

**Europeanisation in the Western Balkans? Compliance with the  
Energy Community environmental acquis in Albania and the former  
Yugoslav Republic of Macedonia**

By  
Mihnea Cătuți

Submitted to  
Central European University  
School of Public Policy

in partial fulfilment for the degree of Master of Arts in Public Policy (Mundus MAPP)

Supervisor: Dr. Uwe Puetter

2017

Word count: 11,996

## Abstract

The Europeanisation of the Western Balkans has been one of the most ambitious projects of the European Union. However, the situation has proven to be more complicated than it was the case for the other formerly communist states that are now part of the EU. Consequently, the EU has been reluctant to commit to a clear accession timetable for the countries in the region and created other mechanisms through which it could export its rules. The Energy Community is one of the most important such instruments, having the purpose to transform the energy and environmental sectors in the EU's neighbourhood. Nonetheless, the compliance of the Western Balkans states with the requirements of this organisation has been patchy and incomplete. Therefore, this paper seeks to explain what are the main factors contributing to this record, by conducting a comparative case study analysis of the former Yugoslav Republic of Macedonia and Albania's compliance with three environmental directives of the Energy Community. The evidence confirms the idea put forward by the external incentives theoretical model that the size and speed of rewards offered by the EU and the credibility of conditionality need to be high in order to overcome the significant adoption costs and vested domestic interests. The performance of the two countries remains poor, as even when the Energy Community directives have been transposed at the domestic level, weak administrative capacities and low levels of civil society engagement have represented great barriers to the actual implementation of the legislation. Moreover, the weak sanctioning mechanisms of the Energy Community have been ineffective at correcting this problem. Overall, it appears that the Energy Community has only led to a 'shallow' Europeanisation of the energy and environmental sectors of its members.

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## List of abbreviations

CARDS	Community Assistance for Reconstruction, Development and Stabilisation
CEECs	Central and Eastern European Countries
EBRD	European Bank of Reconstruction and Development
ECS	Energy Community Secretariat
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EnC	Energy Community
ENGO	Environmental Non-Governmental Organisation
EU	European Union
FYROM	Former Yugoslav Republic of Macedonia
IE	Industrial Emissions
IPA	Instrument for Pre-Accession Assistance
LCP	Large Combustion Plants
MSSD	Most Similar Systems Design
SAA	Stabilisation and Association Agreement
SAP	Stabilisation and Association Process
TEnC	Treaty establishing the Energy Community
WBIF	Western Balkans Investment Framework

## 1. Introduction

The European Union has 'a long tradition as a rule exporter' to its neighbouring countries (Stephan, 2009: 4). The Western Balkans<sup>1</sup> have been of particularly great interest to the EU, which is trying to prove that it can provide stability in the region and engage it with its market-governance principles. Consequently, the Western Balkans have been heavily subjected to processes of Europeanisation. While acknowledging the difficulty of the task ahead, the former Commissioner for External Relations, Chris Patten stated that '[t]he map of the European Union will not be complete until the countries of the Western Balkans are included on it' (European Commission, 2003). The EU has already proven to be willing and capable of granting entry to ex-communist Central and Eastern European Countries (CEECs). However, progress towards satisfying the criteria for membership has been slower in the Western Balkans than it was in the other formerly-communist states that are now part of the EU (Qorraj, 2010: 79). In addition, given the lessons learned from the previous accession process of CEECs, the EU has refined its pre-accession mechanisms, leading to a stricter conditionality regime than ever before (Barniff, 2009: 563). With the EU unwilling to commit to a clear accession timetable for the countries in the Western Balkans, the region is now stuck in an area between inclusion and exclusion, circumstances which significantly inhibit the transformative power of Europeanisation.

One of the most ambitious pre-accession instruments created for the Western Balkans is the Energy Community (EnC)<sup>2</sup>. The Treaty establishing the Energy Community (TEnC), signed in 2005, creates an 'international organization which brings together the European Union and its neighbours to create an integrated pan-

European energy market' (Energy Community, 2016). By signing this treaty, the members of the EnC have committed to comply with multiple EU directives on energy, environment and competition. Thus, the EnC represents 'an example of the EU's piecemeal export of its legislation' (Bechev, 2011: 104). It is also used as a test of a country's capability for regional cooperation and compliance with EU legislation, serving as an important indicator of readiness for accession to the EU (Dimitrova et al., 2016: 2). While the compliance record of the contracting countries has not been perfect, the EnC is considered the 'greatest progress' for the European integration of the Western Balkans (Tsardanidis, 2011: 498).

Despite the Energy Community's importance as a pre-accession instrument and its potential for revealing valuable insights for the literatures on Europeanisation and compliance with international organisations, the EnC and the Western Balkans region as a whole remain understudied in the academic literature. Hence, this thesis represents an attempt to fill some of this gap. The purpose of this paper is to assess the compliance (or lack of) with the EnC obligations and to answer the research question of what are the main drivers of the compliance record. In order to do so, this thesis uses a comparative case study analysis of compliance with three environmental directives of the EnC in Albania and the Former Yugoslav Republic of Macedonia (FYROM)<sup>3</sup>. To determine which explanatory variables best account for the compliance record of these countries, multiple theoretical approaches are engaged with, in order to create a comprehensive model. The thesis combines institutionalist arguments of top-down Europeanisation with insights on the role played by powerful bottom-up forces, such as domestic energy producers and civil society organisations. Moreover, as the EnC is technically a separate organisation

from the EU, the theories of paths to compliance with international organisations are also explored to determine what are the most relevant explanatory variables.

In order to develop the argument, the paper is structured as follows. First, this thesis engages with the academic literature with the purpose of identifying the main explanatory variables that can account for the compliance record with the EnC obligations. Second, the analytical and methodological considerations are discussed, explaining why a comparative case analysis is suitable for answering the research question. This section also explains how the choice of country cases and directives can help determine the main drivers of compliance. The methods and sources of data used are also presented. The third part initially explores Albania and Macedonia's domestic circumstances and their relationship with the EU. After establishing the context, the chapter analyses and discusses compliance with three different environmental directives: the Environmental Impact Assessment Directive, the Sulphur in Fuels Directive and the Large Combustion Plants Directive. The evidence indicates that the size and speed of rewards offered by the EU and the credibility of conditionality need to be high in order to overcome the significant adoption costs and the vested domestic interests. Nonetheless, even in cases of recorded compliance, Albania and FYROM tended to merely transpose the legislation, as weak administrative capacities and low levels of civil society engagement represent barriers for the effective implementation of the directives. In addition, the weak sanctioning mechanisms of the EnC have been ineffective at correcting this issue. Therefore, this paper argues that only a 'shallow' Europeanisation of the energy and environmental sectors of Albania and Macedonia appears to have been achieved through the EnC.

## **2. Variables and Theoretical Considerations**

This chapter identifies the core concepts and theories guiding the research and locates the thesis within the academic literature. The literature on Europeanisation is first explored, with a focus on the particularities of the relation between the EU and the countries that seek to be its members. One of the best equipped theories to explain the compliance record of candidate countries is the external incentives model. As the Western Balkans have less realistic membership perspectives for EU accession than previous candidate countries (Anastasakis, 2008; Elbasani, 2008; Jano, 2008; Freyburg and Richter, 2010), the domestic veto players can play a more decisive role in their country's compliance record. In the context of the EnC's environmental obligations, the energy producers and civil society groups emerge as some of the most significant veto players. By also focusing on these domestic actors, this project can obtain a more comprehensive understanding of the dynamics affecting compliance. Lastly, the paths to compliance theories are also engaged with. The EnC is a highly institutionalised organisation, with its own administration and monitoring mechanisms. Consequently, the Energy Community's architecture, prerogatives and capabilities are expected to be important determinants of the level of compliance among its member states.

