the functioning of democratic institutions, this element deserves a place in the report of Kosovo.

Coordination between the central and local levels of governance

In BiH, recent tensions with the entity of Republika Srpska is a strong indication of lack of coordination between the two levels of governance in the country, which is why it ought to be covered in the report.

Transparency at the local level

Experts agree that democracy starts at the local level. Therefore, it is necessary for local governments to practice transparency. Reports for BiH, Kosovo, Montenegro, North Macedonia, and Serbia should account for local transparency, keeping in mind that there is a strong focus on local-level governance within the Governance sub-chapter.

Government effectiveness and coalition stability

The Serbian government, although stable and effective in the observed period, has been criticised for its lack of legitimacy. Further, parliamentary elections held in 2022 resulted in a long period without a new government, despite the fact that the ruling coalition won a stable majority.

Access to IPA by local government

The financial resources of local governments are often limited. The support coming from the EU is very helpful in this regard. The Commission report is the best avenue for assessing the access to IPA funds by local governments in BiH, Kosovo, Montenegro, North Macedonia, and Serbia.

Local governments' involvement in EU integration

As EU accession and integration will result in many obligations of local governments, their involvement in the integration process should be reported for BiH, Kosovo, Montenegro, North Macedonia, and Serbia, similarly to Albania.

Civil society

Institutional bodies voicing priorities of CSO

In the Serbian case, it is unclear whether this element is missing because institutions are good at voicing priorities from CSOs, or if it was omitted by mistake.

Right to freedom of assembly and association, and freedom of expression

North Macedonia is the only state missing this policy element, which is essential for the proper functioning of civil society organisations.

Attacks against CSOs

In the case of Albania, there have been threats and smear campaigns against CSOs by pro-government media. The CSO Sustainability Index showed that the public image of CSOs has deteriorated due to constant attacks by the government.

Involvement of CSOs in the EU integration process

The EU integration process should include various actors, and civil society organisations are a valuable partner to the government. The reports for BiH and Macedonia should encompass this policy element.

Civilian oversight of security forces

Parliamentary oversight

Three countries do not have this sub-chapter at all: Albania, Kosovo, and Montenegro. The Albanian example is particularly relevant, as in previous years, Albania was the target of Iranian cyber-attacks and Border Police data (compromised data management system), which should be the subject of the parliament scrutiny.

Executive oversight

Apart from some countries not having this sub-chapter at all, the effective oversight of security forces should be reported for BiH, as it is substantial for maintaining peace there.

Legal framework

The assessment and description of the overall legal framework should be provided for North Macedonia, similarly to Serbia and BiH, in order to enable comparison and adopt legal solutions.

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