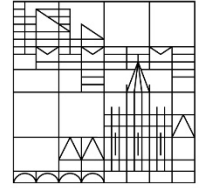




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Wolves in Sheep's clothing

STATE CAPTURE IN SERBIA AND ITS INFLUENCE ON EU
ENLARGEMENT

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Abstract:

This thesis analyses the effect of state capture on the cost/benefit calculation of EU accession in Serbia through the framework of the External Incentives Model by Schimmelfennig and argues that state capture severely increases the adoption and implementation costs of EU rule adoption for political, ruling elites in Serbia. Following a mechanistic process-tracing research design, this thesis shows how state capture allowed Serbian political elites in the SNS party led by Aleksander Vučić, to reduce checks and balances in society and create an unequal democratic playfield from 2012 onwards. This thesis finds that under such conditions, there are high power, opportunity, and welfare costs involved in the bona fides implementation of politically sensitive pieces of the EU acquis. Faced with high costs for EU rule adoption, these elites balance engagement and disengagement through the selective implementation and enforcement of EU acquis. More broadly, the findings indicate that state capture decreases both the effectiveness as well as the credibility of EU conditionality in Serbia. Lastly, state capture is identified as a key obstacle to be overcome in the EU enlargement process.

Keywords: State capture, EU enlargement, External-Incentives Model, rule of law, Serbia

Chapter 1. Introduction

The observation that the European Union is not a static, finished project but is instead continually changing is perhaps most noticeable in the field of EU enlargement. Since the foundation of the EU's predecessor, the European Economic Community, that project has grown to initially 28 member states, reducing to 27 member states with the exit of the United Kingdom in 2019. Article 49 TEU stipulates that any European country which respects the values embedded in article 2 TEU can apply to join the European Union. Actual membership is made conditional to meeting requirements with regards to democratic institutions, a stable market economy, and the capacity to implement the obligations which stem from EU membership.¹ By holding far-reaching change conditional on its membership, the EU has sought to promote and obtain far-reaching reforms in acceding countries.

The current focus of EU enlargement is related to the WB6: 6 countries in the Western Balkans for which there exists a European membership perspective.² Among these is Serbia, the largest country in the Western Balkans, home to around 7 million people. However, despite the EU's efforts to promote transformational change in the field of democracy, the rule of law and human rights, it has been met with a distinct lack of progress. Stagnation and even backsliding levels of democracy and the rule of law are present in Serbia.³ The most recent Serbian parliamentary elections, held on June 21, were boycotted by the opposition, who alleged that the elections were unfair and lacked legitimacy. This boycott led to a landslide victory of the ruling SNS party, led by Aleksandar Vučić, who is now able to rule without any real opposition party being in parliament.⁴

The EU itself has stated that all Western Balkans countries, including Serbia, show: "clear elements of state capture, including links with organized crime and corruption at all levels of government and administration."⁵ State capture refers to the control of state resources and powers for private or party-political gain by actors who have infiltrated state structures through clientelist networks and use these state structures as a mantle to hide their corrupt actions.⁶ In Serbia, this state capture focusses on strengthening the political party SNS, led by Aleksandar Vučić, over their political competitors. This form of party state capture more specifically refers to an abuse of state power and resources by

¹ European Commission: Accession criteria. Available online at https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accession-criteria_en.

² The WB6 consists out of Albania, Bosnia, North Macedonia, Serbia, Kosovo, Montenegro

³ Kapidžić, Damir (2020): The rise of illiberal politics in Southeast Europe. In *Southeast European and Black Sea Studies* 20 (1), pp. 1. DOI: 10.1080/14683857.2020.1709701

⁴ Florian Bieber (2020): The Election of Losers. Available online at <https://europeanwesternbalkans.com/2020/06/24/the-election-of-losers/>.

⁵ European Commission (2018): Communication: A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans. COM (2018). Available online at https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf.

⁶ Richter, Solveig (2017): Der Wolf im Schafspelz. Illegitime Herrschaft durch State Capture in Nachkriegs- und Transitionsgesellschaften. In *ZeFKo* 6 (2), pp. 183 DOI: 10.5771/2192-1741-2017-2-174.

political elites to the benefit of themselves and their political party.⁷ State capture represents “an important back-drop to understanding the nature, scope, and challenges of corruption in the region.”⁸ While state capture is a practice that we can observe beyond Serbia, into the Western Balkans and the EU, for reasons of scope and focus, this thesis limits itself to the case of Serbia.⁹ Initially named as “frontrunner” of EU enlargement and seemingly being enthusiastic about the EU enlargement process, Serbia has seen increased levels of state capture and democratic backsliding in recent years. As domestic political considerations and developments can have a significant impact on whether EU enlargement makes progress or not, this thesis seeks to find out what the role is of state capture in Serbia on the process of Serbian accession into the EU.

1.2 Research Question

This thesis adopts the “External Incentives Model” of Schimmelfennig and Sedelmeier to see what effect state capture has on the cost/benefit calculation, which this model conceives to lie at the heart of the EU accession process.¹⁰ In doing so, it picks up the theoretical challenge which was put forward by Richter and Wunsch, who have stated that “traditional cost-benefit calculations fail to explain observed decoupling between formal compliance with membership criteria and stagnating, if not declining, democratic performance.”¹¹ There seems to be a gap in the existing literature with regards to analysing the effects of state capture on the cost/benefit calculation of EU enlargement in Serbia following the EIM of Schimmelfennig and Sedelmeier. This is a gap which this thesis seeks to fill. Therefore, this thesis aims to answer the following main research question: *How does state capture affect the domestic adoption costs and benefits of EU accession in Serbia?*

1.3 Societal relevance

Besides the theoretical relevance with regards to the EIM and the extent to which state capture affects the conditions which determine the success of EU rule adoption or not, this thesis also has sizeable societal relevance. The recent von der Leyen Commission has stated how the Western Balkans are a priority for the current European Commission, and that “the Western Balkans belong in the EU.”¹² The

⁷ Ibid.

⁸ European Commission (2013): Thematic Evaluation of Rule of Law, Judicial Reform and Fight against Corruption and Organised Crime in the Western Balkans – Lot 3. Available online at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial_assistance/phare/evaluation/2013_final_main_report_lot_3.pdf.

⁹ Innes, Abby (2014): The Political Economy of State Capture in Central Europe. In *J Common Mark Stud* 52 (1), pp. 88–104. DOI: 10.1111/jcms.12079.

¹⁰ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe. In *Journal of European Public Policy* 11 (4), pp. 661. DOI: 10.1080/1350176042000248089.

¹¹ Richter, Solveig; Wunsch, Natasha (2020): Money, power, glory: the linkages between EU conditionality and state capture in the Western Balkans. In *Journal of European Public Policy* 27 (1), pp. 41. DOI: 10.1080/13501763.2019.1578815.

¹² Alice Tidey (2020): 'The Western Balkans belong in the EU', says Ursula von der Leyen. Euronews. Available online at <https://www.euronews.com/2020/05/06/the-western-balkans-belong-in-the-eu-says-ursula-von-der-leyen>.

current Commissioner on EU enlargement, Olivér Várhelyi, has also indicated that he wishes to see the accession of at least one candidate during his term as commissioner.¹³ The lack of progress with regards to democratization and the rule of law, and even an increase in authoritarianism in the Western Balkans, raises questions about the effectiveness of the current EU strategy towards enlargement.¹⁴ The EU's conditionality strategy has also been accused of empowering state capture in the Western Balkans, which makes it additionally relevant to find out what effects state capture has on the EU enlargement process.¹⁵ Understanding the influence of state capture on Serbia and the EU enlargement process is the first step in ensuring that sustainable and transformative change takes place, not only until the moment of accession but also in the years after membership.

1.4 Guide to this thesis

After this introduction, Chapter 2 of this thesis will give a brief background on EU enlargement and the concept of state capture. Chapter 3 will discuss the EIM as the main theoretical framework used in this thesis. Chapter 4 will provide an overview of the research design methodology applied in this thesis, justifying in more detail the choices involved in the research design. Chapter 5 is the main empirical chapter of this thesis, consisting of 4 subchapters which each discusses one step in the 4-step mechanistic process-tracing research design applied in this thesis. Chapter 6 seeks to contextualise the findings by discussing the effect of state capture on the effectiveness and credibility of EU conditionality. It also provides policy recommendations to reduce state capture in Serbia. Lastly, chapter 7 concludes by answering the main research question, pointing to the theoretical and societal relevance of this thesis, and proposing avenues for further research.

¹³ European Commission: Statement by President von der Leyen at the joint press conference with President Michel and Andrej Plenković, Prime Minister of Croatia, following the EU-Western Balkans Zagreb Summit. Available online at https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_825.

¹⁴ Freedom House: "Nations in Transit 2020: Dropping the Democratic Facade". Available online at <https://freedomhouse.org/report/nations-transit/2020/dropping-democratic-facade>.

¹⁵ Richter, Solveig; Wunsch, Natasha (2020): Money, power, glory: the linkages between EU conditionality and state capture in the Western Balkans. pp. 41.

Chapter 2: Literature review and Background: EU Enlargement and State Capture

2.1 A brief overview of EU Enlargement

EU Enlargement has traditionally been viewed as one of the most important foreign policy strategies of the EU. The enlargement from the original six founding members of the EU to the current 27 member states initially provided a boost of democratization, economic growth, good governance, and higher consumer/environmental standards across Europe.¹⁶ For example, the countries in the 2004 enlargement have experienced an increase in per capita GDP of approximately 12%.¹⁷ Nevertheless, the process has also faced criticism on several fronts. Critics have questioned the sustainability of EU conditionality by pointing towards considerable democratic backsliding in certain EU countries such as Poland, Bulgaria, and Hungary, which shows how EU leverage over enlargement countries is fragile after accession.¹⁸ Critics have also pointed towards the alleged accession fatigue, which characterized the last ten years of the WB6 enlargement process with low motivation to make far-reaching steps on both sides of the aisle.¹⁹ This section provides an overview of the EU enlargement process, its goals, how it operates, and its legal foundations. Furthermore, it gives a background on state capture, a crucial characteristic, and challenge of various countries in the Western Balkans, of which Serbia is a prime example.

Article 49 of the Treaty of the European Union sets out the legal basis for any European state to join the EU. It states that European countries who respect the values embedded in Art. 2 TEU can apply to become a member.²⁰ Besides this, the applicant country has to fulfil a number of eligibility criteria, which are commonly referred to as the Copenhagen Criteria, see table 1.²¹

Table 1: Copenhagen Criteria
<ul style="list-style-type: none">• stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;• a functioning market economy and the capacity to cope with competition and market forces in the EU;• the ability to take on and implement effectively the obligations of membership, including the aims of political, economic and monetary union.

¹⁶ Sedelmeier, Ulrich (2017): Enlargement: Constituent Policy and Tool for External Governance: Oxford University Press. pp 407.

¹⁷ Nauro Campos, Fabrizio Coricelli, Luigi Moretti (2014): How much do countries benefit from membership in the European Union? Available online at <https://voxeu.org/article/how-poorer-nations-benefit-eu-membership>.

¹⁸ Schimmelfennig, Frank; Sedelmeier, Ulrich (2020): The Europeanization of Eastern Europe: the external incentives model revisited. In Journal of European Public Policy 27 (6), pp. 815. DOI: 10.1080/13501763.2019.1617333.

¹⁹ Džankić, Jelena; Keil, Soeren (2019): The Europeanisation of Contested States: Comparing Bosnia and Herzegovina, Macedonia and Montenegro. In Jelena Džankić, Soeren Keil, Marko Kmezić (Eds.): The Europeanisation of the Western Balkans, vol. 10. Cham: Springer International Publishing, pp. 182.

²⁰ Article 2 TEU reads: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities"

²¹ European Commission: Accession criteria. Available online at https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accession-criteria_en.

Besides these Copenhagen criteria, there is also a security dimension covered by the Copenhagen Plus criteria, which is a set of WB specific conditions on regional cooperation, reconciliation, and the need to resolve bilateral issues. Several bilateral issues have plagued the accession process, such as between North-Macedonia and Greece (which was resolved with the Prepsa agreement two years ago) and between Kosovo and Serbia.²² Lastly, besides these criteria, the European Council has also made clear that its final decision to allow accession candidates also depends on its capacity to integrate new members.²³

The EU has agreed to a Stabilization and Association Agreement, which provides the framework which structures the EU's relationship with the WB6. Bosnia & Herzegovina and Kosovo are only 'potential candidate countries.' A recent decision opened the door to negotiations being initiated with the candidate countries Albania and North Macedonia. Montenegro and Serbia are the only two countries with which the EU has actually opened talks. These negotiations discuss the timing and conditions of the transfer of all EU rules (the Acquis Communautaire) to the target state. Thirty-five different policy fields have been divided up into chapters, each of which the EU negotiates separately. Accession countries must first fulfil specific opening standards to open a chapter, the judgment of which is subject to the full unanimous consent of all 27 EU member states. The European Commission monitors the candidate progress in all fields, brings out reports and recommendations, but EU member states have a veto on each step of the negotiation process. In Serbia, 18 out of 34 chapters have been opened, but in only two chapters have the requirements been sufficiently reached so that these chapters could be closed.²⁴

Recently, the Commission gives the process increased political attention, resulting in the 2018 Communication called: "A credible enlargement perspective for and enhanced EU engagement with the Western Balkans," which set out a more pro-active approach of the EU towards the WB.²⁵ The new European Commission led by Ursula von der Leyen has continued this more pro-active approach towards the Western Balkans, by putting forward a 'revised methodology' on EU accession.²⁶ This new methodology now uses a "fundamentals first" approach, clustering specific vital chapters (such as

²² European Parliament: The Western Balkans and EU Enlargement: Lessons learned, ways forward and prospects ahead". Available online at [https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/534999/EXPO_IDA\(2015\)534999_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/534999/EXPO_IDA(2015)534999_EN.pdf).