### **2.1 A case of Europeanisation**

Broadly speaking, Europeanisation refers to the 'process of change affecting domestic institutions, politics and public policy' as a result of the interaction with the EU (Radaelli, 2012: 1). One of the key issues that needs to be noted is that Europeanisation is a concept and not a theory, or as Bulmer explains it,



Europeanisation is 'a phenomenon which a range of theoretical approaches have sought to explain' (2008: 47). By altering the opportunity structures of domestic actors, the process of Europeanisation has an impact that differs across countries, time and policy areas (Featherstone, 2003: 4). Another important aspect is that Europeanisation is not just an unidirectional phenomenon (Radaelli and Pasquer, 2008: 37). Therefore, top-down Europeanisation occurs when the EU-level causes domestic changes in its member states, which have to 'download' EU policies, while bottom-up Europeanisation refers to the process through which member states seek to 'upload' their domestic preferences at the EU-level (Borzel and Risse, 2003: 62).

In terms of research, Europeanisation 'can be an useful entry-point for a greater understanding of important changes' in countries interacting with the EU (Featherstone, 2003: 3). The literature is rich in accounts about the transformative impact of Europeanisation on both EU member and non-member states. However, given its wide usage, researchers are exposed to the 'risk of conceptual overstretching', and therefore need to provide a clear definition of its meaning (Radaelli, 2003: 27). Thus, for the purposes of this paper, the concept of Europeanisation refers to the policy changes caused by the EU in non-member states. As the contracting partners of the EnC have no say in the content of the policies they have to implement, this thesis adopts a top-down understanding of Europeanisation, where the countries have to 'download' directives at the domestic level. Europeanisation can also refer to the changes brought to domestic politics and polity (Treib, 2006: 4), but given the issue specificity of the EnC, most changes are expected to be observable at the policy level.

A key element which most researchers agree that must be present for Europeanisation to occur is a certain degree of misfit between the domestic and EU-level (Borzel and Risse, 2003: 58). This misfit can be between policies, economic conditions, ideational systems, institutions and even constitutional orders (Caparoso: 2008: 31). Given the post-communist legacy and the tumultuous transition to market-economies, a significant degree of misfit can be observed between the Western Balkans and the EU environmental acquis promoted through the EnC (Papa, 2006: 319). Various theoretical accounts of Europeanisation provide different explanations of how this misfit stimulates change at the domestic level. The Europeanisation literature bears the mark of the 'institutionalist turn' in European studies (Hix and Goetz, 2000: 18), and therefore its main theoretical paradigms are rationalist institutionalism and sociological institutionalism. While rationalist institutionalism relies on a 'logic of consequentialism', where misfit creates new opportunity structures for domestic actors to pursue their interests, sociological institutionalism applies a 'logic of appropriateness', where change is the outcome of processes of persuasion and exposure to common norms (Borzel and Risse, 2003: 58-59). As explained in the following section, this thesis employs a rationalist institutionalist model, given its proven track record in explaining the drivers of compliance with the EU's requirements in countries that seek membership.

### *Non-member states and conditionality*

Europeanisation is not restricted to EU's member states, as it also affects countries which may or may not have membership aspirations. One of the most prominent instances of Europeanisation of non-member states has been a direct

result of the EU's external efforts of promoting the transfer of its own *acquis communautaire* to neighbouring countries (Lavenex and Schimmelfenning, 2009: 792). The recent enlargement to the East therefore became a 'real-world experiment' for the study of Europeanisation (Borzel and Risse, 2007: 489). However, the dynamics have been somewhat different than it was the case for older member states. The EU accession process of CEECs has been described as 'both a blessing and a curse' for the states involved, which have struggled to meet the requirements (Borzel and Buzogany, 2010: 158).

Through the process of conditionality, the EU put strict conditions that applicants had to fulfil if they wanted to further their membership ambitions or to benefit from political and economic support (Elezi, 2013: 241). At the same time, applicants have no input on the policies they are obliged to 'download', which makes them clear cases of top-down Europeanisation. The EU has multiple mechanisms at its disposal, through which it can promote compliance with its demands (Grabbe, 2001). Gate-keeping allows the EU to withhold and decide on the timing of granting accession and other benefits. Through monitoring the EU can verify the compliance status of applicants, while through financial and technical assistance the EU facilitates the successful implementation of its policies. Therefore, the EU not only sets out conditions, but it also provides technical and financial aid and closely monitors progress (Elezi, 2013: 241).

The Western Balkans members of the EnC are also heavily subjected to conditionality, and the desire for EU membership in the region gives the EU 'considerable leverage to shape domestic institutions and policies of these states to conform to EU rules and norms' (Lindstrom, 2011: 198). Rationalist institutionalist

models rely on power asymmetry between the EU and candidate countries to explain domestic changes and therefore have a proven track-record of being able to explain Europeanisation through conditionality (Schimmelfenning and Sedelmeier, 2008: 90). Such models are capable of explaining how the regime of conditionality has a significant impact on the domestic opportunity structures, changing the incentives of key actors (Bache, 2010: 5). The most prominent rationalist institutionalist framework, which is also used by this paper, is the external incentives model, according to which compliance with EU demands is a function of the 'reinforcement by reward' logic of conditionality (Schimmelfenning and Sedelmeier, 2005: 11).

## **2.2 The external incentives model**

According to the external incentives model, Europeanisation interferes with the domestic status quo of applicant countries by offering various rewards for compliance, such as technical and financial assistance, institutional ties, and by far the most sizeable prize, EU membership. These benefits realign domestic preferences and calculations for both state and non-state actors. According to this framework by Schimmelfenning and Sedelmeier (2005), four main factors influence the likelihood of compliance, which are discussed in turn in this section.

The first is the determinacy of conditions. This refers to the 'clarity and formality of a rule' that has to be implemented at the domestic level (Schimmelfenning and Sedelmeier, 2005: 12). When the demands are not clearly specified, research indicates that compliance is 'patchy and selective', but when the rules to be implemented are clearly communicated, states tend to make the necessary domestic adjustments (Sedelmeier, 2011: 22). In the case of the EnC, requirements are clearly

stated in the TEnC and there is no ambiguity about the directives that contracting countries must implement. Moreover, for the Western Balkans, the European Council has made it clear that EU accession is dependent on the compliance of each individual state with the conditions of the Stabilisation and Association Process (SAP) and the Stabilisation and Association Agreement (SAA) (European Commission, 2010a: 2). The SAP was one of the first mechanisms to engage these countries with the EU *acquis communautaire* (Tsardanis, 2011: 495). The following step in a country's collaboration with the EU is signing a bilateral SAA. The SAA clearly establishes the conditions for EU accession, including compliance with the Copenhagen criteria, concerned with the establishment of democracy, rule of law and human rights protection, and making progress in the alignment with EU legislation. Therefore, in the Western Balkans the determinacy of conditions is high and there is no variation between the case studies, so this variable offers no analytical information for this paper. Consequently, it is not analysed alongside the other independent variables.

The second explanatory factor of the model is the size and speed of rewards. The larger and faster the reward offered, the more likely a state is to comply (Schimmelfenning and Sedelmeier, 2005: 13). The most sizeable reward is EU membership, but the EU institutions have been elusive in making a clear commitment about this for the Western Balkans states. Therefore, the Commission used other intermediate rewards, such as financial assistance, visa liberalisation and sectoral associations (Anastasakis, 2008: 369). Rewards in forms of financial support can be particularly relevant in the cases of formerly communist states, which have a legacy of insufficient budgets and weak administrative capacity (Sedelmeier, 2011: 15).

