

# THE EU COMPETITION RULES AND IMPACT ON INCREASING MARKET COMPETITIVENESS ON THE WESTERN BALKANS

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## Abstract

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Harmonizing national legislation with the EU acquis and developing capacities of the national competition authorities (NCA) remains a core element for increasing market competitiveness for the countries of the Western Balkans (WB). This research paper using a comparative approach while analysing data and information from a chronological point of view identifies the lack of progress of the Stabilization and Association Agreement (SAA) countries in the EU integration process. The paper identifies that most of the WB countries show similar shortcomings from the past which are still present and the progress achieved in this in the EU path is limited. The paper concludes that in order to achieve the targets defined in the SAAs the WB countries should enhance their efforts to not only approximate their legislation with the EU acquis but, in addition, establish appropriate mechanisms and increase the implementation capacities. The conclusions of the paper may be relevant for further researches regarding the more challenging issue as to why competition law in the WBs has not been sufficiently understood and developed in this region. Understanding and embracing the competition rules is important for economic development in general (Buccirossi & Ciari, 2018) while it contributes directly to the living standard of the citizens (Najdanović, Mladenović, & Tutek, 2019). This paper tries to contribute to this area of study which is not sufficiently studied as well and publications therein are not that many.

**Keywords:** Market Competitiveness, Undertakings, Dominant Position, EU Internal Market, Western Balkans, Stabilization and Association Agreements

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## 1. INTRODUCTION

Increasing market competitiveness remains a challenge for all the Western Balkan countries (WBC) bound by the Stabilisation and Association Agreements (hereinafter: SAA)<sup>1</sup>, otherwise known as

the Western Balkans<sup>2</sup> (hereinafter: WB). In general, rules on competition are relatively new in the Western Balkans where their origin dates from early 2000. The responsible state institutions for protecting

<sup>1</sup> Stabilization and Association Agreements are the agreements used by the EU as an integration mechanism for the countries of the Western Balkans.

The SAA for the countries concerned, have been provided through the Stabilization and Association Process (SAP).

<sup>2</sup> In this paper, the term *Western Balkans* is used for the following group of countries: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia.

market competitiveness were neither fully operational nor well-structured to operate independently. Such states' structures in many of the WBC were established within certain Ministries (mostly Ministries of Economy) operating as departments or independent competition authorities responsible for observing the newly introduced market competition rules.

The rules on competition are an important part of the EU integration process for the WB derived from the economic requirements of the Copenhagen Criteria (EU, 1993). In this regard, the WB countries had to move ahead along a clear roadmap following the respective EU legislation on competition rules leading, over the intervening years, to a "massive" standardization and harmonization process with the *acquis communautaire*. The necessity of developing competition rules was made especially clear when the WB became officially part of the EU's regional approach through the mechanism of SAP<sup>3</sup>.

Nevertheless, increasing market competitiveness in the WB has proved to be a major challenge over the years due to their common and similar pasts and becomes clear in the field of competition where the WB countries all suffer the same shortcomings. This is, more or less, similar in the other sectors within these countries. In this regard, establishing efficient institutions, adopting and implementing the appropriate respective legislation, familiarizing themselves with the EU institutions and EU Member States' (MS) working practices on competition still remain existing challenges for the entire WB.

After two decades of implementation of intense economic policies by the WBC they have achieved macroeconomic stabilisation but the results in reforming the economy, reforming the public sector and the public institutions remain at an insufficient level and continue to remain a challenge for these countries (Najdanović, Mladenović, & Tutek, 2019).

Competition policy is a major instrument for building a modern and competitive market economy and competition law and its enforcement form one pillar of competition policy (Tosheva & Dimeski, 2019). Protection and development of economic competition is a requirement for WBC that aim to be part of the EU (Asllani & Grima, 2019).

There are not that many studies and researches conducted pertaining to the development of the competition sector in the WB. However, there are a number of questions that may arise in this regard and which can be further studied including but not limited to the matters, such as why the competition rules develop at a low pace in the WB? What are the capacities of the WBC to stay on track with the most recent EU acts adopted in the field of competition and whether the WB might calculate on adopting the appropriate harmonization and implementation mechanisms? Simultaneously, it is important to try and understand the weaknesses shown in the WBC which still hinder the development of the competition rules. Following the most recent EU legal acts in the field of competition adopted by the EU institutions, it should be a primary concern

for the WBC as well, so that they are duly considered and properly incorporated in enhancing their own legislative framework.