²³European Commission: Integration capacity. Available online at https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/integration-capacity_en#:~:text=Integratin%20capacity,known%20as%20'absorption%20capacity'%20.

²⁴ The 2 chapters which have been closed are culture & education. See: European Commission: Serbia. Available online at https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/serbia_en.

²⁵ European Commission (2018): Communication: A Credible Enlargement Perspective for and Enhanced EU Engagement with the Western Balkans. COM (2018). Available online at https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf.

²⁶ European Commission (2020): Enhancing the accession process – A credible EU perspective for the Western Balkans. Available online at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/enlargement-methodology_en.pdf.

judiciary and fundamental rights, justice, freedom and security, and public administration reform) together and making these the core of the negotiations. This new, reformed approach seeks to inject more credibility, dynamism, and predictability into the process while at the same time enlarging the political steering role which member states have.

Much has been written on EU enlargement, especially concerning enlargement towards Central and Eastern Europe.²⁷ A significant focus of the literature with regards to EU enlargement is the way in which EU rules changed domestic contexts and institutions, which is a specific focus of a broader literature, also known as “Europeanization.”²⁸ Increasingly there is attention to domestic political constraints and the (re)nationalization of enlargement policy on the side of the EU. Still, less attention is given to the domestic political considerations which influence how elites from enlargement countries engage with the EU.²⁹ To fully understand why political, ruling elites within accession candidates implement or do not implement EU rules, we must therefore improve our understanding of the domestic politics and institutions of these countries. Understanding the domestic politics of accession countries is especially relevant because various Western Balkan countries seem to be stuck in a hybrid situation on their way to democratization and good governance reform despite significant attempts of the EU to engage with the region. Whereas after the fall of the Berlin wall, Central and Eastern Europe managed to follow a path leading to EU membership, most Western Balkan countries never saw such change in the transitional society, which followed the breakup of Yugoslavia.³⁰ The notable exceptions here were Slovenia and Croatia. Slovenia was a liberal republic within Yugoslavia and had pushed for political liberalization within the Yugoslav Federation and had a relatively well-developed civil society and free media and joined in 2004. Croatia’s accession only came about in 2013. It was enabled by its strengthening of rule of law institutions, the fact it had no parties opposing EU integration, and its self-identification with the west.³¹

²⁷ Schimmelfennig, Frank (Ed.) (2005): *The Europeanization of Central and Eastern Europe*. Ithaca, NY: Cornell Univ. Press (Cornell paperbacks). Available online at <http://www.h-net.org/reviews/showrev.php?id=23705>.

²⁸ See for example footnote 26 & Lavenex, Sandra; Schimmelfennig, Frank (2008): *Relations with the Wider Europe*. In *J Common Mark Stud* 46, pp. 145–164. DOI: 10.1111/j.1468-5965.2008.00821.x. & Frank Schimmelfennig (2015): *Europeanization beyond Europe*. In *Living Reviews in European Governance* 10 (1), pp. 1–34. Available online at <http://www.europeangovernance-livingreviews.org/Articles/lreg-2015-1/download/lreg-2015-1.pdf>.

²⁹ Wunsch, Natasha (2017): *Between indifference and hesitation: France and EU enlargement towards the Balkans*. In *Southeast European and Black Sea Studies* 17 (4), pp. 541. DOI: 10.1080/14683857.2017.1390831. & Vachudova, Milada Anna (2014): *EU Leverage and National Interests in the Balkans: The Puzzles of Enlargement Ten Years On*. In *J Common Mark Stud* 52 (1), pp. 124. DOI: 10.1111/jcms.12081.

³⁰ Interview G, held with expert on 18-05-20

³¹ Bieber, Florian (2020): *The Rise of Authoritarianism in the Western Balkans*. Cham: Springer International Publishing. pp 23.

2.2 State capture: a short background

A crucial characteristic of Western Balkan states and Serbia in particular, is the level of state capture which permeates its society, political system and institutions.³² Originally the term was coined by World Bank researchers who were investigating the influence of the private sector on the state within post-USSR countries, specifically how private interests were seeking to extract rents through manipulating the state.³³ Research by others, such as Grzymala-Brusse has focused less on private, economic agents and more on agents within a state itself who seek to use state resources and powers for their own private or party-political gain.³⁴

According to Richter, state capture refers to “processes whereby state institutions and intermediary actors, such as political parties or parliaments, become hijacked or infiltrated by clientelist networks who lend their informal ways of decision making, including corrupt practices, a formal mantle.”³⁵ State capture goes beyond the misconduct of individual elites or citizens (such as in petty corruption). It refers to a collective and institutionalized form of conduct embedded in networks of informal relationships where the separation between an actor in his formal office and his private interests are blurred.³⁶ State capture derives its power from clientelist networks, which can be funded by control over state resources and public employment. Clientelism is defined here as “the contingent and targeted distribution of selective goods to supporters in exchange for their loyalty.”³⁷ The role of institutions is key here because it is not straightforwardly the case that clientelism thrives under weak government institutions, but rather that the institutions are built with the ‘extractive goals of rulers’ in mind.³⁸ Informal relationships are essential in both state capture and clientelism, as it is this informality that allows political elites to create, communicate, and enforce rules and procedures outside the official channels.³⁹ State capture is not limited to the Western Balkans. Instead, it is a phenomenon which we see especially in transitioning societies in which the rule of law and democracy did not come into being through a bottom-up process, but came into being in a short period of time.⁴⁰

³² Balkans in Europe Policy Advisory Group: The Crisis of Democracy in the Western Balkans. Authoritarianism and EU Stabilitocracy. Available online at <http://www.biepag.eu/wp-content/uploads/2017/03/BIEPAG-The-Crisis-of-Democracy-in-the-Western-Balkans.-Authoritarianism-and-EU-Stabilitocracy-web.pdf>.

³³ Rothstein, Bo; Varraich, Aiysha (2017): Corruption, State Capture and Political Particularism. In Bo Rothstein, Aiysha Varraich (Eds.): Making sense of corruption. Cambridge, United Kingdom: Cambridge University Press, pp. 94.

³⁴ Grzymala-Busse, Anna (2008): Beyond Clientelism. In Comparative Political Studies 41 (4-5), pp. 638. DOI: 10.1177/0010414007313118.

³⁵ Richter, Solveig (2017): „Der Wolf im Schafspelz“, pp. 183.

³⁶ Ibid.

³⁷ Grzymala-Busse, Anna (2008): Beyond Clientelism. 639.

³⁸ Ibid.

³⁹ Richter, Solveig (2017): „Der Wolf im Schafspelz“, pp. 186.

⁴⁰ Ibid.

2.3.1 State capture, the rule of law and good governance reform

Whereas petty corruption solely takes place related to how power is exercised, state capture deals with policy already from the stage of formation throughout the entire political process. A combination of “high party discipline, strong control over the parliamentary majority, and legitimized corrupt elites” are able to create a formal legal basis for highly contentious actions.⁴¹ State capture thereby impacts the whole policy process, from policy formation to acceptance of new rules to the enforcement and implementation of regulations. Accession countries do not have a formal influence on the content of the EU acquis which these countries have to accept ‘as is’ to become a member, so the policy formation step is less problematic with regards to EU enlargement. However, control over the public administration means that those who captured the state can try to distort the transposition, implementation, and enforcement of EU acquis, which is a significant problem throughout the Western Balkans.⁴²

Favouritism is a central element to state capture and highly problematic for the rule of law. The opposite of favouritism is impartiality in the exercise of public power. To act impartially means, according to Cupit, to not be influenced by personal relationships or private ties, but rather to treat all people alike in the execution of government power.⁴³ The advanced systems of patronage and clientelism built up in countries experiencing state capture are prime examples of favouritism, which has been identified as the very antithesis of justice.⁴⁴ Impartiality refers here to procedural impartiality and not to the substantive content of policies, which can be the result of a wide range of influences. A politician can represent his constituency through raising substantive points that matter to his voters without engaging in the partial execution of government power. The impartial exercise of public power is a procedural norm closely related to the rule of law in which the government itself is also bound by law. All in all, whereas a system based on the rule of law restricts government power by imposing constraints on political elites, in a system based on favouritism, such constraints on the power of political elites are weakened.⁴⁵

2.3.2 Importance of the rule of law for the EU and EU enlargement

The rule of law is especially important for the EU and is a highly important eligibility criterion of EU membership for several reasons. Firstly, the rule of law is a foundational value of the European Union

⁴¹ Kmezić, Marko (2020): Rule of law and democracy in the Western Balkans: addressing the gap between policies and practice. In *Southeast European and Black Sea Studies* 20 (1), pp. 186. DOI: 10.1080/14683857.2019.1706257.

⁴² Gjergji Vurmo (2020): Tailor-made laws in the Western Balkans: State capture in disguise. Available online at <https://www.ceps.eu/ceps-publications/tailor-made-laws-in-the-western-balkans/>.

⁴³ Rothstein, Bo; Varraich, Aiysha (2017): *Corruption, State Capture and Political Particularism*, pp 98.

⁴⁴ Ibid.

⁴⁵ Kmezić, Marko (2019): EU Rule of Law Conditionality: Democracy or ‘Stabilitocracy’ Promotion in the Western Balkans? In Jelena Džankić, Soeren Keil, Marko Kmezić (Eds.): *The Europeanisation of the Western Balkans*, vol. 59. Cham: Springer International Publishing, pp. 94.

set in stone by article 2 of the TEU. The ECJ reiterated this in the “Les Verts” case, where it stated that the EU is “a Community based on the rule of law.”⁴⁶ Furthermore, it is a prerequisite of the trust necessary for the EU to function within the internal market where the national member states remain primarily responsible for implementing EU law. After all, diverging implementation of EU law creates distortions that undermine the proper functioning of the EU internal market.⁴⁷ Having a rule of law-based democratic systems allows for the proper functioning of mechanisms of political accountability, which ensures the equality of all citizens within society and reduces the space for potential abuse of state power.⁴⁸ Often when the rule of law is mentioned in an EU or enlargement context, it goes beyond a thin description that focusses only on procedural safeguards. Instead, EU actors often refer to a thick understanding of the rule of law, which enshrines and protects political and civil liberties but is also more elusive and more complicated to maintain.⁴⁹ In conclusion, the favouritism of state capture, which is based specifically on special relationships and informal networks, is directly at odds with the good governance principles regarding the rule of law, which the EU tries to instil in accession candidates.

⁴⁶ European Court of Justice, “Judgment of the Court of 23 April 1986. Parti écologiste “Les Verts” v European Parliament”, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61983CJ0294>.

⁴⁷ Versluis, Esther (2007): Even rules, uneven practices: Opening the ‘black box’ of EU law in action. In *West European Politics* 30 (1), pp. 50. DOI: 10.1080/01402380601019647.

⁴⁸ Kmezić, Marko (2020): Rule of law and democracy in the Western Balkans: pp. 185.

⁴⁹ Magen, Amichai (2016): Cracks in the Foundations: Understanding the Great Rule of Law Debate in the EU. In *J Common Mark Stud* 54 (5), pp. 1050. DOI: 10.1111/jcms.12400.

Chapter 3: Theoretical framework

3.1 Europeanization and the External Incentives Model

European enlargement is situated in the broad theoretical field of ‘Europeanization,’ which tries to understand how regulations and institutions on an EU level influence the domestic political arena.⁵⁰ The predominant focus lies on European Union member states themselves and how EU rules are created and subsequently implemented in domestic contexts. However, there is also a significant external dimension that focusses on how the EU spreads its rules, norms, and regulations to states outside the EU.⁵¹

The primary way with which the EU attempts to influence accession countries is through conditionality, which is a bargaining strategy aimed at reinforcement by reward.⁵² Here the EU gives incentives to the target government when it complies with what the EU asks of it to do: adopt EU rules and values. The main theoretical framework through which EU conditionality leads to domestic change in accession candidate countries is the External Incentives Model (henceforth abbreviated with EIM) of Schimmelfennig and Sedelmeier.⁵³ Within this theoretical framework, EU conditionality requires the fulfilment of three aspects (1) A credible membership perspective. (2) Consistent application of conditionality. (3) An acceptable level of domestic costs incurred for compliance with accession requirements.⁵⁴ Conditionality affects the intergovernmental bargaining process by altering the cost/benefit calculation of the target state: here we can expect EU rule adaption to happen when the benefits outweigh costs. Conditionality also works indirectly through the “differential empowerment of domestic actors,” which changes the domestic opportunity structure in favour of actors (e.g., politicians, civil society organisations, interest groups) who want to adopt rules vis-à-vis those in society that do not.⁵⁵ As Schimmelfennig points out, in the end, the adoption of EU rules requires the decision of the target state government who seeks to balance “EU, domestic, and other international pressures in order to maximize its own political benefits.”⁵⁶

3.2 Conditions for success in the EIM

The EIM expects that the altering of cost/benefit calculations so that these governments adopt EU rules depends on four conditions: (1) the size of the EU’s rewards, (2) the determinacy of the

⁵⁰ Ladrech, Robert (2010): *Europeanization and national politics*. Basingstoke, Hampshire: Palgrave Macmillan (The European Union series). pp 22.

⁵¹ Frank Schimmelfennig (2015): *Europeanization beyond Europe*. In *Living Reviews in European Governance* 10 (1), pp. 6. Available online at <http://www.europeangovernance-livingreviews.org/Articles/lreg-2015-1/download/lreg-2015-1.pdf>.

⁵² Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 661.

⁵³ Ibid.

⁵⁴ Richter, Solveig; Wunsch, Natasha (2020): “Money, power, glory” pp. 45.

⁵⁵ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 664.