Since 2001, Western Balkans countries were given access to the Community Assistance for Reconstruction, Development and Stabilisation (CARDS), amounting to more than €5 billion until 2006. From 2006, most financial assistance was offered through the Instrument for Pre-Accession Assistance (IPA), worth €5.7 billion. Financial and technical assistance for necessary infrastructure investments was also given through the Western Balkans Investment Framework (WBIF) which reunites the European Commission, European Investment Bank (EIB), European Bank of Reconstruction and Development (EBRD), Council of Europe Development Bank, Kreditanstalt für Wiederaufbau and the World Bank (European Commission, 2015b). The EU has enforced in the region both ‘negative’ means of conditionality, by withholding compliance benefits, and ‘positive’ means of conditionality, by rewarding the actions taken towards compliance (Zuokui, 2010: 83). Nonetheless, the size of these rewards is significantly smaller than the prospect of EU membership, which represents the main ‘carrot’ for compliance that the EU can offer to Western Balkans countries (Radovanovik, 2012: 212).

The third factor is the credibility of conditionality. The EU must be able to grant and withhold rewards on a consistent manner in order to increase the likelihood of compliance (Schimmelfenning and Sedelmeier, 2005: 15). The credibility of the membership prospects is perhaps the most important, as it has been proven to be able to overrule the cost-benefit analysis of candidate states in favour of compliance (Sedelmeier, 2011: 22). Previous experience with ex-communist states shows that candidate countries are effective at implementing EU policies when they are given clear negotiating schedules (Trauner, 2009: 775). Nonetheless, this variable can be particularly problematic for the case studies of this thesis.

Article 29 of the Treaty of the European Union states that any European country has the potential for applying for EU membership, which means that all Western Balkans states are 'de facto candidates' (Stephan, 2009: 5). However, it seems that the EU has been 'oscillating between inclusion and exclusion' with the region (Renner and Trauner, 2009: 449). This was attributed to an 'enlargement fatigue' following the recent rounds of accession, which was only further complicated by the uncertainties brought by the rejection of the Constitutional Treaty by the Dutch and the French in 2005 (Phinnemore, 2006: 25). The EU has since failed to commit to clear accession timetables for countries like Albania and Macedonia, fact which some have blamed for the patchy compliance record with the EnC (Dimitrova et al., 2016: 9).

The forth factor of the model consists of the domestic veto players and adoption costs. The veto players are 'actors whose agreement is necessary for a change in the status quo' and can therefore either facilitate or impede compliance (Schimmelfenning and Sedelmeier, 2005: 16). In addition, the costlier the adoption of EU requirements is, the less likely it makes successful compliance. In the accession process of the CEECs the combination of weak veto players and high pressure of the conditionality regime was a key enabling factor for successful Europeanisation (Borzel, 2014: 17). The problem for the Western Balkans however, is that evidence seems to indicate that the less credible the conditionality regime is, the more important the role of veto players (Sedelmeier, 2011: 23). Not only is the credibility of conditionality lower in the region, but there have also been more vocal domestic actors against the EU and its market-governance model (Youngs, 2007: 1).

In short, given the clear top-down Europeanisation of the Western Balkans, this thesis uses the external incentives model to explain the compliance records of

Albania and FYROM with the EnC environmental requirements. The main variables used are 1) size and speed of rewards, 2) credibility of conditionality and 3) veto players and adoption costs. Given the more important role played by veto players in the Western Balkans than it was the case in previous rounds of enlargement, special attention is paid to these actors. Therefore, the following section takes a more in depth look at the role played by two crucial actors in the domestic energy and environmental sectors: the energy producers and the civil society.

### **2.3 Domestic veto players**

Domestic veto-players are expected to behave as powerful bottom-up forces that either enable or hinder compliance with the EnC. Therefore, this paper also analyses the effect of two crucial such actors: the energy producers, which bear the immediate implementation costs of the EnC environmental policies, and the civil society actors, which can contribute to the enforcement of the transposed legislation. Such a both bottom-up and top-down approach to understanding the mechanisms of Europeanisation can provide a more accurate understanding of the processes involved (Graziano and Vink, 2008: 7). This section also explains how the phenomenon of state capture and corruption affect the relative influence of these actors.

#### *Energy producers*

In the formerly centrally-planned economies, exposure to systems of free-trade has produced both winners and losers (Andonova, 2004: 12). The demands of



the EnC about the liberalisation of the regional energy market in the Western Balkans can have serious repercussions on the domestic energy producers. Such actors also bear the immediate adoption costs with the environmental requirements of EnC directives. Given the endemic corruption in the Western Balkans and the interlinked interests of elected officials and the owners of energy companies, the high implementation costs mean that these actors can generate significant opposition to compliance at the highest levels of government.

Therefore, state capture and corruption are expected to provide the energy producers with an important voice in the implementation of environmental legislation. In formerly centrally planned economies, through the phenomenon of state capture, politicians and political parties control and have compromised all structures of governance (Dimitrova and Buzogany, 2014: 141). The early winners of the post-communist transition have subverted the public institutions and state companies to their interests (Innes, 2013: 88). Consequently, as energy producing companies are run for the interest of high-ranking politicians, any adaptation requirements that work against these interests are expected to be met with fierce opposition.

### *Environmental Non-Governmental Organisations*

Civil society organisations can act as valuable partners for governments, by providing the underfunded environmental ministries with support in form of information and expertise (Bell, 2005: 194). More importantly, ENGOs play a crucial role in the implementation of environmental policies, engaging in whistle blowing activities when they observe the improper enforcement of the legislation (Carmin and

VanDeveer, 2004: 12). Therefore, the overall capacity of a state to implement the environmental acquis can be considered to be the sum of the capacity of the government and that of the civil society organisations (Carmin and VanDeveer, 2005: 12).

Nonetheless, the ENGOs in the Western Balkans remain widely underdeveloped. In addition, the unfavourable domestic political culture can also provide barriers for the involvement of civil society organisations in the policymaking process (Borzel and Buzogany, 2010: 160). State capture and corruption limit transparency and public participation, which decreases the potential of such actors for making a positive impact towards compliance. Besides, the civil society itself is poorly organised and lacks the necessary financial and technical capacity to influence the governance processes (Dimitrova and Buzogany, 2014: 143). Thus, ENGOs are expected to be active domestic actors, but their overall influence on the compliance with the EnC requirements is expected to be limited.

## **2.4 The Energy Community and the paths to compliance theories**

The Energy Community has a 'high degree of institutionalisation' (Gstohl, 2007: 8). Given its crucial function as a preparatory tool for EU-membership, its institutional structure 'is consciously modelled on the European Steel and Coal Community' (European Commission, 2005a). The Ministerial Council, which meets on a yearly basis, is the highest decision-making body, having the role to 'establish key priorities and steer the implementation of the treaty' (Energy Community, 2016). The Permanent High Level Group is responsible for preparing the work of the council, the Regulatory Body cooperates with the national regulatory institutions,

while the Specialized Working Groups and Task Forces provide technical support. The Secretariat is the main independent body of the EnC, which much like the Commission for the EU, is responsible with monitoring and enforcing the implementation of the *acquis*. Thus, the EnC represents a tool of Europeanisation and cannot be conceptualized without mentioning the EU. However, the Treaty of the Energy Community technically creates a separate international organization, with its own rules and capabilities. Consequently, it is important to also analyse the international organisation itself, in order to obtain a comprehensive understanding of compliance with its requirements. Hence, the thesis engages with the enforcement and management paths to compliance theories of international relations, which explain the factors determining the compliance of states with international organisations.

The enforcement perspective, which is based on a logic of rationality and consequences, focuses on the importance of monitoring and sanctioning mechanisms (Andonova and Tuta, 2014: 778). Thus, in order to deter countries from non-compliance, an international organisation needs to have the means to both effectively monitor and sanction the behaviour of its members (Tallberg, 2002: 612). The sanctions need to be powerful enough to alter the cost-benefit calculations that states make about adoption costs. The Secretariat monitors the compliance of its member states, in parallel with the Commission which assesses compliance with the Copenhagen Criteria and the alignment with the EU's *acquis communautaire*. When the Secretariat detects non-compliance, it can trigger the dispute-settlement procedure, established by the Articles 90-93 of the TEnC. The process is modelled after the infringement procedure of the EU, with one notable exception: there is no supranational court that can impose sanctions. This means that the enforcement

tools of the EnC can be quite 'blunt'<sup>4</sup>, compared to EU's infringement mechanism for its member states. However, the Ministerial Council can still enact some sanctions through an unanimous decision, such as the suspension of the voting rights of the infringer. The limited sanctioning capabilities of the EnC are expected to be an inhibitor of compliance.