Taking into account the above-raised questions and considerations, the authors of this paper intend to highlight the role of the state in implementing the competition rules starting from the harmonization process of the national legislation with the *acquis communautaire*, and establishing the appropriate mechanisms for implementation of those rules. The paper thus aims to emphasise the importance of the EU and EU MS rules on competition reflected in the SAA international obligation as well which are taken by the WB. Therefore, the objective of this paper is to show the importance of the competition rules for the WB with regards to increasing market competitiveness, as well as the need to invest in the inherited and current shortcomings in this sector that hinder its further development. Particular attention will also be paid to the EU's most recent developments in the field of competition which may serve as a signal and a clear guide for the engagements ahead to be faced by the WB.

In our endeavour to shed light on those considerations, the paper reveals how the WB should increase their efforts in order to make further progress in the sector of competition and move forward to achieving the objectives of the EU integration process. The paper as such, by raising those questions and summarising some of the most developments in the given sector, intends to contribute to further studies which may be focused on providing answers to the other matters involved in regard to further developing the competition rules in the WB.

Therefore, and based on the above introductory remarks, the paper starts with a section on an overall literature review (Section 2) while it continues to describe the research methodology (Section 3) to be then followed in the end by the results (Section 4) and conclusion (Section 5).

## 2. LITERATURE REVIEW

In 2001, the International Competition Network was created by the competition authorities of 14 jurisdictions, and today it has increased to 138 members. This rapid growth was due to the introduction of competition law in many countries that previously lacked one. The adoption of anti-monopoly regulation was spurred by the transition from a planned to a market economy, in some areas, and by the general belief that competition could be one of the main drivers of better economic performance (Buccirossi & Ciari, 2018).

Competition policy is an instrument to achieve an efficient allocation of resources, technical progress, and consumer welfare and to regulate the concentration of economic power, which is detrimental to competition. This is a vital part of the market economy (Asllani & Grima, 2019).

The competition protection policy aims to prevent various harmful forms of collaboration and action of economic entities, in order to cause limitation and distortion of competition in the market (Tosheva & Dimenski, 2019).

At the national level, competitiveness is viewed as the ability of the country to increase the standard of living. Competitiveness can be defined as the set

<sup>3</sup> The Stabilisation and Association Process (SAP) is the EU's policy towards the Western Balkans established with the aim of their eventual EU membership. The SAP was launched in 1999 and is composed of a set of political, economic and legislative goals and reforms in order to help SAA countries to prepare them for the integration into the EU.

of institutions, policies, and factors that determine the level of productivity of a country (Najdanović, Mladenović, & Tutek, 2019).

Existing literature also shows that the effectiveness of competition policy depends on other characteristics of the given country. These regimes vary along various dimensions concerning the substantive rules, the institutions entrusted with their enforcement, and the way this enforcement is conducted. Different models can be built by combining these elements in different ways (Begović & Popović, 2018).

## 2.1. The EU rules on competition

The rules on competition are relatively new even for the countries of Europe itself. Initially, the rules on competition law became part of national legislation of some EU western countries (as a model taken by the USA Sherman Antitrust Act, 1890), and later, with the creation of the European Economic Community (EEC) those provisions were included in the European Community Treaty (Articles 81–89) and playing a major role in the development of the European Community (EC). “Competition law has played a prominent role in the development of EC law... it has also contributed significantly, and often controversially, to the consolidation of the single market objective of the Treaty.” (Albors-Llorens, 2002, pp. 1–2).

In order to implement the treaty provisions, the EU institutions have gradually adopted respective secondary legislation which on its own has been subject to continuous changes and development. “Regulation 17/62 was the first procedural regulation adopted by the Commission to implement Article 81 of the EC Treaty. At the time of its adoption, the community was small, and competition law was undeveloped. In the following years, in terms of implementing Article 81 of the EC Treaty, the modernization process has required the replacement of Regulation 17/62 with Council Regulation (EC) 1/2003. The latter regulation embodies the principles of the new competition environment, and addresses various refinements to the old regulation that had developed through practice” (Gream, 2003, p. 2), with the most important one sharing the burden between the central EU institutions and national competition authorities (NCA).