⁵⁶ Ibid.

conditions, (3) the credibility of conditionality and (4) the size of the adjustment cost of compliance for target governments.⁵⁷

First of all, (1) EU membership can be seen as the most significant carrot in the EU toolbox to convince target governments that they should conform to the high EU standards. These governments need to be provided with such a carrot because if the WB6 countries had adopted EU rules on their own, the entire process of EU enlargement would not have been necessary.⁵⁸ The EU's rewards are relatively considerable during the enlargement process and increase as target states comply with EU rules, the so-called "more-for-more"-principle.⁵⁹ During enlargement, it is the IPA (Instrument for Pre-accession Assistance), as well as visa liberalization and preferential market access, which provides tangible rewards as countries move closer to their more distant reward and main prize: EU membership.

Second of all, (2) determinacy refers to the precise specification of the conditions and standards which target governments must reach to obtain their rewards. Clear EU communication on what exactly it is that target governments must do, and the feedback the EU gives on that progress improve determinacy.

Thirdly, (3) with regards to the credibility of conditionality towards accession candidates, there is a time-gap between when target governments implement EU rules and when target governments will obtain membership. That is why the EU must be credible in its commitment that if the target states meet the EU demands and standards, these target states can expect EU membership in the end. If enlargement countries are faced with painful reforms but feel that they will not be let in even if they meet all the criteria, for example, due to internal referenda or "adoption capacity" excuses, EU credibility will suffer.⁶⁰ While the WB6 might be more dependent on the EU than the other way round, the presence of cross-conditionality, other actors offering comparable benefits with lower adaption costs, is relevant. Offers made by external actors such as Russia and China might increase geopolitical competition over the WB6 with low requirements to good governance reform, which makes it more difficult for the EU to withhold its rewards and thus reduces the effectiveness of EU conditionality.⁶¹

⁵⁷ Schimmelfennig, Frank; Sedelmeier, Ulrich (2020): The Europeanization of Eastern Europe: the external incentives model revisited pp 2.

⁵⁸ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): "Governance by conditionality": pp. 666.

⁵⁹ European Parliament (2019): Fact Sheet: The European Neighbourhood Policy. Available online at <https://www.europarl.europa.eu/factsheets/en/sheet/170/the-european-neighbourhood-policy>.

⁶⁰ The French constitution (art 88-4) mandates that if 60% of parliamentarians are not in favour of accession, it is put to a public referendum.

⁶¹ Frans-Paul van der Putten et al (Forthcoming): China and the EU in the Western Balkans: A zero-sum game. In Clingendael Brief.

Whereas these three conditions are directly under the influence of the EU or its member states, the domestic adoption costs depend on the domestic politics and situation in the target states and cannot be as easily influenced by the EU, according to the EIM. The next section will go into further detail as to this last, crucial condition.

3.3 The External Incentives Model and adoption costs

The EIM shows certain conditions where EU pressure through conditionality can likely produce rule adoption. However, despite its name, it is wrong to assume that this model only assumes that it is external incentives that produce this rule adoption. Instead, a cost/benefit analysis is at the core of this model. Schimmelfennig and Sedelmeier state that “If non-member states are confronted with determinate and credible conditionality, and if they are offered equally beneficial rewards, the EIM postulates that the size of domestic adoption costs and their distribution among domestic actors determine whether they will accept or reject the conditions.” Domestic adoption costs are, therefore, a crucial explanatory factor and critical hurdle to overcome, for EU rule transfer to be successful according to the EIM.

3.3.1 Overview of different forms of costs in EIM

Adoption costs come, in the EIM, in 3 different forms: power costs, welfare costs, and opportunity costs.⁶² Power costs refer to the reduced scope of influence for the political, ruling elites vis-à-vis other actors in society because of implementing reforms that curtail their power or might exclude them from power altogether, for example, through legal prosecution. Welfare costs refer to the broad economic costs that domestic actors must bear by adopting EU rules. Adopting the EU acquis requires the adjustment of all sorts of internal regulations, which cause welfare losses for the economic system as it shifts from the old rules to the new.⁶³ Opportunity costs refer to the fact that WB states forgo the advantages and rewards of alternative rewards, which these states could obtain by adopting any other rule than EU rules. For example, if Serbia would adopt and implement very stringent public procurement rules of the EU, then it becomes more difficult for them to accept Chinese state loans in backroom agreements to fund Serbian infrastructure projects. Opportunity costs are therefore related to cross-conditionality: adopting EU rules means rejecting alternative benefits from external actors whose benefits might have lower adjustment costs. Better alternatives to WB6 states relative to the EU offer increase the opportunity costs.

3.3.2 Acquis conditionality and democratic conditionality compared

There can be substantial differences between the various sorts of EU rules which have to be adopted and implemented, which subsequently also have different levels of adoption costs. This differentiation

⁶² Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 666.

⁶³ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 661.

is important because it helps us understand why it might be more difficult for governments to implement certain rules, but not others. The EIM differentiates between two different contexts of conditionality: *acquis* conditionality or democratic conditionality.⁶⁴ *Acquis* conditionality refers to the adaptation of the entirety of the *Acquis Communautaire* through regulatory alignment.⁶⁵ Importantly, Schimmelfennig remarks that: "as *acquis* conditionality does not concern the political system and the basis of political power as such, governments generally do not have to fear that the costs of rule adoption in individual policy areas will lead to a loss of office. Costs are thus unlikely to be prohibitive."⁶⁶

Democratic conditionality refers to the adoption of certain fundamental principles that go to the core of what the EU stands for, such as human rights, the rule of law, and liberal democracy. The EIM expects a different cost/benefit calculation in the field of democratic conditionality. Power costs for the incumbent state might be the possible consequence of adopting and implementing EU democratic standards, for example. A loss of power can occur when governments have to implement reform, which would reduce their grip on society. Power costs can happen, for example, by implementing and enforcing rule of law reforms that reduce the arbitrariness of government decisions and where additional judicial independence ensures that politicians are held accountable by law. One of the core priorities for a government engaged in state capture is the preservation of political power.⁶⁷ Crucially, the EIM expects the effectiveness of democratic conditionality to be "circumscribed by the domestic power costs of incumbent governments."⁶⁸

3.3.3 Identity-related costs

Finally, identity-related issues induce another form of domestic adoption costs. These costs can arise from issues related to national identity, such as the Serbian extradition of war criminals to the international criminal Tribunal for Former Yugoslavia. According to this argument, governments face high "identity costs" when dealing with matters related to national identity. However, Vachudova points out that issues related to national sovereignty and identity can also be used by rent-seeking elites to provide political shelter for their own corrupt behaviour.⁶⁹ Admittedly, these identity costs do not neatly fall within the remit of the EIM, which makes other prioritizations. Therefore, these identity costs will form part of the alternative hypothesis of this thesis (chapter 4.3).

⁶⁴ Schimmelfennig, Frank; Sedelmeier, Ulrich (2020): *The Europeanization of Eastern Europe: the external incentives model revisited* pp 16.

⁶⁵ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): "Governance by conditionality": pp. 669

⁶⁶ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): "Governance by conditionality": pp. 672.

⁶⁷ Pešić, Vesna: *State capture and widespread corruption in Serbia*. Brussels: CEPS (CEPS working document, 262). pp 3. Available online at <https://aei.pitt.edu/11664/1/1478.pdf>.

⁶⁸ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): "Governance by conditionality": pp. 683.

⁶⁹ Vachudova https://doi.org/10.1007/978-3-319-91412-1_4 p66

3.3.4 Forms of rule adoption in EIM

Even when states decide to adopt EU rules, they will still do so in a manner that minimizes their costs. The EIM looks at the extent to which adopted rules are institutionalized. Rule adoption in the EIM does not limit itself to the formal transposition, but also looks at the actual changes to domestic institutions and political practices.⁷⁰ A first option is discursive adoption, where political elites rhetorically show willingness but do not deliver results de-facto. A second option is formal adoption, but low implementation and enforcement. This can lead to “Potemkin harmonization” in which laws are adopted which conform to the EU acquis, but there is little change in the “actual inner-state politics and outcome.”⁷¹ A third option is substantive, de-facto adoption, which requires not only the rhetorical and formal adoption but also the implementation and compliance in domestic situations. Such adoption reflects far-reaching levels of institutionalization of EU rules and is also related to the change in mindset and lived practice of street-level bureaucrats.

3.4 Distribution of costs over societies

Within the EIM, it is not only adoption costs, but also the distribution of these costs among domestic actors that determines whether these actors will accept or reject conditions according to this model. The idea that the distribution among domestic actors is important lends from veto player theory where “the difficulty for a significant change of the status quo increases in general with the number of veto players and with their distances.” Veto players can be defined as “Individual or collective actors whose agreement is necessary for a change of the status quo.”⁷² A small number of veto-players within a society who can stand up against the government and potentially stop EU rule adoption, as was the case in CEE countries, makes the cost/benefit calculation of the government more relevant as the target of EU conditionality.⁷³ On the other hand, if various powerful veto players exist in society, then the government will have to keep these powerful actors more into account. The empirical chapter of this thesis will investigate the power of various veto players in Serbian society.

3.5 Rational institutionalism and alternative models of external EU governance

Rational institutionalism can be seen as the theoretical foundation of the EIM, and this section shortly explains the assumptions on which it is based vis-à-vis alternative models of external EU governance. Rationalism institutionalism has three main components.⁷⁴ Firstly, it allows for methodological institutionalism, where (groups of) actors become the object of the analysis and have interests and

⁷⁰ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 670.

⁷¹ Schimmelfennig, Frank (Ed.) (2005): *The Europeanization of Central and Eastern Europe*. Ithaca, NY: Cornell Univ. Press (Cornell paperbacks). pp 26.

⁷² Tsebelis, George (1995): *Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism*. In *British Journal of Political Science* 25 (3), pp. 289. Available online at www.jstor.org/stable/194257.

⁷³ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 675.

⁷⁴ Pollack, Mark A. (2006): *Rational Choice and EU Politics*. In *SSRN Journal*. pp 32. DOI: 10.2139/ssrn.1011326.

motives of their own. Secondly, it perceives actors to be generally rationally and utility-maximising, which makes these actors interested in both incentives (the benefits of enlargements) and costs. Thirdly, actors are conceived to be making their decisions within certain institutional and domestic constraints. This means that the preferences and actions of actors are shaped by the domestic institutions in which they are embedded.⁷⁵

In a recent paper revisiting the EIM by Schimmelfennig and Sedelmeier, the validity and relevance of this cost/benefit approach for understanding the success of conditionality is reconfirmed in the WB6.⁷⁶ However, it is still important to mention alternative models, which are not necessarily mutually exclusive and compare these to the dominant EIM in how they explain rule adoption target states. The social learning model, for example, uses constructivism to explain why external states adopt EU rules. This model emphasizes the influence of socialization in which actors change their identities and preferences due to argumentative persuasion. Here actors are convinced of the legitimacy of EU rules rather than by the prospect of incentives. Rule adoption is likely when the EU rules are seen as highly legitimate, when the target society identifies with the EU and if there is domestic resonance towards these rules.⁷⁷ The lesson-drawing model explains EU rule adoption, not because of external incentives or because the EU convinces them of the legitimacy of EU rules, but because states judge them to be effective remedies to their own domestic needs and challenges.⁷⁸

The main difference between the EIM and the ‘social learning’ model lies in the fact that this school follows a different logic. Whereas rational institutionalists follow a ‘logic of consequences’, constructivists follow a “logic of appropriateness.”⁷⁹ This “logic of consequences” posits that rules are followed when it is in the self-interest of generally rational and utility-maximising actors to do so. The “logic of appropriateness” explains decisions by looking towards what social norms deem to be the natural, legitimate, and right.⁸⁰ The ‘social learning’ model will provide an alternative hypothesis to test the EIM against in this thesis.

⁷⁵ Ibid.

⁷⁶ Schimmelfennig, Frank; Sedelmeier, Ulrich (2020): The Europeanization of Eastern Europe: the external incentives model revisited. pp. 816.

⁷⁷ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 675.

⁷⁸ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 671.

⁷⁹ March, James G.; Olsen, Johan P. (1989): Rediscovering institutions. The organizational basis of politics. New York, NY: Free Press.

⁸⁰ Ibid.

Chapter 4: Research design methodology

4.1 Research question and sub-questions

This thesis seeks to understand what role state capture plays in the cost/benefit calculation with regards to the adoption and implementation of EU rules in Serbia. This research starts from the rational institutionalist assumption that the cost/benefit calculations for EU enlargement countries are subject to domestic politics and are mediated through the institutions of specific Western Balkan countries. There seems to be only limited attention for what the influence of state capture is on the domestic adaptation costs and benefits for EU accession of political elites in Western Balkan countries as analysed through the EIM.⁸¹ While there is literature that addresses issues of state capture in Serbia, no literature was found which investigates what state capture does to adoption costs in line with the External Incentives Model in Serbia.⁸² It is important to note that the EIM only seeks to clarify the conditions under which rule adoption and implementation are likely to be successful, and its usefulness is not limited to scenarios in which external incentives lead to rule adoption.⁸³ Richter and Wunsch have stated that cost-benefit calculations and the related external-incentive model are not able to explain the observed decoupling of formal compliance and democracy levels in Serbia.⁸⁴ This thesis seeks to challenge this idea and make a contribution to the literature by further investigating state capture through the lens of the EIM. It examines the effect state capture has on the domestic cost/benefit calculations of EU enlargement and whether potentially increased domestic adoption costs for political, ruling elites empowered by state capture might explain a decoupling between formal progress and backsliding democracy. This thesis will therefore seek to answer the following research question:

RQ: *How does state capture affect the domestic adoption costs and benefits of EU accession in Serbia?*

The following sub-questions are formulated to help to answer this main research question: *What effects does the practice of state capture have in Serbia, and what role does informality play in that practice? What power, welfare, and opportunity costs and benefits does state capture create with regards to EU accession in Serbia? What do high adoption costs mean for compliance with the adoption and implementation of EU acquis and democratic standards in Serbia?*

⁸¹ Richter, Solveig; Wunsch, Natasha (2020): Money, power, glory: pp. 42.

⁸² Ibid.

⁸³ Schimmelfennig, Frank; Sedelmeier, Ulrich (2020): The Europeanization of Eastern Europe: the external incentives model revisited. pp. 816.

⁸⁴ Richter, Solveig; Wunsch, Natasha (2020): Money, power, glory: pp. 42.

4.2 Mechanism-based explanations

Mechanisms, according to Elster, provide a “continuous and contiguous chain of causal or intentional links between the explanans and the explanandum.”⁸⁵ Mechanisms are defined in this thesis as “a theorized link between a cause (or set of causes) and an outcome, where each part of the mechanism is clearly described in an ordered sequence, and, in particular, in terms of entities engaging in activities that transfer causal forces.”⁸⁶ The goal of such a mechanism-based approach is to open up the black box behind the macro-level association between X and Y, between the dependent and the independent variable.

This thesis adopts a typology developed by Hedstrom and Ylikosi as a template for the mechanistic process tracing undertaken in this thesis. This typology works from the assumption that it is not one single mechanism which can explain the complex world in which we live, but that it is through mechanisms working in concert with each other where we are able to explain the whole chain of causal mechanisms. Within this typology, we do not focus exclusively on the macro-level association between X (the explanans) and Y (the explanandum). Instead, it tries to understand the whole chain of situational, action-formation, and transformational mechanisms, which helps us to make sense of the observed macro-level relationship.⁸⁷ Their typology is based on the work of the sociologist Coleman who is famous for his model on social action, dubbed “Coleman’s bathtub.”⁸⁸ This model emphasizes how complete explanations of change link macro-level states to the behaviour of individual actors, which then generate new macro outcomes at a later moment in time.⁸⁹ This typology can be understood to be a multi-level model in which each specified social mechanisms can be seen as a necessary condition for the outcome, and all the mechanisms taken together can be understood as a sufficient condition for the outcome.⁹⁰ A focus on the role of individual actors and their domestic constraints works well together with the EIM used in this thesis. Both the EIM and this model focus on (groups of) actors and regard their cost/benefit calculations as being dependent on the domestic politics and institutions in which they are embedded.

This template consists of 4 steps. First, the relevant actors of the model are identified and the extent to which state capture influences who can be regarded as a relevant actor. Secondly, this typology

⁸⁵ Elster, Jon (2012): *Nuts and Bolts for the Social Sciences*: Cambridge University Press.

⁸⁶ Beach, Derek; Pedersen, Rasmus Brun (2018): *Selecting Appropriate Cases When Tracing Causal Mechanisms*. In *Sociological Methods & Research* 47 (4), pp. 842. DOI: 10.1177/0049124115622510.

⁸⁷ Hedström, Peter; Ylikoski, Petri (2010): *Causal Mechanisms in the Social Sciences*. In *Annu. Rev. Sociol.* 36 (1), pp. 49–67. DOI: 10.1146/annurev.soc.012809.102632.

⁸⁸ Hedström, Peter; Ylikoski, Petri (2010): *Causal Mechanisms in the Social Sciences*. pp. 59

⁸⁹ *Ibid.*

⁹⁰ Blatter, Joachim; Haverland, Markus (2014): *Designing case studies. Explanatory approaches in small-N research*. Paperback. New York, NY: Palgrave Macmillan (Research methods series). pp 97.

identifies situational mechanisms, which are mechanisms by which social structures constrain individual action and cultural environments that shape the desires and beliefs of relevant actors.⁹¹ Thirdly, this is then linked to action-formation mechanisms where individuals or groups of individuals who possess particular desires and beliefs lead them to their specific actions. This action-formation mechanism shows how a combination of these desires, beliefs, and action opportunities can then generate specific actions in an actor or group of actors. As Hedstrom mentions, there is a wide range of (social)-psychological mechanisms that operate at this level.⁹² Lastly, transformational mechanisms are identified by which individuals, through their actions and interactions, generate various intended and unintended social outcomes and thus form the micro-macro link, which is often underspecified in the research of political mechanisms. This transformational mechanism is a crucial step as it explains how actions of “one or multiple actors are aggregated to produce certain collective outcomes.”⁹³

A mechanism-based explanation always describes the causal process in a selective fashion: it is not an exhaustive account. Instead, it seeks ‘to capture the crucial elements of the process by abstracting away the irrelevant details.’⁹⁴ Any mechanism portrayed in this thesis does not exclude the possibility of different mechanisms operating at the same time.

⁹¹ Hedström, Peter; Swedberg, Richard (Eds.) (2006): *Social mechanisms. An analytical approach to social theory*. Transferred to digital printing. Cambridge: Cambridge Univ. Press (Studies in rationality and social change pp 23.

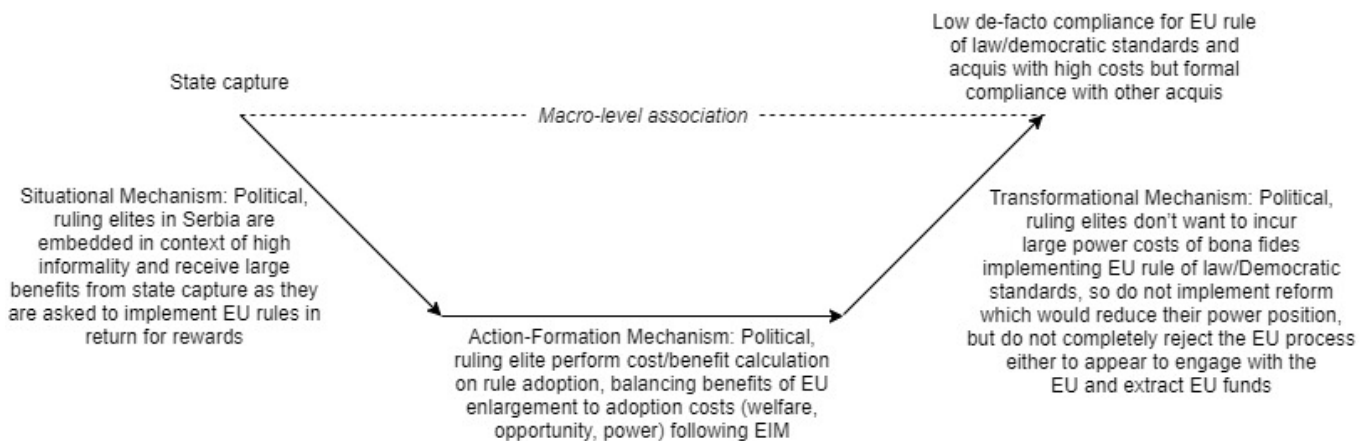
⁹² Ibid.

⁹³ Schimmelfennig, Frank (2015): *Efficient process tracing*. In Andrew Bennett, Jeffrey T. Checkel (Eds.): *Process tracing. From metaphor to analytic tool*. Cambridge, New York: Cambridge University Press (Strategies for social inquiry), pp. 8.

⁹⁴ Hedström, Peter; Ylikoski, Petri (2010): *Causal Mechanisms in the Social Sciences*. pp. 53.

4.3 Hypotheses and formulation of a mechanistic “bathtub”

This typology is used to create the following template which shows the hypothesized causal mechanism under observation in this thesis. This template leads from state capture (X) to low-de facto change for EU rule of law/democratization standards, but formal compliance with other, less politically sensitive EU acquis (Y). The macro-level association is not enough, but rather the entire concert of mechanisms responsible for this association has to be specified and meticulously put under a magnifying glass.



The main hypothesis of this thesis, depicted in the graph above, follows the External Incentive Model, and its crucial focus on adoption costs in explaining the disconnect between formal compliance in some fields of acquis but low compliance with regards to EU democratic standards. The alternative hypothesis follows the social-learning model and its focus on socialization and the perceived legitimacy of EU rules to explain this disconnect.

H1: External incentive model: domestic adoption cost hypothesis

State capture increases domestic adoption costs of EU rules, which would harm the power position of Serbian elites, who, in a cost/benefit calculation primarily oriented on their own interests, ultimately reject these EU rules due to their excessive personal adoption and implementation cost. However, domestic adoption costs for EU rules which do not harm the power position of Serbian elites are not heightened by state capture, which allows them to be adopted and implemented.

H2: Social learning model: lacking legitimacy hypothesis

State capture has socialized Serbian elites into believing their own elite corruption is acceptable, and these elites do not fully implement EU rule of law/democratization standards as they do not hold these

EU rules to be legitimate. EU rules which do not interfere with their own self-legitimized state capture activities can be implemented.

4.4 Mechanistic process tracing

This mechanism-based approach of trying to find evidence of a chain of various mechanisms linking explanans to explanandum is a good fit with process tracing. Process tracing is defined here as “the analysis of evidence on processes, sequences, and conjunctures of events within a case for the purposes of either developing or testing hypotheses about causal mechanisms that might causally explain the case.”⁹⁵ Mechanistic process tracing is a within-case research methodology that investigates how a causal process evolves within a specific case. Process tracing can help reveal a mechanism by uncovering the intermediate steps, predicted by theory, and thereby “places theory and data in close proximity.”⁹⁶

Process tracing is attentive to issues of time, order, and sequence. As the name “process”-tracing implies, the analysis does not look at a certain situation within a single point of time, but rather as a sequence of events which take place over a given period. Collecting enough data to perform the mechanistic process tracing employed in this thesis adequately is essential. That is why this thesis generates data by a combination of desk research, monitoring reports, and other available (government) documents. In addition, intensive semi-structured interviews with ten knowledgeable experts from the diplomatic corps, civil society, and think tanks have been conducted to generate enough data to assess every step of the mechanisms empirically.

4.5 Case selection

An essential question for any research design is that of case selection. As we are interested in tracing the causal mechanism linking X and Y, Beach and Pedersen advise selecting cases where this mechanism could have been present, at least in theory.⁹⁷ This advice is important as choosing a case where such a mechanism is not present would not tell us much about the cases where it is present. That is why this thesis opts for a “typical” case selection where we can expect a priori for such a theorized relationship to be present but need empirical assessment to see whether this is the case and to check for alternative explanations.⁹⁸ The hypothesized relationship is in this thesis adapted from the EIM of Schimmelfennig, which expects that high adoption costs and its spread among domestic actors

⁹⁵ Bennett, Andrew; Checkel, Jeffrey T. (Eds.) (2015): Process tracing. From metaphor to analytic tool. Cambridge, New York: Cambridge University Press (Strategies for social inquiry). pp 7.

⁹⁶ Checkel, Jeffrey T. (2009): Process Tracing. In Audie Klotz, Deepa Prakash (Eds.): Qualitative methods in international relations. A pluralist guide. Paperback ed. Houndmills, Basingstoke [England]: Palgrave Macmillan (Research methods series), pp. 114.

⁹⁷ Beach, Derek; Pedersen, Rasmus Brun (2018): Selecting Appropriate Cases When Tracing Causal Mechanisms. pp. 837.

⁹⁸ Ibid.

are a crucial factor to explain de-facto noncompliance in EU rule transfer. Tracing mechanisms therefore requires a different case selection approach and is based on a different logic than variance-based designs, where a broad selection of cases is needed to control for other causes.⁹⁹

4.6 Ensuring validity and reliability

Ensuring the validity and reliability must be a prime concern for every piece of research, that is to say, that research has to measure what it is supposed to measure (validity) and that it must be precise and consistent in its measurement (reliability).¹⁰⁰ When engaging in a mechanism-based process testing research design, we have to be careful of lazy narrative-based story-telling. To avoid this, the empirical part of this thesis will rigorously test whether these mechanisms are also empirically at play in Serbia. That is important as the rigorous checking of the assumptions on which the mechanism scheme rests is what creates the validity that this thesis requires.

Semi-structured elite interviews are especially useful when researching causal mechanisms as they permit the researcher to “directly and deeply assess the roots of individual actions and attitudes.”¹⁰¹ A difficulty of investigating domestic adoption costs of EU rule transfer is that political elites might have the interest to deceive and hide their true intentions. Such deceptions can be especially present when it concerns something like corruption, with which political elites do not want to be openly associated. Bargaining power within the EU accession negotiations is heavily dependent on the information which is exchanged, so there might be a strategic advantage of political elites to misrepresent true intentions if this will benefit their position.¹⁰² The semi-structured interviews with experts within Serbia are used to pass through this fog of misinformation and discover more about how state capture influences Serbia and how elites calculate their domestic adoption costs and benefits.

When we process-trace the functioning of theorized mechanisms in practice, we can control for possible other explanations by assessing “whether the particular piece of evidence is theoretically unique, or whether finding it is just as plausible with other explanations.”¹⁰³ That is why this thesis also formulates an alternative hypothesis based on the social-learning model, which might explain the puzzling outcome in Serbia of high compliance with (certain pieces of) EU *acquis* but backsliding

⁹⁹ Beach, Derek; Pedersen, Rasmus Brun (2018): Selecting Appropriate Cases When Tracing Causal Mechanisms. pp. 837.

¹⁰⁰ Mayring, Philipp (2016): Einführung in die qualitative Sozialforschung. Eine Anleitung zu qualitativem Denken. 6., überarbeitete Auflage. Weinheim, Basel: Beltz. Available online at http://content-select.com/index.php?id=bib_view&ean=9783407294524.

¹⁰¹ Mosley, Layna (2013): Interview research in political science. Ithaca: Cornell University Press. Available online at <http://www.jstor.org/stable/10.7591/j.ctt1xx5wg>. pp 2.

¹⁰² Schimmelfennig, Frank; Sedelmeier, Ulrich (2005): The Europeanization of Central and Eastern Europe. Ithaca and London: Cornell University Press. pp 15.

¹⁰³ Beach, Derek; Pedersen, Rasmus Brun (2012): Case Selection Techniques in Process-Tracing and the Implications of Taking the Study of Causal Mechanisms Seriously. In SSRN Journal. pp 44. DOI: 10.2139/ssrn.2131318.

democratization. The process tracing creates a three-way fight between the first hypothesis, the data, and the alternative hypothesis, and thus enhances the (internal) validity of the findings. External validity, which refers to the generalizability of this causal mechanism to other cases in the population of EU enlargement countries, also deserves reflection. Process tracing causal mechanisms yields high internal validity due to the thorough investigation of available evidence in a single case. Still, we have to be aware of the trade-off between internal and external validity. When attempting to generalize the findings of this within-case process-tracing method, we have to be modest in the sense that we will never be entirely certain whether the same causal mechanism was also present in a different case without additional research.

Another issue to be aware of is that of endogeneity. EU attempts of rule transfer through conditionality might not be able to overcome state capture to convince target countries to engage in rule of law reform. Still, EU conditionality might also be contributing to that very same state capture. It is important to make clear that this thesis does not claim that state capture exists independently of the EU accession process. This is in line with the findings of Richter and Wunsch, who conclude that EU conditionality contributes to state capture through a combination of empowering government elites, providing them with funds, and legitimizing their position.¹⁰⁴ The situational mechanism, as the second step in this thesis, also includes space for a wide range of origins of state capture which reinforce each other. What is most important for this thesis is how state capture then subsequently impacts adoption cost/benefit calculations of elites. The insight of Richter and Wunsch that the current form of enlargement is potentially strengthening state capture adds to the relevance of this thesis, pointing to the importance of understanding the causal impact of state capture on EU conditionality and enlargement.¹⁰⁵

¹⁰⁴ Richter, Solveig; Wunsch, Natasha (2020): "Money, power, glory" pp. 41.

¹⁰⁵ Ibid.

Chapter 5: Mechanistic process tracing of EU Rule adoption and implementation under state capture in Serbia

5.1.1 Step 1: Investigating relevant actors

The first step of the process tracing template applied in this thesis and which was shown in Chapter 4.2 & 4.3, is to investigate who are the relevant actors for the cost/benefit calculation of adopting and implementing various EU rules in Serbia. This section examines how state capture affects who can be seen as the relevant actor(s) in this model, as state capture has an impact on the relative power of actors in Serbia. To the extent that it is necessary to understand who is the relevant actor and the relative power of actors in society, state capture is discussed in this step. However, the exact functioning of state capture and its mechanisms will be discussed in more detail in the second situational mechanism step.

5.1.2 State capture infiltrating the government

The dynamics of the EU enlargement process are best understood as a long-term negotiation between the European Union, represented by the European Commission, and the government of the applicant country.¹⁰⁶ When a state is internally sovereign (such as Serbia), the government of that country chooses whether or not to comply with EU rule adoption and implementation.¹⁰⁷ Whether or not to comply with EU rule adoption is, therefore, a political choice which certain governments would make, and others would not.¹⁰⁸ After receiving an application from an applicant country, based on Article 49 TEU, formally applying for EU membership, it also follows logically that the EU cannot negotiate with an entire society. Instead, WB6 governments are assumed to be the legitimate interlocutor, with a mandate flowing from their majority in parliament.

The powerful position which the EU negotiation process accords to the governments of accession countries is strengthened by the state capture that has been advanced by the ruling, political elites in Serbia. Aleksandar Vučić has been at the head of that government for the past eight years, as the leading figure of the SNS party (Srpska Napredna Stranka), the Serbian Progressive Party.¹⁰⁹ State capture was especially present during the reign of Milošević just after the dissolution of Yugoslavia.¹¹⁰

¹⁰⁶ Bojinović Fenko, Ana; Urlić, Ana (2015): Political Criteria vs. Political Conditionality: Comparative analysis of Slovenian and Croatian European Union accession processes. In *Croatian International Relations Review* 21 (72), pp. 126. DOI: 10.1515/cirr-2015-0004.

¹⁰⁷ Noutcheva, Gergana (2012): *European Foreign Policy and the Challenges of Balkan Accession: Conditionality, Legitimacy and Compliance*. London, UNITED KINGDOM: Taylor & Francis Group. pp 159. Available online at <http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=987966>.

¹⁰⁸ Ibid.

¹⁰⁹ Interviews A, B, D & G.

¹¹⁰ *Handbook of Organized Crime and Politics* (2019). Cheltenham, UK: Edward Elgar Publishing (Elgar handbooks in political science). pp 99.

The situation slightly improved after Milošević's ousting in 2000, but Serbia saw a significant increase in state capture again from 2012 onwards.¹¹¹ Whereas one could speak of certain control mechanisms and checks and balances on power before Vučić came to power, "it is hard to see those checks and balances now," notes one of the interviewees.¹¹² This backsliding is also visible in the recent Freedom House ranking, which now places Serbia in the hybrid-regime category, instead of the semi-consolidated democracies category.¹¹³

Serbia has a semi-presidential system, with an elected president in charge of external affairs and a prime minister as leader of the majority in parliament. Legally speaking, power over most internal affairs remain a responsibility of the prime minister Ana Brnabić. However, Vučić's (informal) influence over fellow party member Ana Brnabić means that Vučić has a dominant position in Serbian politics.¹¹⁴ All interviewees noted, and a variety of reports and rankings confirm, how state capture has become very widespread in Serbia and turned into a state of "normalcy."¹¹⁵ While in the beginning stages of the rule of the SNS party in Serbia, elites engaged in state capture in secret, now their power is consolidated, they can be more open about their activities.¹¹⁶ To a certain extent, political elites still have to pretend state capture is not an issue, as their public goal remains EU accession, and such grand corruption is not part of the EU values to which they would have to agree.¹¹⁷ While Serbia is the biggest country among the WB6, its size is still relatively modest compared to other Western-European economies. High levels of state capture combined with relatively small state resources make the Serbian arena, as one interviewee describes it: "the fight of alligators in a little pond."¹¹⁸

5.1.3 Shape of political, ruling elites engaged in state capture

In Serbia, the political elites who participate in state capture are given shape, not by any specific ethnicity (which is the case in Bosnia & Herzegovina, for example), but by their affiliation to the ruling political party, the SNS, which binds them all together.¹¹⁹ The SNS was founded out of a split with the Serbian radical party, a right-wing nationalist party in 2008. It obtained success in the 2012 elections as a populist, catch-all party, advocating both EU accession while still maintaining a national

¹¹¹ Ibid.

¹¹² Interview A, held with expert on 28-04-20.

¹¹³ Freedom House: "Nations in Transit 2020: Dropping the Democratic Facade". Available online at <https://freedomhouse.org/report/nations-transit/2020/dropping-democratic-facade>.

¹¹⁴ Interview E & Antonela Riha (2017): New Government of Ana Brnabić – Old Politics of Aleksandar Vučić. Available online at <https://rs.boell.org/en/2017/07/06/new-government-ana-brnabi%C4%87-%E2%80%93-old-politics-aleksandar-vu%C4%8Di%C4%87>.

¹¹⁵ Interview B, held with expert on 29-04-20 & Interview H.

¹¹⁶ Interview B.

¹¹⁷ Interview A.

¹¹⁸ Interview E.

¹¹⁹ Interview A & Interview J, held on 13-07-2020.

conservative outlook.¹²⁰ The role of this party and its elites is crucial in the functioning of state capture in Serbia, as the specific form of state capture in Serbia can be described as party-state capture, which has as its aim to obtain a political monopoly for its party.¹²¹

Aleksandar Vučić's role is tied to his leadership over the SNS, where he obtained "control over all of his party members."¹²² The ruling, political elites mostly act in a unitary fashion because they also receive protection through that unity.¹²³ The role of informal connections such as family ties should not be underestimated as a mechanism through which state capture takes place. The brother of Aleksandar Vučić, Andrej Vučić, has for example been linked to several suspected cases of corruption.¹²⁴ These political, ruling elites can have private gains and interests in engaging in rent-seeking from the Serbian state, but must also follow the interest of the party.¹²⁵ Elites loyal to the SNS-party are challenging to prosecute, as the judiciary in Serbia remains highly politicized, which was also outlined by a recent report of the Open Societies Foundation and the progress report by the European Commission.¹²⁶ At the same time, this means that leaving the circle of the SNS, corruption, and state capture is also made more difficult: with power over prosecutions, it is relatively simple to start proceedings against someone who decides to speak out.¹²⁷

To conclude, the political, ruling elites of Serbia are led by Vučić and given shape by their membership of, and affiliation with the SNS party. State capture, and the control over state institutions that comes with it, protects political elites from prosecution and at the same time acts as a warning that even elites can be disposed of and replaced if their loyalty falters.

5.1.4 The influence of state capture on the relative power of veto players

When investigating who are the relevant actors for the cost/benefit calculation of EU rule adoption, we should also look at the role of veto players in society. This next section therefore investigates

¹²⁰ Gegeshidze, Archil (Ed.) (2018): Towards unlocking Georgia's European perspective. Tbilisi: The Levan Mikeldadze Foundation.

¹²¹ Innes, Abby (2014): The Political Economy of State Capture in Central Europe. In *J Common Mark Stud* 52 (1), pp. 88. DOI: 10.1111/jcms.12079.

¹²² Interview D & M & Vasovic (2020): Serbia's Infallible Leader no Longer Needs a Party. Available online at <https://balkaninsight.com/2020/06/19/serbias-infallible-leader-no-longer-needs-a-party/>.

¹²³ Interview C.

¹²⁴ Interview D, held with expert on 04-05-20 & Stevan Dojčinović and Bojana Pavlović (2019): Serbian President's Brother Met with Infamous Criminal. Available online at <https://www.occrp.org/en/investigations/serbian-presidents-brother-met-with-infamous-criminal>.

¹²⁵ Interview C

¹²⁶ Srdjan Cvijic (2018): When Law Doesn't Rule: State Capture of the Judiciary, Prosecution, Police in Serbia. Available online at <https://www.opensocietyfoundations.org/publications/when-law-doesn-t-rule-state-capture-judiciary-prosecution-police-serbia> & European Commission: Serbia 2019 Report. Available online at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>. pp 14.

¹²⁷ Interview C.

whether there are also powerful elites outside the dominant coalition led by the SNS, who might have the relative power in society to challenge these elites.

Informal actors in Serbian society, such as economic tycoons, intelligence service officials, hooligans, and organized criminals, are not a formal group as such. Nevertheless, it is crucial to be aware of their importance in transitioning societies like Serbia, where informal networks often trump formal institutions.¹²⁸ These actors are, out of all the potential veto players in Serbia, the most interlinked and interdependent with the ruling, political elite and have as Interviewee B remarked, “much power in their hands.”¹²⁹ Recent reports by the Commission have shown that little progress was being made prosecuting organized crime, showing how Serbia “has yet to establish a convincing track record of effective investigations, prosecutions, and final convictions in organised crime cases.”¹³⁰ Clientelist connections between people formally in power and informal actors are secure, and since such rule by informal networks benefits the political, ruling elites, they not only condone it but are “feeding in it, and promoting it.”¹³¹

The media sector represents another potentially powerful veto power in Serbia. A significant problem that prevents this potential from being reached is that the media sector remains dependent on state funding for their survival.¹³² This dependency on state resources enables the influence of the political elites who allocate state resources in return for loyalty from the main broadcasters.¹³³ Media freedom is a precondition for democratic societies, and the fact that state capture enables control from the political elites over this medium “gives them immense power” over society.¹³⁴ All in all, the media sector is under the current conditions not able to act as a veto player vis-à-vis the Serbian government.

Civil society organisations, such as NGOs or think tanks, are key actors who mobilize citizens and represent a vital counterforce to government power in democratic societies. Most Serbian civil society organizations are highly critical of the government and their corrupt practices. Civil society organisations are relatively weak in Serbia and are therefore also not able to act as a strong veto player vis-à-vis the government. This weakness is partly because of their dependence on external funding, of

¹²⁸ Slobodan Cvejic (2016): Informal power networks, political patronage and clientelism in Serbia and Kosovo. Available online at [https://www.secons.net/files/publications/31-
Informal%20power%20networks,%20political%20patronage%20and%20clientelism%20in%20Serbia%20and%20Kosovo.pdf](https://www.secons.net/files/publications/31-
Informal%20power%20networks,%20political%20patronage%20and%20clientelism%20in%20Serbia%20and%20Kosovo.pdf). pp 11.

¹²⁹ Interview B.

¹³⁰ European Commission: Serbia 2019 Report. Available online at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf> pp 4.

¹³¹ Interview B.

¹³² Wouter Zweers and Dragana Bajić (2020): Declining media freedom and biased reporting in Serbia. Clingendael Institute. Available online at <https://www.clingendael.org/publication/declining-media-freedom-and-biased-reporting-serbia>.

¹³³ Balkan Investigative Journalism Network. Available online at <https://birn.eu.com/>.

¹³⁴ Interview B.

which they can expect little from the Serbian government.¹³⁵ It is also the case because state-controlled media frames civil society negatively, again because they are often highly critical of Vučić and his acts of state capture.¹³⁶ The pressure of the EU to better integrate civil society in Serbian policymaking has not led to actual influence but has mostly led to façade cooperation with no genuine intention of seeking greater inclusion of civil society in Serbian politics.¹³⁷ (Informal) control over the media enables Vučić to brand an image of civil society as a group of “foreign spies” who receive their money and commands from Brussel.¹³⁸ The fact that most civil society is located in Belgrade is also problematic because it cannot reach people throughout Serbia and thereby has “struggled to gain public legitimacy.”

The parliamentary opposition is the final potential veto player under investigation. The position of the opposition is weak in Serbia, in part due to their disorganisation, but also because state capture makes the conditions more difficult under which to be able to operate effectively and hold the government to account.¹³⁹ Serbian opposition is highly divided and, according to one interviewee, “in complete disarray.”¹⁴⁰ Most of the remaining, democratic opposition has lacked international community support, which was given to Vučić, who presented himself as a pro-European reformer who could resolve the Kosovo issue.¹⁴¹ All in all, both due to faults of their own and due to the difficult circumstances they are put in, the Serbian opposition is not able to act as a powerful veto-player to hold the government to account. Even more problematically, a lack of effective parliamentary oversight makes it easier to further entrench state capture, for example, through the appointment of party members to key positions in “independent” institutions. This lack of oversight makes it even more difficult to wage a fair fight against the government party, enabling a vicious cycle of state capture entrenching itself.

5.1.5 State capture subverting democracy: role of voters in a state captured state

Lastly, it is important to discuss the extent to which Serbian voters are the actors who ultimately make the decision to vote certain parties in or out of office and thus decide whether or not to put their country on a path to EU accession. We could assume that if there were free and fair elections in place,

¹³⁵ Soeren Keil (2018): *The Business of State Capture and the Rise of Authoritarianism in Kosovo, Macedonia, Montenegro and Serbia*. pp. 71.

¹³⁶ Interview D & Human Rights Watch (2020): *World Report: Serbia*. Available online at <https://www.hrw.org/world-report/2020/country-chapters/serbia/kosovo>.

¹³⁷ Fagan, Adam; Wunsch, Natasha (2019): *Fostering institutionalisation? The impact of the EU accession process on state-civil society relations in Serbia*. In *Acta Polit* 54 (4), pp. 621. DOI: 10.1057/s41269-018-0093-1.

¹³⁸ Interview D.

¹³⁹ Interview C & Tara Tepavac (2019): *National Assembly of the Republic of Serbia: Temple or Façade of Democracy?* Available online at <https://crt.rs/wp-content/uploads/2019/01/National-Assembly-of-the-Republic-of-Serbia-temple-or-facade-of-democracy.pdf>.

¹⁴⁰ Interview E.

¹⁴¹ Interview H.

as long as Serbian citizens continue to vote for authoritarian leaders, that they have decided that the arduous transformative process which EU accession requires is not worth the effort. The problem with this line of thinking in Serbia is that through state capture, the institutions which typically guarantee that elections are held in a free, fair manner do not exist.¹⁴²

In a true democracy, the role of elections is highly important as an opportunity to “throw the rascals out.” However, with state resources being put to use for the governing party through informal networks and relational clientelism, the level playing field under which democratic elections are supposed to take place is skewed. The role of democracy in EU enlargement is also affected by the fact that, despite being responsible for state capture, the SNS formally remains in favour of EU integration. EU-membership is so popular in Serbia that to be elected, political elites have to maintain at least the image that they are advancing in that direction, if not for the values, then for the increase in standards of living that it entails.¹⁴³ Up to now, Vučić has been careful to keep up the appearance that he wants to join the EU because otherwise, he would lose the support of the silent majority of Serbians who want EU accession.¹⁴⁴ Appearing to engage with the EU, is also important for the legitimacy of Vučić as he benefits from being seen as the powerful actor who can engage with the EU and get the job of EU accession done.¹⁴⁵ While nominally, we see a pro-Western orientation coming from Vučić, de-facto, we see an implicit rejection of the liberal democratic values that the EU espouses.¹⁴⁶ In Serbia, the government-controlled media has “been working against the positive perception of the EU in the country,” thus cynically undermining the credibility of EU enlargement.¹⁴⁷ By portraying EU actors in a negative light, Vučić can escape accountability for the lack of progress made in EU accession. While voters might not be fooled forever, the uneven playing field for elections that state capture creates makes it easier for the SNS to keep control over the government.

Serbian voters do have a role to play in deciding who is in power on paper: internal and external expectations that elections are kept regularly to ensure that there is an elected parliament and government in place. Still, the enduring state capture in the advantage of the SNS makes the system less fair and thereby makes the position of the general voter less powerful.

¹⁴² Interview A.

¹⁴³ Interview E.

¹⁴⁴ Interview E.

¹⁴⁵ Interview E.

¹⁴⁶ Bieber, Florian (2020): *The Rise of Authoritarianism in the Western Balkans*. Cham: Springer International Publishing. pp 141.

¹⁴⁷ Interview C.

5.1.6 Step 1 conclusion:

This section has shown how political, ruling elites, from Vučić's SNS party, are empowered by state capture, which gives them access to using state resources for private and party-political reasons. First of all, we have seen how the EU enlargement process primarily engages with the government from the accession candidate. In the case of Serbia, this has been the SNS government since 2012. Second of all, we have seen that veto-players have been structurally weakened through state capture and its associated attacks on independent institutions. The extent of these attacks is also reflected in Serbia's downgrading from a semi-consolidated democracy to a hybrid regime in the latest Freedom House ranking.¹⁴⁸

The absence of powerful veto players who are not loyal to the SNS party ensures that the political elites in government are the main target of EU conditionality and adds to the causal relevance of these political elites and their cost/benefit assessment.¹⁴⁹ Whereas in a fully functioning democracy, the people would indeed be the ones making the decisions to go on with EU enlargement or not, the democratic backsliding which can be observed in Serbia reduces this mechanism. This thesis will therefore assume that political, ruling elites embodied by Vučić and the SNS party are the most relevant actors whose cost/benefit calculations matter when deciding whether or not to adopt and in good faith implement EU rules. However, it will also still assume that in making that cost/benefit calculation, that they continue to incorporate domestic political considerations.

5.2.1 Step 2: Situational Mechanism:

In this step, the situational mechanism is investigated. First, this section will look at the presence of informal practices and a culture of informality as a broad social and cultural context of the Western Balkans and Serbia in particular. The sub-question to be answered is: What effects does the practice of state capture have in Serbia, and what role does informality play in that practice? The starting point of this analysis is the breakup of Yugoslavia in 1992, and the transition that followed. Secondly, it will analyse state capture in Serbia as something that could be built on that culture of informality and how state capture forms the context in which Serbian political elites make their cost/benefit calculations with regards to EU enlargement.

5.2.2 Informal practices and a culture of informality following the breakup of Yugoslavia

The Western Balkans have seen many attempts of transformations over the last decades. Elderly citizens in Serbia might never have moved from their place of residence in Belgrade, yet have been a

¹⁴⁸ Freedom House: "Nations in Transit 2020: Dropping the Democratic Facade". Available online at <https://freedomhouse.org/report/nations-transit/2020/dropping-democratic-facade>.

¹⁴⁹ Schimmelfennig, Frank; Sedelmeier, Ulrich (2005): The Europeanization of Central and Eastern Europe. Ithaca and London: Cornell University Press. pp 26.

citizen of 4 different countries.¹⁵⁰ The turbulent social change that followed these (failed) transformations have made citizens of the Western Balkans sceptical of such projects of change. To survive in complicated, hostile settings, citizens adapted, coped, and sometimes even survived through a host of ‘practical norms’, ‘unwritten rules’ and informal conventions of behaviour.¹⁵¹ It was necessary for citizens living through post-socialist transitions to manipulate formal rules through the enforcement of informal norms and personal obligations to navigate through constraints by selectively following some rules and breaking others.¹⁵² As one interviewee put it: “If formal structures do not function properly anymore, then informal institutions become more important.”¹⁵³ These unwritten rules prioritizing personal relationships over formal rules were useful in navigating through a minefield of failed or failing institutions, and indeed a certain amount of informality is not a bad thing per se. There is a rationality behind using informal networks based on trust with low transaction costs and useful in practical problem solving when impersonal, formal institutions are proving to be ineffective.¹⁵⁴ Nevertheless, they also block desirable progress promoted by formal institutions and open up the door for clientelism and networks of patronage to form which subvert away from the public good, to serve the private interests of individuals.¹⁵⁵

The breakup of Yugoslavia and the violent turmoil that followed had a significant impact on how several Western Balkans countries would develop. At the same time that countries in Central and Eastern Europe were developing their democracies, fighting ensued in certain Western Balkans countries, which prevented the development of democracy.¹⁵⁶ This different context is important to keep in mind when comparing the different environments in which accession took place for the CEE countries and the Western Balkan countries.¹⁵⁷

The process of state formation was heavily influenced by networks of elites that established monopolies of power. These elites did so either as nationalists (for example, in the case of Croatia with General Tudjman) or former communists, who had adopted nationalism as their ideology (such as in Serbia with Milošević).¹⁵⁸ Unlike the clean break with communist elites as had occurred in several

¹⁵⁰ Slobodan Georgiev (2019): What we talk about when we talk about state capture: reflections from Serbia. Available online at <https://scscsussex.wordpress.com/2019/11/04/what-we-talk-about-when-we-talk-about-state-capture-reflections-from-serbia/>.

¹⁵¹ Eric Gordy, Predrag Cvetičanin Alena (2018): Closing the gap between formal and informal institutions in Balkans. pp 6. Available online at <https://cordis.europa.eu/project/id/693537>.

¹⁵² Ibid.

¹⁵³ Interview H

¹⁵⁴ Eric Gordy, Predrag Cvetičanin Alena (2018): Closing the gap between formal and informal institutions in Balkans. pp 13.

¹⁵⁵ Ibid.

¹⁵⁶ Interview G

¹⁵⁷ Zhelyazkova, Asya; Damjanovski, Ivan; Nechev, Zoran; Schimmelfennig, Frank (2019): European Union Conditionality in the Western Balkans: External Incentives and Europeanisation. In Jelena Džankić, Soeren Keil, Marko Kmezić (Eds.): The Europeanisation of the Western Balkans. Cham: Springer International Publishing, pp. 15–37.

¹⁵⁸ Soeren Keil (2018): The Business of State Capture and the Rise of Authoritarianism in Kosovo, Macedonia, Montenegro and Serbia. pp. 64.

Central and Eastern European countries, networks of power made up by powerful actors within the old Yugoslav regime were able to remain in power in the messy transition following the breakup of Yugoslavia. In the period that followed, formal democracy was combined with informal authoritarianism, which led to further clientelism and replaced state control over resources by party control.¹⁵⁹ The abrupt, formal introduction of democracy did not encounter an “autonomous ‘sphere’ of interests, opinions, or socio-economic forces” but rather people who were “still dependent on state mediation and prone to collectivist identification and authoritarian ideologies.”¹⁶⁰ Besides the 1990s war, countries in the region had to deal with the dissolution of the common state, mass migration, the breakdown of the socialist social model, economic slump, state-building, and nationalism, all occurring simultaneously.¹⁶¹ Due to the imposed sanctions, large informal criminal networks became powerful through smuggling goods into Serbia.¹⁶² Not only did a culture of informality start to flourish here, but with the chaos associated with the fall of Yugoslavia, various compasses were lost, as one interviewee put it “a moral compass, lost in the war [and] a compass on expectations of how the state looks like.”¹⁶³

Most of these informal practices adopted by people throughout the Western Balkans and Serbia take place in everyday life. There is cultural awareness, as one interviewee put it, that “a rule is not applied equally to everyone.”¹⁶⁴ Instead, when a service, action, or job appointment is needed, it is important that some sort of personal connection involved, which is an idea which the interviewees perceive to have deep roots in WB societies.¹⁶⁵ People feel obliged to start playing by semi-corrupt rules to get healthcare or avoid regular long queues as they know that “whatever it is, it is resolved when you give a call to the right person.”¹⁶⁶ The cultural acceptance of everyday informality seems to be rather high, with the implicit notion that nobody gets hurt and that it would almost be impolite not to do the “right thing.”¹⁶⁷

Considering how informal practices are widespread in Serbia, it becomes difficult to draw a clear line between where informal practices stop and corruption begins.¹⁶⁸ While informal practices help people manoeuvre around complex environments, state capture abuses informal and formal practices on a much larger scale taking place in a systemic process. While state capture is not caused by informality

¹⁵⁹ Bieber, Florian (2020): *The Rise of Authoritarianism in the Western Balkans*. Cham: Springer International Publishing. pp 28.

¹⁶⁰ Heinrich Böll Stiftung (2017): *Perspectives Southeastern Europe #4: Captured states in the Balkans*. pp 5.

¹⁶¹ Eric Gordy, Predrag Cvetičanin Alena (2018): *Closing the gap between formal and informal institutions in Balkans*. pp 29.

¹⁶² Ibid.

¹⁶³ Interview A.

¹⁶⁴ Interview G.

¹⁶⁵ Interview A, C & G

¹⁶⁶ Interview B.

¹⁶⁷ Interview C.

¹⁶⁸ Interview A & Bieber, Florian (2020): *The Rise of Authoritarianism in the Western Balkans*. Cham: Springer International Publishing. pp 111.

directly, having a large culture of informality present in Serbia helps state capture to function. The practical use of informality lies in the fact that power can be exercised while bypassing formalistic, legal mechanisms.¹⁶⁹ To conclude, the tumultuous period after the transition of Yugoslavia left its mark on Serbian society. The rise of informal practices and norms from that period helped people survive in complex contexts but also opened the door for politics based on clientelism and networks of patronage, which formed a breeding ground for state capture. It was on these ruins of Yugoslavia, where a culture of informality became an essential feature of the messy transition that followed its dissolution, that state capture in Serbia could flourish.

5.2.3 State Capture in Serbia

After the fall of Yugoslavia, Serbia has experienced various levels of state capture in the period that followed. The Milošević era, lasting from 1992 until his downfall in 2000 was characterized by high levels of state capture in which corruption and the use of state resources for private gain was widespread.¹⁷⁰ His successor Zoran Đinđić who took office in 2001, led a broad coalition of democratic parties. While there were still elements of corruption in Serbia, it represented a significant step up in anti-corruption efforts compared to Milošević. Đinđić was ahead of his time and was getting rid of regressive elements who had enriched themselves, something for which he ultimately had to pay with his life as a prominent organized crime syndicate assassinated him on March 12th, 2003.¹⁷¹

In Serbia, state capture consolidated around the Serbian progressive party, the SNS, which has been in power since 2012. A quote from interviewee H is apt here: “You have the political party in power, the SNS, basically over the course of 8 years taking control of all institutions. Independent, regulatory bodies, parliament, public prosecuting, secret service, everything is under their control. In that sense, state capture is absolute.”¹⁷² The dependency of many actors in Serbia on the state for employment, public funding, or even the execution of simple state tasks makes many vulnerable for political elites making those state resources conditional on their loyalty and (tacit) support.¹⁷³ It has been argued that this consolidation of state capture by the ruling SNS party has also inadvertently been helped by EU conditionality, through the “Money, power, Glory”-argument put forward by Richter and Wunsch. According to their analysis, the EU has helped state capture through 3 mechanisms. Firstly, by providing political elites with EU funding, which freed up state resources for corruption and economic

¹⁶⁹ Ibid.

¹⁷⁰ V. Pestic (2007, *Centre for European Policy Studies*, State Capture and Widespread Corruption in Serbia, <https://www.ceps.eu/wp-content/uploads/2013/02/1478.pdf>).

¹⁷¹ Interview B & Zurnić, Marija (2019): *Confronting Corruption in Post-Milošević Serbia: Discourse and Institutions*. In Marija Zurnić (Ed.): *Corruption and Democratic Transition in Eastern Europe*, vol. 78. Cham: Springer International Publishing, pp. 78.

¹⁷² Interview E.

¹⁷³ Soeren Keil (2018): *The Business of State Capture and the Rise of Authoritarianism in Kosovo, Macedonia, Montenegro and Serbia*. pp. 71.

liberalization opportunities, which could be abused (money). Secondly, by empowering elites through justifying the lack of internal accountability mechanisms on strict deadlines of EU acquis adoption (power). Thirdly, by legitimizing the position of autocratic political elites (glory).¹⁷⁴ While it goes too far to blame the rise of state capture in Serbia solely on EU support, the role of the EU's half-hearted conditionality, which inadvertently helped state capture grow in Serbia, should not be underestimated.

5.2.3.1 Politicization of Serbian state administration

One crucial mechanism through which state capture operates in Serbia is the politicization of the state administration.¹⁷⁵ State institutions are increasingly filled with patronage appointments based on loyalty to Vučić and the SNS, rather than on merit and competence.¹⁷⁶ Being a member of the SNS is highly important for obtaining a job in the state administration.¹⁷⁷ The importance of party membership to get jobs, opportunities and other benefits is also reflected by high membership figures for the ruling SNS party in Serbia. Around 730.000 people are a member of the SNS, which officially makes them the biggest party in the entirety of Europe by far. The German CDU party “only” has around 407.000 members, despite Germany being approximately 12 times larger than Serbia is.¹⁷⁸ One interviewee indicated that there seems to be the idea among Serbians that they have to be thankful to the ruling party for being employed in public administration, which is a mechanism on which the party relies to obtain loyalty and thus gather votes in elections.¹⁷⁹ Not only the employed person but also their families become dependent on the government staying in power. It is not uncommon that SNS members employed by the government are then pressured to obtain votes for the party if they want to ensure that their employment is secure.¹⁸⁰ The appointment of jobs based on party membership is an example of how state capture stretches deep into society and creates a complex pyramid led by political ruling elites at the top and promotes the idea that you are “either with us or against us.”¹⁸¹ After eight years of state capture and almost every appointment of a public position dependent on the political will of the government, the amount of society untouched by state capture is small in Serbia, according to an interviewee: “there is no empty space in society that is not under control.”¹⁸² With so many jobs conditional on loyalty to the political elite and the SNS, state capture

¹⁷⁴ Richter, Solveig; Wunsch, Natasha (2020): Money, power, glory: pp. 41.

¹⁷⁵ Vladimir Mihajlovic (2019): The Senior Civil Service System in Serbia: 12 years of Simulated Depoliticisation. European Policy Centre Belgrade. Available online at https://cep.org.rs/wp-content/uploads/2019/06/The-Senior-Civil-Service-System-in-Serbia-12-Years-of-Simulated-Depoliticisation_VM.pdf.

¹⁷⁶ Interview H & Vladimir Mihajlović (2018): Serbia Scores a Weak Two in Professionalisation of Public Administration. European Policy Centre Belgrade. Available online at <https://cep.org.rs/wp-content/uploads/2018/02/Weak-Two-for-Serbia.pdf>.

¹⁷⁷ Interview H & Belgrade Center for Security Policy (2020): The Security Sector in a Captured State.

¹⁷⁸ Interview H.

¹⁷⁹ Interview G.

¹⁸⁰ Interview G & Soeren Keil (2018): The Business of State Capture and the Rise of Authoritarianism in Kosovo, Macedonia, Montenegro and Serbia. pp. 70.

¹⁸¹ Interview H & Belgrade Center for Security Policy (2020): The Security Sector in a Captured State. pp 11.

¹⁸² Interview F.

can turn into society capture as well when opportunities and life chances become subject to decisions of the state.¹⁸³

Hille and Knill have already demonstrated that a properly functioning, and high-quality domestic bureaucracy is a precondition for enlargement and the implementation of EU acquis.¹⁸⁴ Serbia has an extensive public administration and is regarded as the country with the highest institutional capacity out of all the WB6, however, the politicization of public administration can have detrimental effects on this institutional capacity as well. Whereas the Serbian EU integration office was seen as the “gold part of Serbia’s administration” 8 years ago, appointments based on party loyalty and not on merit have taken their toll on effectivity.¹⁸⁵ While the politicization of state administration and employment based on loyalty and not merit helps the political elites in power to tie the bureaucracy to their political will, it has detrimental effects on the institutional capacity of the bureaucracy to bona fides adopt and implement EU laws.¹⁸⁶

The politicization of the state administration can also translate into control over the judiciary when an appointment to these organisations depends on the political will of the government and the SNS. In Serbia, law enforcement has a significant amount of discretion when deciding whether or not to go ahead with the investigation or persecution in a particular case.¹⁸⁷ Discretion is not a problem in and of itself but linked with political appointment, it can result in political motivations to go ahead with certain prosecutions and not with others.¹⁸⁸ Combined with limited accountability for judges and public prosecutors and a lack of transparency, this helps hide political pressure from the public.¹⁸⁹ There have been multiple scandals involving high public officials in Serbia with are known but for which “there is no public prosecution office which would react.”¹⁹⁰ Loyalty to the leading Serbian party, therefore, not only results in employment but can even grant protection from prosecutions: “It is really difficult to prosecute any individual that is loyal to the party because the system is behind that and they are protected.”¹⁹¹

¹⁸³ Eric Gordy, Predrag Cvetičanin Alena (2018): Closing the gap between formal and informal institutions in Balkans. pp 144.

¹⁸⁴ Hille, Peter; Knill, Christoph (2006): ‘It’s the Bureaucracy, Stupid’. In *European Union Politics* 7 (4), pp. 549. DOI: 10.1177/1465116506069442.

¹⁸⁵ Interview H.

¹⁸⁶ European Commission: Serbia 2019 Report pp 1.

¹⁸⁷ Srdjan Cvijic (2018): *When Law Doesn’t Rule: State Capture of the Judiciary, Prosecution, Police in Serbia*. pp 23.

¹⁸⁸ Srdjan Cvijic (2018): *When Law Doesn’t Rule: State Capture of the Judiciary, Prosecution, Police in Serbia*. pp 5.

¹⁸⁹ Ibid.

¹⁹⁰ Interview H.

¹⁹¹ Interview C.

5.2.3.2 State capture and its effects on media freedom

Another mechanism in which state resources can be used for party-political gain and which increases the power of the government over society is the lack of media freedom in Serbia. The latest media freedom index ranked Serbia 93 out of 190 worldwide, the worst ranking in the WB6.¹⁹² The main problem concerning state influence on the Serbian media landscape comes from the dependency of the media on government funding.¹⁹³ The Serbian media landscape consists of many small media outlets and a few big national broadcasters which all compete for advertising revenue. There is only a limited number of actors of the proper size to fund advertisement campaigns on the main media: large businesses and the government. By selectively using state resources to fund various public announcement programmes, this allows the government to channel the advertising revenue to media outlets who report favourably about the state.¹⁹⁴

Scandals could potentially destabilize the government and its political elites. Instead, government control over the media is able to suppress negative stories about the government or frame them in a particular way: “when all these affairs and incidents happen, many people will not even hear from them.”¹⁹⁵ While there are some small independent media sources, they do not have the broad coverage of the leading Serbian broadcasters, such as RTS (Radio televizija Srbije) and RTV (Radio Televizija Vojvodine).¹⁹⁶ Most of the scandals which were discovered about the Vučić government have been found by networks for investigative journalism such as KRIK (Crime and Corruption Reporting Network) and BIRN (Balkan Investigative Journalism Network). These investigative networks are limited in their size and lack the reach of state-controlled public broadcasters. There are also instances of attacks on journalists that are not adequately investigated by law enforcement, leading to self-censorship among journalists.¹⁹⁷

One last example of the significant emphasis which is put on keeping control over the public discourse by the ruling SNS party is through control over social media. Twitter announced it had removed 30.000 twitter accounts related to the SNS party who were sending out propaganda in its name.¹⁹⁸ Considering

¹⁹² Reporters without Borders: World Press Freedom Index. Available online at <https://rsf.org/en/serbia>.

¹⁹³ Reporters without Borders (2017): Media Ownership Monitor presented by RSF and BIRN.

¹⁹⁴ Interview F.

¹⁹⁵ Interview D.

¹⁹⁶ Reporters without Borders (2017): Media Ownership Monitor presented by RSF and BIRN. Available online at <https://rsf.org/en/news/who-owns-media-serbia>.

¹⁹⁷ Julija Simić (2019): Rise in attacks on journalists in Serbia prompts concerns for press freedom. Euractiv. Available online at <https://www.euractiv.com/section/enlargement/news/rise-in-attacks-on-journalists-in-serbia-prompts-concerns-for-press-freedom/>.

¹⁹⁸ RadioFreeEurope (2020): Twitter Removes Thousands Of Accounts 'Promoting' Serbian Ruling Party. Available online at <https://www.rferl.org/a/serbia-twitter-Vučić-sns-serbian-progressive-party/30526199.html>.

the essential watch-dog role that an independent media plays in the functioning of a democracy, influence over the media is a source of power for the political, ruling elites led by Vučić.

5.2.3.3 State capture and obtaining electoral support through political clientelism

Clientelism is based on the exchange of political and electoral support (votes) in return for material benefits through a relationship between political parties and citizens. Clientelism can help individual citizens to deal with the state and even navigate through life. Instead of going through complicated procedures, it provides a shortcut to various opportunities ranging from employment, permits, subsidies, or other material benefits.¹⁹⁹ It represents a highly influential mode of political mobilization throughout the Western Balkans. This means that whoever is in control over state resources can rely on those state resources to obtain more support.²⁰⁰ The difficulty lies in drawing a line between clientelist relationships and state capture, as the presence of the former does not directly imply state capture.²⁰¹ However, as mentioned before, the systemic nature of state capture that has taken root in Serbia means that we can no longer speak of mere clientelist relationships. Instead, political clientelism seems to be used actively in Serbian state capture to secure votes and loyalty from citizens in return for favours and advantages given through state resources. The informal networks through which this state capture is strengthened means that the power of political elites becomes dependent on returning benefits to specific actors in a society, which leads them to pursue private goals, rather than public goals.²⁰²

5.2.3.4 State capture and control over the legislative process

An unfair democratic playing field has led to a parliament dominated by SNS politicians, which reduces the extent to which the Serbian parliament holds the government to account and performs its oversight function.²⁰³ There is often a lack of substantive debate on laws proposed by the government, also with regards to EU acquis where little debate takes place with the use of the argument “the EU wants us to do this.”²⁰⁴ The massive size of the SNS in the Serbian parliament relative to the (democratic) opposition translates into dominance over parliamentary committees and parliamentary plenary work, according to an interviewee.²⁰⁵ Such dominance in parliament has considerable consequences for the principles regarding the division of power and parliamentary scrutiny which

¹⁹⁹ Eric Gordy, Predrag Cvetičanin Alena (2018): Closing the gap between formal and informal institutions in Balkans. pp 161.

²⁰⁰ Eric Gordy, Predrag Cvetičanin Alena (2018): Closing the gap between formal and informal institutions in Balkans. pp 145.

²⁰¹ Bieber, Florian (2020): The Rise of Authoritarianism in the Western Balkans. Cham: Springer International Publishing. pp 113.

²⁰² Richter, Solveig (2017): „Der Wolf im Schafspelz“ pp. 187.

²⁰³ Tara Tepavac (2019): National Assembly of the Republic Of Serbia: Temple or Façade of Democracy?

²⁰⁴ Interview D.

²⁰⁵ Interview F.

“disables the opposition to scrutinise and control the governments work effectively.”²⁰⁶ This is confirmed by a report from 2019 which stated that a concentration of power in the hands of actors loyal to the executive, as well as outright abuse of democratic procedures, ensured the collapse of both the status and influence of the Serbian Parliament vis-à-vis the executive.²⁰⁷

By not performing oversight over the work from the executive branch, for example, by not assessing reports from independent and regulatory institutions, there is a reduced amount of pressure that demands the government to respect independent institutions and the rule of law.²⁰⁸ The Serbian government does not seem to recognise the importance of parliament as a check on government power. The reduced control function of the Serbian parliament, then in turn, “enables various further elements of state capture for the government.”²⁰⁹

5.2.4 Step 2 conclusions: State capture and its corrosive effects on checks and balances

This situational mechanism step has provided the context in which decisions on EU rule adoption are made. It has done so in a broader sense, in the form of societal informality and in a more specific sense, namely in the form of state capture. This step has shown the various mechanisms which political, ruling elites employ in Serbia to further their private or party-political interests using state resources and to create the conditions in which such state capture can proceed unhindered. With strong institutions and accountability structures, any example of using state resources for private or party-political gain could be investigated, prosecuted, and those responsible held to account. However, the corrosive effects of state capture prevent various structures and independent organizations from providing accountability and checks on government power.

Both horizontal and vertical constraints on power are therefore weakened. Horizontal constraints come in the form of democratic institutions (courts, government watchdogs, independent organizations) which curtail government power and are weakened, among others, through installing loyal party member to strategic positions.²¹⁰ Vertical constraints, in the form of elections on a democratic level playing field, are also weakened through political clientelism with state resources and reductions in media freedom. With the vertical constraints on the government weakened, it becomes

²⁰⁶ Interview F.

²⁰⁷ Tara Tepavac (2019): National Assembly of the Republic Of Serbia: Temple or Façade of Democracy?

²⁰⁸ Interview I.

²⁰⁹ Interview F.

²¹⁰ Dimitrova, Antoaneta L. (2018): The uncertain road to sustainable democracy: elite coalitions, citizen protests and the prospects of democracy in Central and Eastern Europe. In *East European Politics* 34 (3), pp. 269. DOI: 10.1080/21599165.2018.1491840.

more difficult for civil society and voters to put the necessary pressures on the government that bring accountability structures and good governance to Serbia and lead on the path to EU membership.²¹¹

Overview: Corrosive effects of state capture on vertical and horizontal constraints	
Voters	<ul style="list-style-type: none"> • Abuse of state resources to obtain votes for SNS (relational clientelism, vote-buying) • “Society capture” through state control over (economic) opportunities • Control of perception of voters through media
Media	<ul style="list-style-type: none"> • The dependency of funding from the Serbian government translates into de-facto government control over large public broadcasters • Attacks on journalists are not fully pursued leading to a dangerous atmosphere for independent journalists and self-censorship
Opposition	<ul style="list-style-type: none"> • Difficult for opposition parties to win elections with state resources being used for party-political gain by SNS • The reduction of parliamentary power for the opposition leads to a weak control function of parliament over the executive.
Independent institutions	<ul style="list-style-type: none"> • The politicization of independent institutions reducing horizontal constraints on political, ruling elites
Judiciary	<ul style="list-style-type: none"> • The politicization of the judiciary, political pressure for selective prosecution

State capture therefore describes not just any other low-level form of petty corruption but a systemic, cancerous form of grand corruption that destroys checks and balances in a society.²¹² State capture gnaws away at control structures that would otherwise guarantee transparency, accountability, and good governance. It has to be noted that these institutions ensuring the separation of power were also not fully established or even functioning before the current political elites came to power in 2012.²¹³ Political elites in Serbia abused these institutional weaknesses and the culture of informality to enhance their system of state capture further. It is this context of widespread informality (informal networks, institutions, and norms) and state capture that provides in this thesis the situational context

²¹¹ Vachudova, Milada Anna (2014): EU Leverage and National Interests in the Balkans: The Puzzles of Enlargement Ten Years On. pp. 131.
²¹² Interview I.
²¹³ Soeren Keil (2018): The Business of State Capture and the Rise of Authoritarianism in Kosovo, Macedonia, Montenegro and Serbia. pp. 69.

in which the political, ruling elites of the SNS led by Vučić decide whether or not to engage with EU rule adoption and implementation.

5.3.1 Step 3: Action-Formation Mechanism:

This model zooms in on the individual, micro-level considerations of political elites in the Western Balkans, which are influenced by the situational mechanisms identified in the previous step. These political elites, led by Vučić, are in charge of the Serbian government and have to decide whether or not to engage in the adoption and implementation of EU rules. This section will inquire whether, and if so, how these political elites balance the costs and benefits of enlargement in their decisions to adopt and implement EU rules or not. It also looks into the effects of state capture on other elements of the EIM, such as determinacy and credibility. The main sub-question for this step 3 is: *What power, welfare, and opportunity costs and benefits does state capture create with regards to EU accession in Serbia?*

5.3.2 Characteristics of cost/benefit analysis under state capture in Serbia

Before we can analyse the exact costs and benefits involved in the adoption and implementation of EU acquis, we need to first look at whether political, ruling elites balance the costs and benefits in the first place and if so, what are the specific characteristics of this cost/benefit analysis. These characteristics are important as they can influence how the power, welfare, and opportunity costs are calculated.

The conducted interviews and research indicate that political elites in Serbia indeed make a cost/benefit analysis when engaging in EU rule adoption, several stating that “that is precisely what they do.”²¹⁴ However, the specific characteristics of this analysis seem to have a large impact on the outcome. First, the question becomes whether these calculations from the political, ruling elite in Serbia are done keeping mostly broad interests or private interests in mind. Through state capture, the political arena of Serbia has turned into place, which favours the fulfilment of particularistic interests rather than universalist, common aspirations.²¹⁵ When a state gets capture, such a state “loses its autonomy to act in furtherance of public goals.”²¹⁶ The lack of interest in furthering the public interest is confirmed by several interviewees who remarked how political elites mostly have their own

²¹⁴ Interview E, B, & I.

²¹⁵ Eric Gordy, Predrag Cvetičanin Alena (2018): Closing the gap between formal and informal institutions in Balkans. pp 145.

²¹⁶ Fazekas, Mihály; Tóth, István János (2016): From Corruption to State Capture. In Political Research Quarterly 69 (2), pp. 322. DOI: 10.1177/1065912916639137.

interests in mind.²¹⁷ State capture has become so deeply engrained that, according to an interviewee, “no-one has an interest to act in the public good.”²¹⁸

Secondly, it becomes important to see whether political, ruling elites have a short-term or a long-term perspective. A long-term perspective combined with serving the public interest is necessary for EU accession, as an actor has to be prepared to make politically difficult decisions today, to have EU accession in the mid to long term.²¹⁹ Political elites have incentives to prefer quick results that will help them win elections over long-term reform that might ensure the loss of their political office.²²⁰ Some of the problematic reforms which Serbia would have to implement will last beyond the political cycle of most Serbian politicians. The incentives for implementing these long-term reforms are, therefore, lower. A regime which relies on state capture cannot afford to take a long-term perspective leading to EU integration, because it keeps its own long-term interests in mind and knows that such a path to EU integration would then undoubtedly lead to corruption trials and convictions.²²¹ It can, therefore, be argued that Serbian political, ruling elites do keep their own long-term interests in mind when deciding not to engage in bona fides implementation of rule of law/democratisation standards as they know that not fully implementing these standards will maintain their extractive rent-seeking opportunities and their protection from prosecutions in the long-run. As one interviewee points out, a predominantly short-term perspective with regards to EU accession does not mean that there will not be any consideration of the longer term, but rather that it affects the enthusiasm and energy of any changes on such a longer term.²²² Additionally, it is easy for a government to make rhetorical promises about change in the future, but not deliver in the implementation stage, which frequently occurs in Serbian politics.²²³

Seeing these cost-benefit calculations from the perspective of political elites who are embedded in a system of state capture they advance and seek to protect, instead of objectively weighing politicians, allows for a more in-depth understanding of the choices which Serbian decisionmakers face when deciding whether or not to engage in EU rule adoption.

5.3.3 Differentiation between various sorts of EU Acquis

The EU acquis which Serbia has to implement is varied in nature, and can therefore also have different costs and benefits for different groups of actors. Some pieces of EU acquis, namely those which deal

²¹⁷ Interview A.

²¹⁸ Interview B.

²¹⁹ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 661.

²²⁰ Interview B & C.

²²¹ Interview H.

²²² Interview F.

²²³ Sasa Dragojlo (2020): BIRN Fact-check: Has Serbia’s Ruling Party Kept Its Promises? Available online at <https://balkaninsight.com/2020/06/17/birn-fact-check-has-serbias-ruling-party-kept-its-promises/>.

with highly technical standards and have low political costs, are relatively easy to adopt and implement for the Serbian political, ruling elite. The rules which have to be adopted and implemented in the field of the rule of law are stalled. Here the adoption costs are also the highest: “when it comes to public procurement, elections, judiciary this is where the adoption costs are higher. This is where you capture the state.”²²⁴ Rule of law reform and implementation would mean the strengthening of institutions that put a check of the executive and curtail corruption. A practical example here named by one of the interviewees is with regards to empowering state institutions to fight organized crime and corruption. If political elites would empower a state commission by equipping it with capacities and funds, then these actors would be shooting themselves in the foot: “that same commission will start prosecuting them, as they are in power for the last ten years.”²²⁵

However, simplistic dichotomies between political and technical EU rules should be avoided. State capture does not limit itself to political institutions but also intrudes far into society and the economy. This means that adopting and implementing EU acquis related to the role of the government in the economy can also be problematic. For example, with regards to economic EU acquis, three fields are particularly costly due to high state capture. State aid, competition law, and public procurement. While these are all seemingly technical and not related directly to the rule of law, they might still be politically costly. All these three fields regulate the interaction of governments with the economy: state aid (art 107 TFEU) prohibits advantages given on a selective basis to undertakings by national public authorities.²²⁶ Implementing this acquis would require Serbia to ask permission of the European Commission for any selective advantage which it gives to any undertaking, which would make using state resources to favour certain actors for clientelist reasons illegal under EU law. Strict implementation of competition law would thereby remove power from the state. It would also render anti-competitive practices, such as in the form of monopolies illegal, to the detriment of influential informal economic players who lobby the government against such action.

Thirdly, public procurement is a pathway through which much state resources can be put to use for private or party-political reasons.²²⁷ For the future integration of the WB6 into the EU’s single market, public procurement needs to facilitate open market competition and take place in a transparent process open to all companies based on non-discrimination and equal treatment. What remains problematic is that even with public procurement regulations in place, these can still be bypassed by ‘lex specialis’ procedures where parliament ratifies foreign loans at the cost of transparency and

²²⁴ Interview C & European Commission: Serbia 2019 Report pp 1.

²²⁵ Interview C.

²²⁶ Consolidated version of the Treaty on the Functioning of the European Union, Art. 107.

²²⁷ Nikola Cuckić - (2020): Reforming public procurement crucial for fighting corruption in the Western Balkans. Available online at <https://europeanwesternbalkans.com/2020/03/20/reforming-public-procurement-crucial-for-fighting-corruption-in-the-western-balkans/>.

opening up possibilities for corruption.²²⁸ Serbian public procurement law was bypassed in an intransparent manner in May 2019 when the Serbian parliament ratified an interstate agreement on a loan of China.²²⁹ It is important to remember that when Croatia acceded into the EU in 2013, it was not the chapter on the rule of law, but rather chapter 8 on competition law, which was closed last.²³⁰ To conclude, not all EU acquis is the same, and it is the extent to which a particular piece of EU acquis negatively affects the position of the political, ruling elites that influences the extent to which rules become more challenging to adopt and implement.

5.3.4 Selective adoption and implementation of EU rules

One last, but essential differentiation to make with regards to the cost/benefit calculations of political, ruling elites of Serbia engaged in EU enlargement lies in the difference between adoption and implementation of EU acquis. The total control over the bureaucracy by the SNS means that they also have total control over the extent to which EU rules, when adopted, are implemented. Keeping up appearances on the side of the Serbians might require them to adopt certain pieces of legislation. However, total control over the bureaucracy means this does not automatically translate into de-facto implementation of that legislation.²³¹ As Interviewee A put it, “a lot can happen until it starts hurting the actors, and then there it stops.”²³² We should therefore not look at the adoption of legislation as a matter of whether EU acquis is implemented or not: “It is not yes or no: it is how far.”²³³ Vučić does not seem to have a problem with adopting things if it does not touch him or his direct circle, that is why it looks like a lot of ‘progress’ can take place, as the painful place is never reached.”²³⁴

Research on informality in Serbia also indicates that the gap between what is formally envisaged and what actually happens in practice is widened at the stage of enforcement and implementation.²³⁵ Whereas in most old democracies, interests are articulated at the legislative stage, in the WB6 region, interests are incorporated predominantly at the enforcement stage.²³⁶ Serbia is pressured by the EU to adopt large amounts of acquis, but the institutional capacity to fully implement this legislation is sometimes lacking. As a consequence, formal adoption takes place, but informal rules and

²²⁸ Nikola Cuckić (2019): [EWB Interview] Milićević: Fight against corruption is not sufficiently supported by the public. Available online at <https://europeanwesternbalkans.com/2019/12/18/ewb-interview-milicevic-fight-against-corruption-is-not-sufficiently-supported-by-the-public/>.

²²⁹ Transparency Serbia (2019): Public Procurement Law being ignored. Available online at <https://europeanwesternbalkans.com/2019/12/18/ewb-interview-milicevic-fight-against-corruption-is-not-sufficiently-supported-by-the-public/>.

²³⁰ Interview I.

²³¹ Börzel, Tanja A.; Pamuk, Yasemin (2012): Pathologies of Europeanisation: Fighting Corruption in the Southern Caucasus. In *West European Politics* 35 (1), pp. 80 DOI: 10.1080/01402382.2012.631315.

²³² Interview A.

²³³ Interview A.

²³⁴ Interview A.

²³⁵ Eric Gordy, Predrag Cvetičanin Alena (2018): Closing the gap between formal and informal institutions in Balkans. pp 144.

²³⁶ Ibid.

relationships are used to make such pieces of legislation work in practice. The fact that state capture gives near-complete power over the decision to implement does not mean that adopting all parts of the EU acquis is acceptable. As Interviewee G put it, “if they do not want to adopt something, they always find a way not to adopt it.”²³⁷

5.3.5 Domestic costs of adoption and implementation of EU acquis

5.3.5.1 Power costs

Power costs are generated when the adoption and implementation of particular EU rules in Serbia have detrimental effects on the acquisition and exercise of power. