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Policy Brief

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The destructive effects of state capture in the Western Balkans

EU enlargement undermined

This Clingendael Policy Brief analyses the destructive effects of state capture in the Western Balkans and how it undermines the EU enlargement process. Using the case of Serbia, this Policy Brief shows how state capture mechanisms selectively strengthen the ruling party and its leadership while it weakens the opposition and independent institutions. State capture weakens the effectiveness of EU conditionality and reduces the credibility of the EU enlargement process. Tackling state capture, through strengthening accountability structures and increasing transparency, is identified as a key priority for the EU enlargement process to be successful in the future.

Introduction

As the backsliding of rule of law and democracy continues in the Western Balkans, the rise of authoritarian leaders and their grip on power only seems to increase. Understanding how state capture functions and influences this decline is crucial if we want to counter these authoritarian tendencies and improve the functioning of the EU accession process. State capture can be defined as systemic political corruption in which politicians exploit their control over a country's decision-making processes to their own advantage. Focusing on state capture can help us understand the domestic context in which local elites engage with EU accession, and how political elites manage to utilise the EU accession process for their own gain.

Using the case of Serbia, this Clingendael Policy Brief shows how destructive state capture can be: not only for countries tangled up in state capture themselves, but also for the effectiveness of EU conditionality and the credibility of the EU. With external actors such as China playing an increasing role in the Western Balkans, there might be an argument for increasing the speed of accession talks.[1] However, without first seriously tackling state capture, it becomes hard to see how optimistic targets regarding the swift integration of the Western Balkan region into the EU can be reached.

While this Clingendael Policy Brief focuses on the case of Serbia, state capture is by no means limited to this one country. Elements of state capture are to be found throughout various countries in the Western Balkans, in differing degrees and different contexts. For example, in Bosnia and Herzegovina, state

1 See the Clingendael Report by Frans-Paul van der Putten *et al.* (August 2020): *China in the Western Balkans: a zero-sum game?*

capture is widespread, manifesting itself along ethnic lines; in Montenegro, ruling party DPS's leader Đukanović has been able to extend the power of his party over the state for 30 years, until he narrowly lost the country's 2020 elections; and in North Macedonia, the previous leader Gruevski engaged in state capture on a massive scale and was only ousted because of a scandal when leaked recordings revealed the widespread corruption of his administration. The current administration of Prime Minister Zaev has however made good progress in depoliticizing public institutions and the fight against corruption, as reflected in the EU Council decision to open accession negotiations with the country. While individual challenges remain, one cannot speak of a situation of state capture anymore in the case of North Macedonia.

What is state capture, and why does it matter?

State capture refers to a process in which (political) actors infiltrate state structures with the help of clientelist networks and use these state structures as a mantle to hide their corrupt actions.[2] These political elites can exploit their control over state resources and powers for private or party-political gain. In its most extreme form, state capture entrenches itself into every part and level of society and state, leading to the monopolisation of power in the hands of one political party and its leadership.

A vital instrument of state capture is clientelism, which refers to the exchange of political and electoral support in return for material benefits through a relationship between political parties and citizens.[3] It is an important mode of political mobilisation in the Western Balkans, and these clientelist networks are the source of power for political elites engaging in state capture.[4] The power of these political elites becomes dependent on using state resources to benefit their supporters. The consequences of this dependence are immense, as this leads them away from serving public welfare and instead pursuing particularistic interests.

State capture goes beyond petty corruption. It refers to a systemic abuse of state resources that gnaws away at checks and balances to the benefit of a ruling party. State capture in various Western Balkans countries is completely incompatible with EU membership and therefore provides one of the most problematic obstacles for EU enlargement. As a union of laws and based on mutual and sincere cooperation, the EU is highly dependent on the rule of law.[5] Rule of law demands the impartial use of government powers; in other words, equal outcomes in equal cases. State capture clashes with this, as state capture is based on the partial and political use of government resources. It is therefore very worrying to see that various member states within the EU are also increasingly showing signs of party-political use of government powers and resources, signalling that state capture is increasingly an issue within the EU as well.

Case study: state capture in Serbia

To see how state capture works in practice, this Clingendael Policy Brief focuses on one of the most important and biggest countries in the Western Balkans: Serbia. Serbia

2 Solveig Richter (2017): 'Der Wolf im Schafspelz: Illegitime Herrschaft durch State Capture in Nachkriegs- und Transitionsgesellschaften ', *Die Zeitschrift für Friedens- und Konfliktforschung* (*ZeFKo*), 6(2), p. 183, DOI: 10.5771/2192-1741-2017-2-174.

3 Anna Grzymala-Busse (2008): 'Beyond Clientelism', *Comparative Political Studies*, 41(4–5), p. 638, DOI: 10.1177/0010414007313118.

4 Eric Gordy, Predrag Cvetičanin and Alena Ledeneva (2018): 'Closing the Gap between Formal and Informal Institutions in the Balkans', p. 145, available online at https://ec.europa.eu/research/participants/documents/downloadPublic?documentIds=080166e5c058688a&appId=PPGMS

5 Amichai Magen (2016): 'Cracks in the Foundations: Understanding the Great Rule of Law Debate in the EU', *Journal of Common Market Studies*, 54(5), p. 1050, DOI: 10.1111/jcms.12400.

has seen a slow but accelerating decline in rule of law and democracy since 2012, culminating in Serbia being downgraded from a democracy to a 'hybrid regime' in the latest 2020 Freedom House index.[6] With the help of state capture mechanisms, Serbia's ruling party, the Serbian Progressive Party (SNS, for *Srpska napredna stranka*), led by Aleksander Vučić, has extended its power over every aspect of society and politics. State capture has historical roots in Serbia, going all the way back to the messy dissolution of Yugoslavia and the Milošević government, which engaged in large-scale state capture and where current president Vučić served as the minister for information.

Since the SNS came to power in 2012, it has set in motion politicisation of the public administration, where loyalty to the ruling party is rewarded by employment.[7] Appointments based on loyalty, and not solely on merit, represent a powerful way of connecting supporters (who provide votes) to your party. The importance of membership of the ruling SNS party as a pathway to jobs and opportunities is reflected in the party's size. Membership of the ruling SNS has grown to 730,000 members, making it the biggest party in Europe by far. In comparison, Germany's CDU party has 'only' 407,000 members, despite Germany being eleven times bigger than Serbia.[8]

Placing supporters of the government in key positions in the administration has another significant benefit for political elites: it provides control over the crucial stage of implementing legislation. In Serbia, legal frameworks dealing with the rule of law and media freedom often exist on paper, but are in practice enforced selectively, to the benefit of the ruling party.[9] For example, a recent investigation was launched by Serbian authorities into money laundering by non-governmental organisations and activists, whereas no such investigation was launched against members of the ruling party who have actually been reported as engaging in these activities.[10] Control over the public administration, including the judiciary, helps the government to target critics while protecting supporters.[11]

Public resources are used to control the media, which allows the Serbian government to remain in charge of the narrative that the media shapes about the Serbian government and the EU. As public broadcasters depend on state funding, the largest public broadcasters have a pro-government bias in their reporting.[12] There are also various examples of attacks on independent journalists that are not proactively prosecuted, leading to self-censorship.[13] The World Press Freedom Index ranks Serbia

6 Freedom House (2020): 'Nations in Transit, 2020: Dropping the Democratic Façade', available online at https://freedomhouse.org/report/nations-transit/2020/dropping-democratic-facade.

7 Report by Heinrich Böll Stiftung (2017): *Perspectives Southeastern Europe: Captured States in the Balkans*, issue no. 3, p. 33, available online at https://www.boell.de/sites/default/files/perspectives_-_09-2017_-_web.pdf.

8 See https://www.espreso.rs/vesti/politika/235463/sns-ima-175-000-clanova-vise-nego-vladajuce-stranke-u-britaniji-i-nemackoj-a-ove-dve-zemlje-imaju-vise-od-140-miliona-stanovnika-od-srbije

9 European Commission (2019): *Serbia 2019 Report*, available online at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf, p. 25.

10 Milica Stojanovic (2020): 'Serbian Authorities Seek Bank Data of Rights Groups, Investigative Media', *Balkan Insight*, available at https://balkaninsight.com/2020/07/28/serbian-authorities-seek-bank-data-of-rights-groups-investigative-media/

11 Srdjan Cvijic *et al.* (2018): *When Law Doesn't Rule: State Capture of the Judiciary, Prosecution, Police in Serbia*, report by Open Society and Transparency Serbia, available online at https://www.opensocietyfoundations.org/publications/when-law-doesn-t-rule-state-capture-judiciary-prosecution-police-serbia.

12 Reporters without Borders (RSF) (2017): 'Who Owns the Media in Serbia?', Media Ownership Monitor presented by RSF and BIRN, available online at https://rsf.org/en/news/who-owns-media-serbia.

13 Julija Simić (2019): 'Rise in Attacks on Journalists in Serbia Prompts Concerns for Press Freedom', *Euractiv*, available online at https://www.euractiv.com/section/enlargement/news/rise-in-attacks-on-journalists-in-serbia-prompts-concerns-for-press-freedom/.

in 93rd position, and describes the situation in Serbia as 'a worrying state'.[14] A recent Clingendael Institute report also highlights declining media freedom and biased reporting in Serbia.[15] Whereas a properly functioning, independent media landscape can act as a watchdog on the government, state control prevents critical messages about the government from reaching the general public.

An overlap of party structures with state structures has resulted in an attack on domestic checks and balances to the benefit of the leading party, the SNS. It has led to empowerment of the executive at the cost of parliament and the judiciary, whose independence can be increasingly drawn into doubt.[16] Furthermore, a critical consequence of state capture is that it can turn into opportunity capture. When a corrupt government oversees who receives (economic) opportunities and who does not, young and talented people often prefer to move away, resulting in the so-called 'brain drain' phenomenon, which is one of the main challenges in the Western Balkans.

We can observe from this case how state capture undermines input legitimacy (reducing the political participation of citizens) and creates politics that are not based on increasing public welfare or safeguarding political or civil liberties, but instead on clientelist relationships.[17] Trust in democracy is threatened if a political system is aimed at the enrichment and empowerment of a particular segment of society and not at high-quality public policy that serves all.

Not only has the EU so far been unable to counter the rise of state capture, but analysis by Richter and Wunsch has also shown how the EU is (inadvertently) contributing to state capture. According to their analysis, the EU does so through the linkages of 'money, power and glory' – in other words, by providing autocrats in the region with legitimacy and funding.[18] As the EU enlargement process already provides so many benefits, this also partially explains why there is no complete rejection of the EU integration process by political elites engaging in state capture.

Effects of state capture on EU conditionality and credibility

EU conditionality is the primary way through which the EU attempts to influence accession countries: the EU provides benefits to accession countries when they comply with the adoption of EU rules and values. State capture affects the effectiveness and credibility of this strategy, both from a top-down and a bottom–up perspective.

When looking at EU conditionality as a top–down process, it is founded upon an incentive-based strategy that tries to change the cost/benefit calculations of the target

14 Reporters without Borders: 'World Press Freedom Index', available online at https://rsf.org/en/serbia.

15 Dragana Bajić and Wouter Zweers (2020): *Declining Media Freedom and Biased Reporting on Foreign Actors in Serbia*, Clingendael Report, available at https://www.clingendael.org/pub/2020/declining-media-freedom-and-biased-reporting-in-serbia/.

16 Tara Tepavac (2019): *National Assembly of the Republic of Serbia: Temple or Façade of Democracy?*, paper for the conference on 'Civil Society for Responsible Authority', Belgrade, 4–5 February 2019, available online at https://crta.rs/wp-content/uploads/2019/01/National-Assembly-of-the-Republic-of-Serbia-temple-or-facade-of-democracy.pdf; and Srdjan Cvijic *et al.* (2018): *When Law Doesn't Rule: State Capture of the Judiciary, Prosecution, Police in Serbia*, available online at https://www.opensocietyfoundations.org/publications/when-law-doesn-t-rule-state-capture-judiciary-prosecution-police-serbia.

17 Antoaneta L. Dimitrova (2018): 'The Uncertain Road to Sustainable Democracy: Elite Coalitions, Citizen Protests and the Prospects of Democracy in Central and Eastern Europe', *East European Politics*, 34(3), p. 263, DOI: 10.1080/21599165.2018.1491840.

18 Solveig Richter and Natasha Wunsch (2019), 'Money, Power, Glory: The linkages between EU conditionality and state capture in the Western Balkans', *Journal of European Public Policy*, 27(1), pp. 41–62.

government.[19] The largest incentive, or 'carrot', of EU accession is EU membership, which provides benefits such as access to the EU's internal market of 500 million consumers, large regional subsidies of which WB countries would be net-receivers, and a seat at the table in the EU's institutions. However, governments that engage in state capture face high adoption costs, in terms of losing power, for the full implementation of rule of law and democratisation reform. Current heads of government, whose political will is necessary for reform, might end up in jail, out of power, or both, if they implement all EU regulations in good faith. For example, the former president of Croatia, Ivo Sanader, strengthened rule-of-law institutions and subsequently was convicted to ten years in prison for corruption by the same institutions he strengthened.[20] Not only rule-of-law reform is highly costly for elites engaged in state capture. Various other pieces of EU *acquis communautaire*, such as those found in the fields of public procurement or state aid, reduce the state's power to channel funds to supporters, political elites themselves and their cronies, on which clientelism relies. The effectiveness of EU conditionality as a top–down process is greatly reduced when met by a regime whose power is largely dependent on clientelism and state capture. Political leaders of such a regime have vested interests and incentives not to implement reform quickly or thoroughly, as reforms could reduce their power and grip over society, and could lead to them losing elections. Treating harmonisation of the WB6's legislation with the EU *acquis* as a technical task, as the EU has tended to do, ignores how political this process is. Harmonising domestic legislation with the EU *acquis* is, in fact, a highly political process, involving difficult choices that WB6 political elites are not always willing to make if the costs of such choices exceed the benefits for themselves.

EU conditionality can also work in a second way, namely as a bottom–up process of indirect influence. In this case, conditionality changes the political opportunity structure, aiming to empower actors in favour of EU integration against those who do not.[21] Bottom–up pressures are necessary to compel politics to achieve positive public policy outcomes, but state capture helps isolate the executive from these inputs. Domestic accountability structures could theoretically help these pressures lead to change and can, for example, come from voters during elections, as well as from civil-society organisations. However, when state capture undermines democracy or selectively enforces laws to go after civil-society organisations, the potential of bottom–up change is weakened. What further complicates the matter is that governments engaging in state capture still rhetorically welcome EU integration. This makes it hard for opposition members to obtain the support of voters who favour EU accession, as becoming a full member of the EU is, on paper, a preference of governments engaging in state capture as well.

Not only the conditionality mechanism, but also the credibility of the EU enlargement process is undermined by state capture in two ways. First, WB6 political elites engaging in state capture undermine the credibility of the process when they simulate reform, yet delay implementation of key provisions, while extracting rewards and resources and continuing to engage in the monopolisation of power that runs counter to EU values. This balancing act between extracting rewards from the process and implementing legislation in a selective fashion requires political elites to disguise their state capture and their true intentions and, as such, they can be seen as acting as wolves in sheep's clothing.[22] Second, the EU's credibility is at

19 Frank Schimmelfennig and Ulrich Sedelmeier (2004): 'Governance by Conditionality', *Journal of European Public Policy*, 11(4), p. 663, DOI: 10.1080/1350176042000248089.

20 Milada Anna Vachudova (2014): 'EU Leverage and National Interests in the Balkans: The Puzzles of Enlargement Ten Years On', *Journal of Common Market Studies*, 52(1), p. 129, DOI: 10.1111/jcms.12081.

21 Schimmelfennig and Sedelmeier (2004): 'Governance by Conditionality', p. 661.

22 Richter (2017): 'Der Wolf im Schafspelz', p. 183.

risk by not calling out state capture more aggressively, especially when some EU politicians even praise the 'great leadership' of political elites (of the same European party family) who engage in state capture.[23] The EU may be unwilling to be more vocal in its criticism because of stability concerns and the wish to maintain the Kosovo–Serbia dialogue. On the other hand, it also costs the EU dearly not to engage critically enough with governments, which many citizens in the Western Balkans (rightly) perceive to be highly corrupt.

The destructive effects of state capture gaining ground in EU member states should not be understated, neither for the EU enlargement process, nor the EU project in general. In countries such as Hungary, Viktor Orbán is extending the power of his ruling party Fidesz, and recent anti-corruption protests in Bulgaria show that this is a threat to take seriously in the EU. Democratic accountability mechanisms are increasingly under threat, while countries engaging in state capture still enjoy EU subsidies, which are allocated to reward supporters and engage in rent-seeking.[24] EU member states where political leaders and parties are in the process of using mechanisms of state capture to strengthen their monopoly over power are unlikely to prioritise finding a solution for state capture in the EU enlargement process. There is hence a clear interrelationship between backsliding rule of law within the EU and the EU's ability to ensure that its values on pluralism, democracy and the rule of law are projected abroad as well. In the end, if the EU is unable to deal with state capture within the EU, how can it be credible in getting rid of state capture in EU accession countries?

Conclusion and policy recommendations

As this Clingendael Policy Brief has shown, state capture is a key obstacle for EU accession: it is not in the interest of political elites who engage in state capture to have full, good faith implementation of the EU *acquis* that might result in their ousting from power or even ending up in jail. Limits to the success of the EU enlargement process with the WB6 so far can be a consequence of the EU (inadvertently) strengthening the same state capture, which makes EU integration in crucial areas very difficult. State capture prevents the proper functioning of liberal democracy based on the rule of law. Instead, it promotes a political system in which the state and its institutions are used to extract rents while in power. Crucially, state capture creates an unequal democratic playing field, in which abuses of state power strengthen the ruling party and the opposition is weakened.

Reducing state capture should be the main priority of those EU member states, politicians and actors that wish to see a Western Balkans (and a European Union) based on liberal democracy and the rule of law. Considering this serious threat, what can be done to combat state capture? As it is such a deeply rooted problem, it takes time to dismantle networks of state capture after a government engaging in state capture is ousted from power. Solving state capture therefore requires a continuous, long-term approach and focus of the EU to minimise the chances of backsliding at a later moment.

Solving state capture also requires recognition that state capture is not just a technical matter, but a political problem that is (inadvertently) supported by EU funds and legitimisation by EU politicians. Instead of increasing technical support, state capture requires a more critical stance by the EU, for example by calling out WB6 leaders who engage in it. It requires courage by European political party families to call out corruption and state capture whenever they occur and not to play favourites with members of their respective political group.

23 Tweet by Donald Tusk (2020), available online at https://twitter.com/donaldtuskEPP/status/1272516480370868224?s=20.

24 R. Daniel Kelemen (2020): 'The European Union's Authoritarian Equilibrium', *Journal of European Public Policy*, 27(3), p. 481, DOI: 10.1080/13501763.2020.1712455.

The two main enemies of state capture are accountability and transparency. Therefore, the EU needs to increase its support for and investments in domestic accountability structures that hold politicians to account whenever they enrich themselves (or their cronies) over others and engage in state capture. The EU already has initiatives that support Western Balkans' civil society, but it needs to expand these massively if it wants to be serious in its fight against state capture. Instead of relying on political elites who have a vested interest against the implementation of EU reform, the EU should rely more on empowering pro-democratic forces throughout the WB6. Besides this, transparency on the size, scope and functioning of state capture throughout the WB6 (and the EU) is necessary. Large-scale, properly mandated reports such as those written by Reinhard Priebe on North Macedonia, which show the size and scope of abuses of power in Western Balkans countries, are required to make it undeniable that work needs to be done on all sides.[25]

All in all, the entire EU enlargement process would benefit from not seeing EU accession as a sprint towards the finishing line of EU membership, but as an opportunity to transform countries and prepare them for continued fruitful cooperation within the EU. Without first tackling state capture, the EU enlargement process will neither yield the results nor provide the transformation of Western Balkans societies that so many people hope for throughout the region and within the EU.

25 For example, Reinhard Priebe (2015): 'The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on Systemic Rule of Law Issues relating to the Communications Interception revealed in Spring 2015', European Commission, available online at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf.

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