The management approach explains non-compliance as a matter of poor administrative capacity and poor rule interpretation (Tallberg, 2002: 613). This is a significant problem in the Western Balkans, where the administrative institutions are constantly under-funded and under-staffed (IEA, 2008: 19). On multiple occasions, public institutions in the region have proven 'incapable' of fulfilling even their most basic functions (Radovanovik, 2012: 209). Administrative capacity does not however solely refer to the availability of resources. The combination of corruption and an inefficient bureaucracy can significantly diminish the capacity of a government to manage its own resources. An often-cited example for this claim is that of Italy and France, which allocate similar amounts of resources to their administrations, but France's performance tends to be superior, given the lower levels of corruption and higher efficiency (Borzel et al., 2012: 460). The managerial perspective therefore also stresses the importance of the assistance instruments that international organisations have for enhancing the implementation capabilities of its members (Andonova and Tuta, 2014: 778). Hence, it is important to analyse not just the monitoring and sanctioning instruments, but also the technical and financial assistance that is being offered by an international organisation.

At this point a crucial problem that emerged during the accession process of CEECs must be mentioned. It has been argued that in these states we have only witnessed

a 'shallow Europeanisation', as while large amounts of directives have been transposed into national legislation, this has only been a 'superficial adjustment' and compliance has been 'without substance' (Dabrowski, 2012: 731). The formerly communist states have been criticized for not taking the necessary measures to ensure the effective implementation and enforcement of the *acquis* (Borzel, 2011: 8). This is also a significant problem in the Western Balkans, and the Secretariat admits that it is more capable of detecting improper transposition of its directives, rather than faulty implementation, for which it heavily relies on whistle-blowing activities<sup>5</sup>. Some have argued that in the region, the underfunded administrative institutions filled with untrained civil servants and politically appointed officials, combined with a high level of corruption, can only ultimately lead to a 'shallow' Europeanisation' (Elezi, 2013: 244).

In sum, this thesis engages with multiple strands of academic literature in order to determine the main variables that need to be analysed for explaining the compliance record with the EnC environmental requirements. The variables investigated are 1) size and speed of rewards, 2) credibility of conditionality, 3) veto players and adoption costs, with a particular focus on the energy producers and civil society, 5) the institutional capacities for monitoring, sanctioning and assistance and 6) administrative capacity.

### **3. Analytical and Methodological considerations**

The purpose of this chapter is to explain the main methodological and analytical tools used by this paper. The merits and limitations of the chosen framework are also discussed, followed by an explanation of the case studies selection and the implications this has for the findings of the analysis. Lastly, this chapter elaborates on what are the methods and sources of data used for gathering evidence.

#### **3.1 The comparative framework and case study selection**

Compared to both the old and the new EU member states, little attention has been paid to the Europeanisation of the Western Balkans in the academic literature. This is surprising, as the region can provide valuable insights about both EU's enlargement and effectiveness of its rule-exporting strategies on one hand, and about compliance with an international organisation on the other hand. Therefore, this thesis is an attempt fill some of this gap in the literature and to test the explanatory variables of multiple theoretical paradigms.

When it comes to methodology, this paper employs a comparative case study framework. The merits of this analytical tool for testing variables is well documented in the social sciences literature (Colier, 1993: 106). Comparative case studies have also become indispensable in the study of Europeanisation, as they can disentangle the 'net-effects' of the EU from other global, national and subnational forces (Olsen, 2002: 938). In addition, in Europeanisation research, 'intensive case studies are indispensable' for ensuring the causal chain between variables (Haverland, 2008:

68). Nonetheless, such an approach also has its limitations. The ‘many variables, small number of cases’ problem (Lijphart, 1971: 685) means that such a study has low external validity and generalisations are difficult to make based on its findings. At the same time, by carefully exploring the context in each of the cases analysed, small-n studies provide superior stability of measurement, therefore reducing error and running a lower probability of excluding key explanatory variables or misinterpreting the relations between them (Mahoney, 2007: 129-130).

Given its ability to better isolate the effect of the explanatory variables (Burnham et al., 2008: 75), this paper uses a loose adaptation of the Most Similar Systems Design (MSSD) comparative method. A strict usage of the MSSD would require that all explanatory variables across the case studies are very similar, with the exception of the one that the study is trying to highlight (Anckar, 2008: 390). However, two cases that would perfectly fit the description are impossible to find in the Western Balkans. Albania and Macedonia were chosen based on their numerous similarities in size of economy, population, relation with the EU and state capacity, but with one notable difference: their energy sectors. This difference creates very dissimilar adoption costs and domestic veto player interests in the two countries based on which directive had to be implemented. The three policies analysed were therefore specifically chosen to maximise this variation, as it is explained in the following chapter.

The focus on the environmental acquis helps highlight the misfit with the domestic level and the high adoption costs which can only be overcome through high top-down pressures of Europeanisation. This choice also ensures the causal link between the EU demands and domestic changes. The counterfactual is a useful tool

for ensuring that this causality exists in Europeanisation research (Haverland, 2008). It is clear that in the absence of EU's conditionality, such costly environmental policies would have never been a priority in formerly communist states (Jordan and Liefferink, 2004: 233).

### **3.2 Methods and sources of data**

Documentary analysis was conducted on a multitude of sources in order to obtain the necessary data for the research. The EnC Secretariat (ECS) produces implementation reports on an annual basis, which alongside the dispute settlement procedure documents provide a basis for assessing the compliance with the environmental acquis in each of the case studies. The Commission's monitoring process also complements that of the Secretariat<sup>6</sup>. Therefore, the annual progress reports, produced by the Commission on the status of the implementation of the EU acquis in both Albania and Macedonia, are also analysed. Other sources of data include governmental strategies and policy documents, relevant civil society reports and studies conducted by international or European organizations. The information is also triangulated using some primary data collected from face-to-face and telephone semi-structured interviews with officials from the EnC Secretariat, European Commission and the civil society. The time-frame for the evidence collected covers over ten years, from the entry into force of the TEnC in 2006 to 2017.



## **4. Compliance with the environmental acquis in Albania and FYROM**

This chapter analyses the main drivers of compliance with the EnC environmental acquis in Albania and Macedonia. First, Albania and Macedonia's post-communist transitions and relationship with the EU are briefly discussed, alongside an overview of their energy sectors. This reveals an unwillingness of the EU to commit to an accession timetable for the two countries, which limits the size and speed of the rewards offered for compliance. This in turn also affects the credibility of the regime of conditionality. The chapter then analyses and compares the compliance with three different environmental directives. The analysis indicates that adoption costs, veto players and lack of sanctioning mechanisms significantly influence compliance. At the same time, the underdeveloped ENGOs and weak administrative capacity explain the improper implementation of transposed legislation. It appears that Europeanisation through the EnC remains 'shallow'.

### **4.1 Albania**

After the fall of communism, Albania was the 'poorest country in Europe', as its dire economic, political and social situations represented almost unsurmountable hurdles in its transition to a functioning market economy (Panagiotou, 2011: 358). While initial post-communist reforms seemed effective at the beginning, in 1997 the entire economy collapsed, which combined with an influx of hundreds of thousands of Kosovan refugees, lead the country into anarchy (Panagiotou, 2011: 365). As a result, the public institutions alongside the economy were in a dire condition. In 1997 and 2000, the government sought to implement comprehensive reforms for the

modernisation of the public administration (Arolda, 2009: 17). However, the results of these efforts remain limited, as Albania's public administration and private sector are riddled with nepotism and corruption (Tiemann, 2006: 25).

Despite these difficulties, successive Albanian governments made efforts to engage with the EU immediately after the fall of communism, signing a Cooperation and Trade Agreement in 1992. The development of ties with Europe was particularly challenging given the extreme isolationism of the Albanian communist regime, which left the country with little experience in international cooperation (Johnson, 2001: 171). Nonetheless, after negotiations that lasted over five years, Albania got on the 'accession track' when it signed its SAA with the EU on the 12<sup>th</sup> of June 2006 (O'Brennan and Gassie, 2009: 61). On the 28<sup>th</sup> of April 2009 Albania officially applied for EU membership, but the Commission rejected it citing issues with pervasive corruption and questionable rule of law (European Commission, 2011a). The country officially became a candidate for EU membership in 2014 (European Commission, 2014b). The EU institutions have acknowledged that during Albania's accession process great attention must be paid to environmental standards and that the industrial and energy sectors need urgent modernisation (Official Journal of the EU, 2009: 26).

### *Energy production and the environment in Albania*

Albania's electricity comes in proportion of almost 100% from its seven large hydro plants (McGrath et al., 2010: 15). This lack of diversification of energy sources creates serious security of supply problems, leading to frequent blackouts during

periods of drought (World Bank, 2010: 21). In addition, the energy infrastructure is extremely outdated and necessitates costly modernisation (IEA, 2008: 16). With an average age of 35 years, the main hydropower plants, Komani, Fierza and Vau i Dejes, were built in the 70s and 80s (Ministry of Economy of Albania, 2009: 7). This unsustainable dependence on hydropower appears to be an inescapable problem, as more plants will be built, according to the National Renewable Energy Action Plan (Bankwatch Network, 2016: 6). Only about 35% of the hydro potential is exploited (SEEC, 2011: 200), so the Government is interested in further pursuing the exploitation of the country's rich hydrography.

After the 7512 Law in 1991, Albania went through a wave of liberalization and privatization (Konomi, 2015: 364). Nonetheless, the Albanian government privatized the energy company KESH and the oil refinery ARMO only in 2008 (O'Brennan and Gassie, 2009: 68). Corruption and state capture in the energy sector is high, with political figures as high-ranking as the former Prime Minister Ilir Meta interfering in tenders for hydropower plants for personal benefits (DioGuardi, 2013: 265). While the sector is riddled with corruption, the repressiveness of the communist regime created a sense of mistrust among the population, leading to low civil engagement and underdeveloped civil society organisations (Panagiotou, 2011: 360).

## **4.2 Macedonia**

While Albania had the advantage of being a self-governing nation since 1912, the Republic of Macedonia had to go through more dramatic transformations after the fall of the Yugoslavian Federation. According to Panagiotou (2008: 47), FYROM went through three separate transition processes: from a formerly communist

country to a liberal democracy, from a regional to a national economy and from a federal state to an independent country. At the beginning of the 90s the economy was in a precarious state, Macedonia having been the poorest Yugoslav state, accounting for only 5% of Yugoslavia's economic production (Kekic, 2001: 186). However, in recent years, promising steps have been taken. The Ohrid Agreement settled the ethnic conflict between Macedonians and Albanians that has paralysed the country in the 90s, while public administration reforms in 2002 managed to reorganize the oversized and resource-trapping bureaucracy (Willemsen, 2006: 94).

The desire for reforms was noted by the EU, so Macedonia became the first Western Balkans state to sign its SAA, on the 9<sup>th</sup> of April 2001. In 2005, based on the country's satisfactory compliance with the SAA and the Copenhagen Criteria, the Commission recommended that FYROM would be given the official status of candidate country (European Commission, 2005b). Considered alongside Croatia an early frontrunner in the Western Balkans, Macedonia has still not started the official negotiations with the EU. The political scene became unstable and the EU has been ineffective in both sanctioning non-compliance and in rewarding compliance with more than a 'reluctant' discourse about 'potential' membership (Mihaila, 2010: 27). Repeatedly avoiding the commencement of official negotiations, the EU only launched 'preliminary high-level talks' (DioGuardi, 2013: 260). Consequently, in recent years Macedonia has been backsliding on its early progress. With both Albania and Macedonia, the EU appears reluctant to offer its most sizeable reward, membership, and without a clear accession timetable, the speed of rewards is unclear. This consequently leads to a low credibility of conditionality in both countries.

## *Energy production and the environment in Macedonia*

Half of the country's energy mix and three quarters of its electricity production relies on lignite-powered plants, with 30% of Macedonian electricity coming from imports (Change Partnership, 2015: 31). The energy infrastructure bears the legacy of the former Yugoslavian Federation, and requires serious investments. While the country remains highly dependent on lignite for its energy production, its largest coal reserves in Bitola are depleting, prompting the urgent need for solutions to secure new sources of energy (IEA, 2008: 238). The facts that hydrocarbons are still subsidized and that the thermal energy producers have close ties to the government represent a significant barrier to Macedonia's compliance with the EnC<sup>7</sup>.

The state-owned producer JSC ELEM ensures more than 90% of the country's electricity, being bound by law to provide this public service (Ministry of Economy of Macedonia, 2015: 26). While FYROM is considered the most advanced country in the region when it comes to energy sector reform (IEA, 2008: 20), similar to the case of Albania, corruption is also a pervasive problem. After faulty attempts of privatization, 'the people running the energy companies are also the ones setting the rules', given their close connections with public officials (IACC, 2008: 4).

The communist legacy of over-reliance and over-exploitation of lignite lead to severe environmental degradation (Markovksa et al., 2003: 301). This is part of the reason why environmental activism emerged as early as the 1980s (Cicero, 2013: 205). Despite this early start, according to domestic civil society actors, Macedonian ENGOs are unable to effectively influence the process of governance and lack sufficient technical and financial resources (Atanasova and Bache, 2010: 92).

Albania and Macedonia are very similar in some of the explanatory variables of this paper, namely size and speed of rewards, credibility of conditionality, administrative capacity and civil society engagement. However, their energy production industries are widely distinct. This creates different adoption costs and vested interests in the two countries, during the implementation of different environmental directives of the EnC. This chapter now analyses more carefully how this variation in costs and veto player interests can highlight the explanatory factors for compliance with the EnC obligations, by investigating in turn three different environmental directives.

### **4.3 The Environmental Impact Assessment Directive**

The 85/337/EEC Environmental Impact Assessment (EIA) Directive requires the collection and analysis of data on the environmental impact of projects involving energy generation and transmission and the storage of gas and petrochemical substances (ECS, 2013). Projects can be part of either the Annex I category, for which the environmental impact assessment is mandatory, or Annex II, for which the procedure is optional. The category of each project is based on the location, scale and potential for damage to the environment. This directive had to be implemented by EnC members before the 1<sup>st</sup> of January 2006.

In many formerly-communist states this directive is particularly problematic to implement, as it requires not only strong administrative capacities, but also the involvement of competent stakeholders for enforcement (Borzel, 2011: 9). As opposed to the other two directives analysed by this paper, the EIA affects Macedonia and Albania in a similar manner, in terms of adoption costs and veto

players. This helps create a contrast with the cases where one of the countries bears significantly higher costs of compliance.

In the case of Albania, the Secretariat assessed in 2007, that the directive has not been properly transposed (ECS, 2007). The 2002 Law on Environmental Protection and the 2003 Law on Environmental Impact Assessment were insufficient, so the Secretariat launched a fact-finding mission, gathered a network of environmental experts and engaged with the Commission in order to enable Albania to successfully transpose the directive (ECS, 2008a: 8). The legislation did not include necessary enforcement measures and public involvement mechanisms. What should be noted however, is the technical assistance offered by the Secretariat, which did not launch an infringement procedure for non-compliance. Without a proper 'carrot' or 'stick', the Secretariat was unable to generate much change by itself. The domestic legislation allowed the developer to decide whether an impact assessment would be conducted (ECS, 2008b: 12). The Ministry of Environment, after consulting the Regional Environmental Agency, was the ultimate decider of whether a project fulfilled all criteria, but problems arose. For example, the developers of the Lengarica plant incorrectly classified the project as Annex II, mistake which was only noted by the Ministry following ENGO complaints (WWF, 2015: 17).

The Commission also observed that numerous projects failed to obtain permits, and the government was ineffective at sanctioning such behaviour (European Commission, 2012a: 60-61). One of the reasons for this was the insufficient funding for the National Environmental Inspectorate. In response, the Government created in 2013 a novel body, the National Environmental Agency, which had significantly

superior enforcement capabilities both at national and local levels (ECS, 2015: 49). The Albanian authorities appear to have been more responsive to the Commission's requests, as the same complaints have been voiced by the Secretariat in the past, without any tangible results. In fact, this was also the period when Albania received the official candidate status. This was important not only for the membership perspective of Albania, but it also unlocked further intermediary rewards, such as access to all types of IPA funds. While Albania obtaining the candidate status was an outcome of the fulfilment of its SAA obligations, it shows that the Government was more willing to be responsive during times when the credibility of conditionality and size and speed of rewards were high. During this period, Albania improved both the human and the financial resources of its enforcement bodies (European Commission, 2015a: 68).

The participation of civil society actors was another problematic issue in Albania. In the rare occasions when ENGOs were invited for consultations, they were sent the agenda late and the scheduling made it impossible to participate in all discussions (Eko-svest, 2011: 31). The Commission also assessed that the process had numerous barriers to public participation (European Commission, 2011a: 60). The Government promised to solve some of these issues with its new 2011 Law on Environmental Assessment, but as the draft had been submitted to the Secretariat in Albanian, the review process was slow (ECS, 2012: 203). While the new legislative act made some progress, it was insufficient, and would only be resolved with some amendments made in 2014, which ensured the participation of the civil society in both formulation and enforcement processes (ECS, 2015: 49).



Albania has now successfully transposed the directive, but both the Secretariat and the Commission indicated that greater human and financial resources are still needed for effective implementation (ECS, 2016; European Commission, 2016a). The weak level of expertise and training among the civil servants remains a significant barrier (WWF, 2015: 73), and the institutions remain completely dependent on assistance provided through the WBIF (European Commission, 2015c: 60). The civil society is also severely deprived of necessary resources. While the case of this directive has shown examples of ENGO involvement, especially in whistle-blowing activities, these instances have been relatively rare. This lack of resources has a strong impact on the monitoring capacities of the civil society. For example, one of the largest ENGOs, Milieukontakt, would only be able to fully investigate one big project at a time (Milieukontakt, 2017).

By comparison, FYROM was prompter in successfully complying with the legislation on time (ECS, 2007: 16). The Law on the Environment, which transposed the directive, was passed in 2005. As it was the case for Albania, this also coincides with the period when the country was granted official candidate status, reinforcing the idea that countries have been more responsive when size and speed of rewards combined with the credibility of conditionality were high. Article 77 of the law stipulates that the Government decides on a case-by-case basis which projects need a mandatory assessment and Articles 82 and 90 ensure public participation and scrutiny (ECS, 2008c: 25). Ordinances passed in 2008 further enhance the enforcement capacities (ECS, 2008b: 13), meanwhile the long term-commitment for

the implementation of the EIA directive was declared to be of strategic importance (Ministry of Economy of Macedonia, 2010: 20).

While the legislation ensures some public participation, it appears that this is also improperly enforced in Macedonia (ECS, 2012: 209; European Commission, 2012b: 61). Similar to the Albanian case, when invited to participate, ENGOs would be informed about the agenda too late to allow for the formulation of constructive responses<sup>7</sup>. Following these complaints, the Ministry of Environment and Physical Planning organized a series of public hearings on EIA projects in 2013 (ECS, 2013: 167). A coordinative Body was also created for ensuring the communication between the Government and the ENGOs (Ministry of Environment and Physical Planning, 2014: 241). Nonetheless, the civil society was still denied 'real' participation (WWF, 2015: 87). When the watchdog ENGO Eko-svest signalled both the Macedonian authorities and the EU Delegation in Macedonia that the Corridor X project sought to obtain the EIA without conducting public discussions, the EU delayed funding for the project until the complaint had been resolved (Eko-svest, 2015: 6).

As it was the case with Albania, though to a lesser extent, administrative capacity was also a barrier for implementation in Macedonia. However, the Macedonian Government has taken more credible measures for overcoming this issue, with successive decisions taken in 2010 and 2011 that strengthened the administrative capacities for enforcement (European Commission, 2011b: 72; ECS, 2012: 209). Macedonia also received over €1.5 million of EU funding for reinforcing the institutional capacity of the Energy Department and the Energy Agency (OJEU, 2013). Successive amendments brought to the Law on Energy further strengthened these institutions in 2015 (Ministry of Economy of Macedonia, 2015: 19). While the

membership prospects for Macedonia were less credible at that time, the intermediary rewards offered by the Commission, namely technical and financial assistance, had a positive impact on compliance. These findings are also observed by Eko-svest, who's experience suggests that 'Macedonian authorities can really perform well under the pressure of the European Commission, and when finances are at stake' (Eko-svest, 2011: 35). This is not to say that administrative capacity problems are no longer present, as political instability and frequent changes of high-ranking officers still create confusion about priorities among the civil service<sup>5</sup>.

The participation of the civil society in the enforcement of the legislation has also been crucial in whistle-blowing activities. Such examples include the case of the Boskov Most project, which attempted to avoid producing an assessment on the plant's impact on the local biodiversity (Bankwatch Network, 2013: 1), or the Vratnica project which was allowed to be developed without an EIA (WWF, 2015: 25). Nonetheless, the number of projects that ENGOs could monitor was also low in Macedonia, due to lack of resources among the civil society.

While both countries have transposed the requirements of the directive, the implementation record with the EIA in both cases indicates a 'shallow' compliance. Both the public institutions and the civil society have been unable to ensure the successful enforcement of the legislation. Without the intervention of the Commission, the Secretariat also appears to be unable to provide sufficient incentives for countries to correct their behaviour.

#### 4.4 The Sulphur in Fuels Directive

The 1999/32/EC Sulphur in Fuels Directive imposes strict limits on the SO<sub>2</sub> content in fuels. In heavy fuel oil the Sulphur content cannot exceed 1%, while in gas oil the threshold is 0.1%. The directive had to be implemented and enforced by the 31<sup>st</sup> of December 2011. In the case of this directive, no facilities in Macedonia are affected. Therefore, the expectation is that, with higher implementation costs and vested veto player interests, compliance with this directive should be lower in Albania. Nonetheless, this comparison reveals that other explanatory variables, such as weak administrative costs and sanctioning mechanisms can also lead to non-compliance, even when adoption costs are low.

Albania has two oil refineries, Ballesh and Fier, with only the former being operational and covered by the Sulphur in Fuels Directive. The Albanian Ministry of Economy, Trade and Energy, responsible for the country's oil extraction and refinement industry, only started drafting legislation for transposing the directive after the deadline has passed. The percentage of Sulphur allowed by Albania was of up to 7% in heavy fuel oil and 0.2% in gas oil, significantly over the limits imposed by the directive (ECS, 2012: 203). The Ministry motivated the inaction based on the incapacity of the refineries to meet the high investment costs (ECS, 2012: 204). Therefore, the industrial producers put significant pressure on the Albanian Government and affected the compliance record. The influence of these actors was also explained by a high degree of state capture, as the sector was riddled with corruption scandals and close connections with high ranking politicians. A revealing scandal was the privatization of the state oil producer Albpetrol. The company that

won the bid for Albpetrol, Vetro Energy, failed to provide the down-payment of \$170 million after receiving months of extensions from the public authorities (Reuters, 2013). It was later revealed that the Government knowingly allowed Vetro Energy to inflate its bid for Albpetrol without real financial backing, as the company was owned by Rezart Taci, a close friend of Prime Minister Sali Berisha (Financial Times, 2013).

After receiving several complaints from the Secretariat, the Albanian government unilaterally decided that it will only implement the directive in two steps, with the purpose of reaching full transposition by 2015, four years past the deadline (ECS, 2012: 204). This decision was not welcomed by the Secretariat, which launched the ECS-1/13 dispute settlement procedure against Albania, by sending an opening letter to initiate the preliminary procedures and asking the government to motivate the failure to comply. In the first two years after the launch of the infringement procedure, the Albanian Government had not formulated any response to the Secretariat's demands. It appears that the weak sanctioning capabilities of the Secretariat have been insufficient to overcome the adoption costs and interests of domestic veto players.

The directive was only fully transposed in 2015 (ECS, 2015: 49), period when Albania officially became a candidate for EU membership. This seems to suggest again that compliance was higher when signals were sent from the EU itself, rather than the Secretariat, and in times when the credibility of conditionality was high. Nonetheless, the new legislation only ensured the mere transposition of the directive, with the National Environmental Agency being severely deprived of the necessary technical, human and financial resources needed for enforcement (ECS, 2016; European Commission 2016a). The 'shallow' enforcement of the national legislation

in the sector was revealed by an investigative journalism team from the Fiks Faren news-outlet, which collected and tested oil samples produced in the Ballesh refinery, to reveal that the Sulphur content had been significantly higher than the requirements of the nationally imposed standards (Friends of Kosovo, 2014).

Compared to Albania, none of the facilities in Macedonia are directly impacted, with the only functioning refinery, OKTA, producing fuels that are not covered by the Sulphur in Fuels Directive. Nonetheless, there were early plans to modernize the facility (Ministry of Economy of Macedonia, 2010: 12), and FYROM had to establish a regulatory system capable of implementing and enforcing the directive in the future, especially if OKTA were to start producing either heavy fuel or gas oil (ECS, 2011: 104).

Regardless of the low adoption costs and the lack of domestic veto players opposing the directive, compliance was also problematic in Macedonia. The Secretariat launched the ECS-4/13 dispute settlement procedure, because the legislation adopted in 2011 by FYROM was insufficient, as it failed to make inspections mandatory (ECS, 2013: 167). As the Macedonian Government failed to respond to the opening letter, the Secretariat took a further step in the infringement procedure and formulated a Reasoned Opinion on the 21<sup>st</sup> of December 2015. An EnC official explained that the desire of the Secretariat was to avoid taking the case to the Ministerial Council, which could sanction Macedonia by limiting its voting rights<sup>5</sup>. FYROM eventually complied by adopting the Law on Ambient Air Quality and rulebooks on quality of fuels in August 2016 (ECS, 2016: 94).

In the case of Macedonia, it appears that the lack of compliance was attributed to a slow administrative process and a lack of sanctioning mechanisms of the EnC, which failed to create a sense of urgency to comply. Therefore, contrary to expectations, compliance with the Sulphur in Fuels Directive was highly problematic in both Albania and Macedonia. The comparison also reveals the crucial role played by the implementation costs for the industrial actors. Moreover, in both cases, the Secretariat's lack of effective sanctioning mechanisms appears to have been a significant inhibitor of compliance. Albania, which had to bear significantly higher adoption costs, but was going through a period of high size and credibility of rewards from the EU, was quicker to successfully transpose the directive than Macedonia. Nonetheless, while the Albanian government transposed the obligations on paper, it appears to still be reluctant to ensure the costly enforcement.

#### **4.5 The Large Combustion Plants Directive**

The most complex piece of legislation of the EnC's environmental acquis is the 2001/90/EC Large Combustion Plants Directive (LCP). The directive ultimately involves the upgrade or replacement of highly pollutant thermal power plants with a generation capacity greater than 50MW (ECS, 2013: 165). Different standards are imposed on plants based on their age. Facilities built after 2002 must meet the strictest requirements, while the standards on plants built between 1987 and 2002 are somewhat more permissive. Meanwhile, all plants built before 1987 must be phased out of production. Given the over-reliance on outdated thermal power plants, this directive creates immense adoption costs in the Western Balkans and interferes with the interests of national elites controlling the energy assets (Wynn, 2006).

Another piece of legislation, the 2010/75/EU Industrial Emissions Directive (IE), also has to be implemented by 2018. This legislative act imposes strict limits on any new thermal energy plants. Thus, the implementation of these two directives is also costly to implement vis-à-vis future developments, as it sets clear conditions for investments in energy projects and has direct implications for a country's means of production<sup>5</sup>.

Acknowledging the difficulty that contracting partners will face in complying with this directive by the 31<sup>st</sup> of December 2017, the Secretariat created an Environmental Task Force to provide technical assistance and allows for flexibility in implementation. To relive some of the pressure of replacing old plants, by 2027 contracting countries have the option of following National Emission Reduction Plans, which limit emissions at national level, rather than for individual plants. In addition, plants can also apply for opt-outs for a maximum of 20.000 operational hours.

Therefore, given the difference in energy mix, compliance is expected to be significantly more problematic in Macedonia, given its over-reliance on lignite-powered plants and its consequent higher adoption costs. It should be noted however, that as the compliance deadline had still not expired by the time of this analysis, only very limited conclusions can be made about the implementation of the directive. Nonetheless, analysing the preliminary actions taken by the two countries is revealing for the importance of adoption costs and administrative capacities.



Albania's only functional thermal power plant, in Fier, was completely phased out in 2007 (Ministry of Economy of Albania, 2009: 6). Since then, the Albanian company KESH has built a new 100MW thermal plant at Vlore, co-financed by the EBRD, the EIB and the World Bank, in order to alleviate the country's dependency on hydropower energy (EBRD, 2017). While the plant fully satisfies the IE requirements (SEEC, 2013: 65), it remains non-operational due to technical problems unlikely to be fixed (Change Partnership, 2015: 28). Therefore, Albania's adoption costs with the LCP are minimal. Even so, special interests exist in the sector, as it was revealed by the corruption scandal involving Argita Berisha, daughter of Prime Minister Sali Berisha and a businessman seeking to invest in a thermal power plant. The investor was asked by Argita Berisha for a 'success fee' worth almost 3% of the total value of the project (Bankwatch Network, 2014: 21).

Regardless of such problems, the Government has been very prompt to comply. The Law on Environmental Permits adopted in 2011 fully transposes the directive and ensures ongoing monitorization and enforcement (ECS, 2016: 36). Amendments adopted in 2014 further enhance the enforcement capacities, efforts also acknowledged by the Commission (2014b: 56). While some further investments would be needed to increase the administrative capacity, Albania is 'in position to fully implement the provisions of both Directives' (ECS, 2015: 49). Therefore, while the LCP and IE directives are the most complex of the EnC environmental acquis, the low adoption costs and lack of opposing veto players appear to have set Albania on the course of compliance. This clearly contrasts the record that Albania had with the other two directives analysed, which bore significantly superior implementation costs on both the Government and the owners of energy facilities and oil refineries.

In FYROM, given the dependency on lignite and thermal power plants, it was clear from the beginning that the LCP directive would be highly problematic to implement (IEA, 2008: 254). The European Commission also acknowledged that this was ‘a considerable challenge for the country’ (2011b: 73). The LCP directive directly affects nine thermal plants (ECS, 2016: 94). In addition, the high costs do not appear to be diminishing in the future, with the Government planning to open up a new coalmine at Zivojno, to supply lignite for the power plants in Bitola, Oslomej, Skopje and Kogel (Change Partnership, 2015: 31). It has been estimated that over €1.2 billion worth of investments are needed for the full implementation of the LCP directive in Macedonia (SEEC, 2013: 70). While the EBRD, the EIB and the World Bank have made funds available for this process, the Government appears to be incapable to overcome these costs. With the thermal plants owners very closely connected to government officials and given the consequent intertwined interests, the role played by these costs is highly significant<sup>7</sup>.

Macedonia took some preliminary steps in preparation of the transposition of the LCP, by amending the Law on Air Quality and adopting a rulebook limiting levels of emissions, which came into effect in 2013 (ECS, 2009: 30). In 2014, measures were also taken towards the implementation of the IE directive (ECS, 2014: 105), but further amendments are still necessary for full transposition (ECS, 2016: 96). The more difficult process however, is the implementation. Such complex legislation requires a well-resourced and technically-prepared administration. The Commission expressed its concern with the lack of administrative capacity for implementation both at national and local levels (2014a: 55). While the country can access IPA funds for ameliorating this situation, countries like Macedonia lack the essential capacity to even absorb such funds in the first place (Qaraj, 2010: 82). One of the problems is,

according to a Secretariat official, that hiring of the civil servants in the sector is done based on political pressures and the domestic institutions are deprived of necessary experts<sup>5</sup>.

Another aspect that might cause problems to the implementation of the LCP directive is the cooperativeness of the thermal power plant owners. The country submitted its National Emission Reduction Plan to relieve some of the burden of the energy producers in the following years, but surprisingly, none of the power plants requested an opt-out (ECS, 2016: 96). It is too early however to make any conclusions about how these actors will behave once the compliance deadline has passed. In its latest report, the European Commission assessed that implementation is still at an early stage, Macedonia being unprepared to successfully enforce its obligations (2016b: 74). Therefore, while Albania is on track to fully comply with the directive, Macedonia appears to be unprepared and incapable of effective compliance.

## **4.6 Discussion**

The findings seem to confirm the hypotheses of the external incentives model. Size and speed of rewards alongside the credibility of conditionality were determinant factors for how responsive the two governments have been. In periods of high credibility of conditionality and size and speed of rewards, even significant adoption costs and veto player opposition could be overcome. Given the complexity of the accession process, it is difficult however to establish a direct causal link between compliance with single directives and the offering of major rewards such as the candidate status. Nonetheless, intermediate rewards, such as technical and financial assistance have also proven to be enablers of compliance.

When it comes to domestic actors, the civil society had a significantly inferior impact than that of the energy producers. The costs incurred on the energy sector combined with its influence on government, were decisive factors for the non-compliance with the Sulphur in fuels Directive in Albania and with the LCP in Macedonia. Civil society actors also played an important role. While the ENGOs were highly active, their limited resources combined with a lack of transparency and low public engagement of the government limited their overall influence. Another crucial barrier to implementation in all cases analysed was the weak administrative capacity. Even in the lack of significant adoption costs, the poor capabilities of public institutions have hindered compliance. The administration capacity is only further diminished by state capture, ingrained corruption, and political appointments in the civil service. This low capacity for implementation has led to a 'shallow' Europeanisation of Albania and Macedonia's energy and environmental sectors.

Another important explanatory factor was the sanctioning and monitoring capacity of the EnC. Early on, the Secretariat established a 'credible presence' in the region and has been effective at monitoring compliance (IEA, 2008: 67). As it was the case with the EIA directive in Albania, or with the LCP directive, the secretariat was able to offer significant technical assistance. Nonetheless, this did very little in changing the incentive structure of domestic veto players and no progress was noted. With no effective sanctioning mechanisms, it was easy for governments to avoid compliance when it did not fit well with their interests<sup>7</sup>. A revealing example was that of the Sulphur in Fuels directive and the EIA in Albania, where the signals sent by the Secretariat were insufficient. Compliance was only achieved when the European Commission increased the size and credibility of its rewards.

Nonetheless, generalisations are difficult to make based on a small-N case study. More comprehensive studies, involving not just the Western Balkans states, but also countries such as Moldova and Ukraine, are necessary for establishing the impact of Europeanisation through the EnC. This study has also only focused on the policy dimension of Europeanisation. As EnC members have different incentive structures in place than it was the case for CEECs, future research needs to also analyse how these circumstances have impacted differently the domestic politics and polity dimensions. Social-learning and lesson-drawing models of Europeanisation could also be suitable for complementing the findings of this study, which was largely based on rationalist arguments. Despite the need for further research, this study represents an important contribution to establishing the relative importance that different variables have in explaining Europeanisation and compliance in the Western Balkans. The comparative case study of Albania and Macedonia has also highlighted the necessity of analysing such variables together, as part of a more comprehensive model. While each of the variables had an individual effect, the interplay between them was also important to understand in order to accurately explain and predict compliance.

## 5. Conclusion

The Western Balkans offered a critical test for studying the EU's influence on non-member states in its neighbourhood. The EnC, which has developed into the main tool with which EU is trying to export its market-governance model in the region, also represented a perfect case study for researching the transformative power of Europeanisation. The findings of this paper confirm the idea that through conditionality and rewards, Europeanisation can be promoted even in 'weak states' (Borzel, 2011: 12). By employing a comparative case study of compliance with three environmental directives, this thesis has revealed what are the main drivers of compliance with the EnC acquis.

The explanatory variables of the external incentives model have been crucial to this analysis. Therefore, the size and speed of rewards offered by the EU and the credibility of conditionality can be determinant factors for how cooperative a state is when implementing EU legislation. Given the EU's reluctance to offer its most sizeable reward, membership, another explanatory variable of the rationalist institutionalist model, the adoption costs and domestic veto players, had a significant role in determining the outcome of compliance. The evidence suggests that in the circumstances when the energy producers have to bear high implementation costs, and given their close connections with the interests of high ranking politicians, such actors can represent significant barriers to compliance. At the same time, ENGOs have been highly active and played the crucial role of whistle-blowing when they have detected improper implementation. Nonetheless, their lack of resources combined with a governmental hostility towards transparency and public participation have greatly limited their ability to influence the governance process. Another

inhibitor of compliance has been the weak administrative capacities that states have in ensuring the effective implementation of transposed legislation.

This study also serves as an assessment of the EnC's enforcement and sanctioning mechanisms. While the Secretariat has been very active in monitoring compliance and has proven capable of offering technical assistance, its dispute settlement procedure and weak sanctioning instruments were ineffective at promptly resolving cases of non-compliance. In addition, the Secretariat also struggled to identify and correct instances of incorrect implementation of already transposed directives. The combination of these factors led to a 'shallow' Europeanisation of the Albanian and Macedonian energy and environmental sectors. Further research is needed for revealing how these circumstances affect the wider realms of politics and state structures in the Western Balkans and to assess whether a 'deeper' Europeanisation of non-member states is possible in the absence of clear membership perspectives.

## Notes

1. The Western Balkans countries are Albania, Bosnia-Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, and Kosovo. As Croatia is already a member of the EU, for the purposes of this paper it will not be included when referring to this category.

2. The Energy Community consists of the EU plus 8 contracting partners: Albania, Bosnia and Herzegovina, Kosovo, former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia and Ukraine. There is also one applicant country, Georgia, and 3 observers: Armenia, Norway and Turkey.

3. More than 120 countries recognize the 'Republic of Macedonia' name. However, with Greece refusing to recognize it, the European Union and the United Nations use the 'Former Yugoslav Republic of Macedonia' in their documents. This thesis uses both FYROM and 'Macedonia' to refer to this country.

4. Interview, Policy Officer, European Commission, DG Energy, Brussels, 01.08.2016

5. Interview (telephone), Environment Officer, Energy Community Secretariat, 18.07.2016

6. Interview, Head of Department, European Commission, DG NEAR, Brussels, 12.08.2016

7. Interview (telephone), Former Researcher, Analytica Macedonia, 19.07.2016



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