Thus, the EU established the respective institutional mechanisms on applying the provisions on competition rules aiming to protect competitiveness within the internal market. In this regard, it is worth mentioning the two main treaty provisions on competition law, known as anti-trust provisions:

- Article 101 TFEU (ex Article 81 EC Treaty, anti-competitive agreements);
- Article 102 TFEU (ex Article 82 EC Treaty, abuse of dominant position).

According to the EU Treaty provisions, “all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market shall be prohibited as incompatible with the internal market and automatically shall be declared void.” (Article 101 TFEU). In this regard,

the Treaty provisions have also provided the particular effect given in the market or dissimilar conditions and supplementary obligations which may be applied to different parties to put them in unfavourable competitive circumstances. Nevertheless, in this case, there are exceptions provided; which means that in certain cases these provisions “may be declared inapplicable in the case of any agreement... contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit...” (Article 101(3) TFEU).

Similarly, “any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.” (Article 102 TFEU). However, unlike Article 101 TFEU (above), in this case, there are no exceptions provided by the Treaty, which means that as soon as the abuse of a dominant position is evidenced/ascertained, the behaviour shall be declared prohibited as incompatible with the internal market and consequently a punishment/action to be imposed by the Commission on the party/business which has violated this provision of competition law which may have taken place.

In this regard, a set of legal rules have been introduced to regulate this area. Among the most important ones is the Council Regulation (EC) 1/2003 (the so-called “modernization package”) which outlines the detailed rules, activities, and procedures to be followed by the EU institutions and national authorities *vis-a-vis* companies/business operating in the EU internal market. “The Regulation 1/2003 establishes a new European Competition enforcement regime based on joint enforcement of the EC competition rules by the Commission and the national authorities.” (Lowe, 2004, p. 567).

In the case of the EU internal market, it is the EU Commission that conducts the supervision on companies’ “behaviour” operating in the market as to whether they comply with the EU competition rules. In case there is a breach — the Commission is the one to define its dimensions aiming to determine the responsibility of the company which may result in imposing a fine on the company for the breach of community competition rules based on the antitrust provisions: anti-competitive agreements and abuse of dominant position (Articles 101, 102 TFEU).

Furthermore, according to the applicable rules, there are the EU Court of Justice (CJEU, previously known as the European Court of Justice (ECJ)) and the General Court (previously known as the Court of First Instance (CFI)) which in the capacity of the EU institutions may become involved in the case when the business is fined (by the Commission) and may file a complaint (lawsuit) against the act/penalty of the Commission (under the legal remedy of the lawsuit for annulment of the act). According to the legislation, “The Court of Justice shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.” (Article 31, Regulation 1/2003).

Nevertheless, the Commission is fully entitled to use its jurisdiction throughout the EU internal market when the infringement occurred has

a “community dimension”, as otherwise said, when it is considered by the Commission to have consequences in the internal market (in whole or in certain parts of it) in terms of breaching competition rules. “Where the trend of trade between the Member States, the rigidity of prices or other circumstance suggests that competition may be restricted or distorted within the common market, the Commission may conduct its inquiry into a particular sector of the economy or into a particular type of agreements across various sectors. In the course of that inquiry, the Commission may request from the undertakings or associations of undertakings concerned to supply the information necessary for giving effect to Articles 81 and 82 of the EC Treaty and may carry out any inspections necessary for that purpose”. “The Commission may in particular request the undertakings or associations of undertakings concerned to communicate to it all agreements, decisions and concerted practices” (Article 17, Regulation 1/2003).

## 2.2. The EU Member States (MS) rules on competition

The supervision of undertakings as to whether they comply with the competition rules in the internal market is also laid down at the level of the EU MS. “The competition authority of a Member State may in its own territory carry out any inspection or other fact-finding measure under its national law on behalf and for the account of the competition authority of another Member State in order to establish whether there has been an infringement of Article 81 or Article 82 of the Treaty.” (Article 22(1), Regulation 1/2003). The EU MS, in order to comply with the Treaty provisions, do have to properly adopt and implement their national legislation and establish effective institutions dealing with competition cases within their national jurisdiction.

In terms of competition rules, the fact that the MS national legislation must comply with the respective EU legislation, consequently means that the EU internal market is supervised at the two levels:

- *the MS level*, each MS institution shall exercise the powers provided in the national legislation framework over the undertakings operating in the respective national market;
- *the EU level*, the EU institutions shall exercise the powers provided by the EU legislation over the undertakings operating in the EU internal market.

It is worth mentioning that since there is a clear distinction of competencies between the institutions of the EU and MS and therefore no collision exists, it can be said that this dual and mutual oversight goes in favour of better supervising the internal market.

The Commission (on behalf of the EU) does supervise the whole internal market, and practically, it is the Commission to decide whether to investigate a certain company or not and conduct the necessary inspections when there is enough evidence that may lead it to the reasonable suspicion that the company has violated the competition rules in a way that it may affect the community market or a certain part of it, otherwise known as “community dimension”. “In order to carry out the duties assigned to by this Regulation, the Commission may

conduct all necessary inspections of undertakings and associations of undertakings.” (Article 20, Regulation 1/2003). The Commission may also request the authorities of MS to carry out inspections. “At the request of the Commission, the competition authorities of the Member States shall undertake the inspections which the Commission considers to be necessary under Article 20(1) or which it has ordered by decision pursuant to Article 20(4). The officials of the competition authorities of the Member States who are responsible for conducting these inspections as well as those authorized or appointed by them shall exercise their powers in accordance with their national law.” (Article 22(2), Regulation 1/2003).

In particular, there is close cooperation and joint action may be taken between the EU Commission and the MS competition authorities (known as national competition authorities — NCA). “If so requested by the Commission or by the competition authority of the Member State in whose territory the inspection is to be conducted, officials and other accompanying persons authorized by the Commission may assist the officials of the authority concerned.” (Article 22(2), Regulation 1/2003).

The MS do have certain sets of legislative frameworks providing the institutions dealing with competition cases (institutions such as NCA and national courts), the procedures to be followed, the sanctions/measures to be imposed, as well as the setting of legal and judicial mechanisms of complaint about the undertakings. Analogously, the same principle applies to the EU level when the role dealing with competition cases is entrusted to the Commission, to the General Court/as the Court of First Instance (CFI), and to the CJEU/as the Court of Appeal.

The case may “go” beyond the Commission and enter the courts’ procedures when a respective undertaking operating in the EU internal market decides to challenge the Commission’s decision. In such a case, it is important that the act challenged “must be of a definitive nature, a preparatory act which only constitutes one of the steps towards a final decision cannot be challenged.” (Geradin & Petit, 2006, p. 4). In addition, the NCA regularly follows and takes into consideration the EU “soft law” composed of Commission notices, communications, guidelines, and instructions adopted in order to clarify its decisional practice. This will clearly pave the NCA’s way forward. The same can be said for the impact of the ECJ “case law” in enriching the National Court’s practice when it comes to the implementation of the antitrust legislation.

Furthermore, the cooperation between the EU Commission and the NCA has been always close in terms of exchanging information, the transmission of documents, and consulting the Commission in cases involving the application of community law (Articles 11, 12, Regulation 1/2003). Obviously, without effective NCA activity in their respective national markets, the EU Commission on its own cannot bear the burden of properly supervising the whole internal market. The more effective the NCA are, the stronger the competition within the EU internal market is. Therefore, particular attention has been paid towards increasing the cooperation among the EU Commission, NCA of the MS, and national courts in terms of submission

of information, as well as in between the Commission and NCA in conducting investigations or inspection (Articles 15, 22, Regulation 1/2003).

In this regard, the cooperation between the Commission and the NCA aiming to protect competition is also promoted by the European Competition Network (ECN). "Together the NCA and the Commission form a network of public authorities: they act in the public interest and cooperate closely in order to protect competition" (Commission Notice 2004/C 101/03, 1.1). The ECN's role is essential in increasing cooperation among the NCA, as well as with the Commission, as it includes many aspects of the application of competition rules. "The ECN should ensure both an efficient division of work and an effective and consistent application of EC competition rules." (Müller, 2004, p. 733).

### 2.3. The SAA provisions on competition

In the WB, in addition to their respective legislation, the necessary progress needed in the field of competition law also has been indicated in the SAAs as the main document referring to the EU integration process. The SAAs explicitly contain individual provisions covering the competition rules applicable for all the WB. The competition rules are provided under certain SAA provisions, such as approximation of law to the EU *acquis*, law enforcement and competition rules, competition and other economic provisions and public undertakings, etc<sup>4</sup>.

In order to make progress, the WB do have to progressively improve their respective national legislation aiming to bring it in line with the EU *acquis*. Since further actions in certain SAA components are needed, the WB should pay particular attention to the following issues:

- The approximation of existing legislation to that of the Community;
- Applying the antitrust and state aid rules (Articles 101, 102, 106 TFEU);
- Applying the principles of the EU Treaty (Article 106) to all the public undertakings to which the special and exclusive rights have been granted.

The progress achieved towards the required standards is continuously measured by the annual Commission progress reports issued on each respective country. Since the rules on competition are contained as a SAA component, the respective progress is also the subject of permanent evaluation in the SAA negotiation process between the EU and the respective country.

In the process of developing the competition sector in the WB, it is obviously clear that in addition to harmonizing national legislation with EU *acquis*, particular attention by the SAA countries should be paid to the strengthening of the NCA and increasing their law enforcement capacities. This would be in line with the EU general tendency of increasing the role of NCA of EU MS. "The EU competition rules have to a large extent become the 'law of the land' throughout the EU. NCAs have become a key pillar of the application of the EU competition rules." (European Commission, 2014, p. 8).

### 2.4. The challenges of the SAA countries in regard to competition

Since the competition law is a rapidly developing area, in order to accelerate the progress needed and to achieve the SAA criteria in the required parameters, the WBC do need to pay particular attention to the state of affairs on the competition rules as developing at both levels: the level of the EU and at the level of the EU MS.

Most of the researches more or less focus on the same challenges being faced by the WBC in the field of competition. Such challenges are encountered mostly on: adopting a set of appropriate legal and sub-legal acts that respond to the responsibilities assigned to the protection of competition; limited political support for the work of the authorities; insufficient budgets and staff; limited staff training capacities; institutional structures that do not provide the authorities with sufficient and the necessary data in accordance with the requirements; inability to provide solutions that would prevent anti-competitive behaviour; courts that do not have the necessary expertise to conduct a fair trial; limited support from the business and consumer community for the work of competition authorities (Kabashi & Asllani, 2012, pp. 33-34).

Therefore, it is important that the WB take into consideration the following developments in the field of competition:

- The level of implementation of EU competition law at the EU institutional level and at the MS level.
- Developments in regard to the application of the existing applicable EU secondary legislation and the recently adopted legislation.
- The EU Commission's working practice and guidelines, as well as the ECJ case law.
- The EU and MS investments in terms of providing continuing staff training, professional and sufficient human resources as well as financial/budgetary support for the competition authorities.
- Providing institutional support for the NCA.
- Public awareness actions/campaigns on the EU Commission and the NCA's role in protecting the market competitiveness.
- Providing the necessary action to encourage the damaged parties (such as the small- and medium-sized enterprises) to report cases to the NCA.
- Developing certain assistance programmes for the small- and medium-sized undertakings to provide them with all the information and training programmes they need to familiarize themselves with the legislation on the market competitiveness.
- Developing certain programmes to encourage the businesses to comply with the common rules such as financial incentives and rewards (e.g., tax cuts, grants, soft loans, etc., and always bearing in mind to pay the necessary attention towards the state aid provisions).
- Leniency programmes as designated to stimulate cartel members to take the initiative to approach the competition authority, confess their participation in a cartel, and aid the competition law enforcers.

In this regard, the SAA countries of the WB are in particular challenged to follow up the stepping developments in the EU in the field of competition.

<sup>4</sup> For more see the following: Articles 75, 76 of SAA between EU and Kosovo; Articles 71, 72 of SAA between EU and Bosnia Herzegovina; Articles 71, 72 of SAA between EU and Albania; Articles 69, 70 of SAA between EU and North Macedonia; Articles 73, 74 of SAA between EU and Montenegro; Articles 73, 74 of SAA between EU and Serbia; Articles 70 of SAA between EU and Croatia.

However, one should keep in mind, the competition rules if even in the EU itself they are broadly challenged and the application of the above measures/mechanisms is not proved to be absolutely successful and to bring the anti-competitive behaviour of undertakings to an end. "Therefore, in addition to the antitrust authority remedies, private claims should be created, by means of which affected parties could defend themselves in their own right." (Möllers & Heinemann, 2008, p. 596).

In this regard, taking further action has always been in demand and, therefore, the two following EU Directives are already addressed to the MS for implementation aiming to a) compensate the material loss of the affected party by an undertaking's anti-competitive behaviour; b) to further strengthening the NCA.

First, there is the EU Directive 2014/104/EU which provides the eligibility of the undertakings to claim full compensation under national law for the damage suffered caused by an infringement of competition law:

*"This Directive sets out certain rules necessary to ensure that anyone who has suffered harm caused by an infringement of competition law by an undertaking or by an association of undertakings can effectively exercise the right to claim full compensation for that harm from that undertaking or association (...) sets out rules coordinating the enforcement of the competition rules by competition authorities and the enforcement of those rules in damages actions before national courts."* (Article 1, Directive 2014/104/EU).

Secondly, there is also the recently adopted EU Directive 2019/1 aiming to empower the competition authorities of the MS to be more effective in enforcing the competition rules when taking measures to ensure the proper functioning of the internal market, by providing the independence, resources, and powers the NCA need:

*"This Directive sets out certain rules to ensure that national competition authorities have the necessary guarantees of independence, resources, and enforcement and fining powers to be able to effectively apply Articles 101 and 102 TFEU so that competition in the internal market is not distorted and that consumers and undertakings are not put at a disadvantage by national laws and measures which prevent national competition authorities from being effective enforcers."* (Article 1, Directive (EU) 2019/1).

In this regard, it is worth mentioning also the proposed EU Regulation for investigating the foreign subsidies granted to the undertakings in the internal market which may distort competition in it and for redressing such distortions (Article 1, Proposal Regulation 2021/0114 COD).

It is quite evident, that since the approval of the new Council Regulations (Regulation 1/2003 Antitrust Regulation and Regulation 139/2004 Merger Regulation) it is the time when the EU institutions are becoming very active in issuing legislation in the field of competition, the EU is increasingly and obviously empowering NCA by trusting duties and transferring competencies to them and providing independence, resources and the powers needed.

Inevitably, in addition to the existing challenges, the WBC associated by the SAA will also be required to "stay updated" in regard to the recently approved EU legislative acts as well as to take respective

legislative and implementing measures. Therefore, when taking into consideration the lack of sufficient professional expertise, the insufficient human resources, and budgetary means, as well as weak institutional support, the NCA of the SAA countries will face a real challenge to make progress towards the standards required.

Since competition law is a fast-developing area, the EU and MS institutions are permanently active in issuing legislation, in taking the appropriate measures, and carrying out activities. This is why the NCA of the SAA countries should also think about and follow up the EU proposed actions and plans in this field.

### 3. RESEARCH METHODOLOGY

Competition law in the WB is a field covered neither by analysis and actions from the state institutions nor by the literature. Being almost out of the attention of officials for decades, it has remained undeveloped and consequently widely unknown.

Through comparing the existing situation in the WB with the final target of where it should be, this paper also aims at raising awareness and understanding among the WB on fulfilling their international obligations assumed by the SAA where competition is one of the constituent criteria. The key EU legislative acts in the field of competition are carefully analysed and it is presented in a comparative manner to show the progress the EU competition law in itself has made over the years. While in the WB the legal acts in competition rules do usually cover only its general basic principles, simultaneously, the WB do also have a lack of secondary acts which disable the practical implementation of the competition rules and the activity of the relevant institutions.

At the same time, the EU and the MS are paying particular attention to the appropriate implementation of the recently adopted EU legal acts in the field of competition, and in the meantime are looking forward to the more upcoming legal acts, while the WB have lagged behind even in the implementation of the basic concepts of competition rules. This in itself means that the WBC are shooting at a moving target.

For the purpose of answering the above-mentioned research questions (as stated in the introduction section) with the aim of coming up with concrete results, a qualitative research methodology was used. As such, the literature and legislation were reviewed, the evidence and documents were collected and comparatively analysed.

The research aimed at exploring, identifying, and understanding the weaknesses of the competition rules in the WB and concluded that there are measures to be undertaken in order to meet successfully the ongoing challenges which are an obstacle to the increase of market competitiveness and build effective NCA.

Consequently, it has been achieved to demonstrate the current situation in the field of competition in the WB and to determine the appropriate means which may be dedicated to this sector in order to gradually develop it and to create an adequate competition regime.

#### 4. RESULTS

The WB may benefit beyond a mere harmonizing of legislation in the field of competition with EU *acquis*. The competition authorities and even the national courts of the SAA countries may benefit from the activity of the EU institutions and EU MS institutions in the field of competition. This is true, in particular, for the Commission's working practice, communications, guidelines, and the ECJ case law which are of immense importance for WB as a way of attempting to improve the national understanding and stay up to date with the most current developments.

On the other hand, the most recent EU legislative acts in the field of competition law do clearly address some of the current issues concerned, such

as further strengthening the national competition authorities by providing certain guaranties for them; providing the effective exercise of the right to claim full compensation for the harm caused by infringements of competition law; and the developments in the legislation pertaining to investigating foreign subsidies operating in the EU internal market.

A crucial positive impact and push forward have also been given by the EU integration process of the WB where those countries belong. The SAA themselves have outlined the required respective progress by the countries concerned. Such progress is measured by the annual Commission reports issued to the WBC, including the 2021 reports which reflects the following:

**Table 1.** Main findings from the Progress Report 2021, for the national competition authorities

No.	Countries	Stage of competition	Progress in legislation	Enforcement capacities
1	Albania	Moderately prepared	There was limited progress during the reporting period.	There was limited progress during the reporting period.
2	Bosnia and Herzegovina	Has some level of preparation	There was some progress in this area during the reporting period.	Should further align its implementing legislation.
3	Kosovo	Early stage	Some progress during the reporting period.	Needs to strengthen its enforcement record and align implementing legislation with the EU <i>acquis</i> .
4	Montenegro	Moderately prepared	Some progress was registered during the reporting period.	A good level of implementing legislation is in place and largely in line with the relevant EU <i>acquis</i> .
5	North Macedonia	Moderately prepared	No progress was made during the reporting period.	Implementing legislation needs to be amended.
6	Serbia	Moderately prepared	Limited progress was made during the reporting period.	There was limited progress during the reporting period.

Source: EU country progress reports 2021 for each country of the WB.

#### 5. CONCLUSION

Increasing market competitiveness can only be achieved through properly applying competition rules. Therefore, the WBC should establish the appropriate institutional mechanisms able to implement the competition rules, as well as to follow up the most recent EU developments in the field of competition. Furthermore, the WBC should also be able to identify the weaknesses in their national legislation, existing legal gaps, and the necessary measures and actions to be taken by increasing the capacities of their NCA.

EU legislation and practice are continuously developing and evolving, so is the case-law of the Court of Justice. This, in return, requires the attention of the WB authorities to not only follow them timely but, in addition, to adjust accordingly. This in itself means that the countries of the WB are shooting at a moving target and thus makes this exercise even more difficult. As such, in their efforts they do need to further strengthen the national competition authorities to meet successfully the ongoing challenges by increasing their professional capacities in terms of providing the appropriate legal expertise, human resources, budgetary means, institutional support, etc., achieving progress towards the EU competition rules and following up with the latest developments in this field is mandatory for increasing market competitiveness. It is also important not only to step up the move

towards EU integration but, even more for the mere benefit of economic development of the WBC themselves.

This research is limited to exploring the current studies and the existing data referring to the WB which are not that many and outdated. This is why the research is mainly focused on providing the general requirements to be met by the WB, such as the SAA obligations on competition, the recently adopted EU respective secondary legislation to be taken into consideration, as well as the existing early stage of harmonization of national legislation with EU *acquis* in which the WBC are at present. All of these are presented at a glance and in a nutshell to reflect the scope of such a short paper.

This contribution may be helpful to other new scholars and researchers interested in further exploring this important topic while serving as a source of information for practitioners in this area. Future research may focus on specific areas and are very much needed to further develop the understanding on this topic and address properly the more challenging issues and reasons why competition law in the WB has not sufficiently progressed. There are though sufficient studies and research available confirming that competition law and policy impacts directly not only the market rules by improving the competitiveness of the concerned markets but most importantly contribute to the economic development in general.

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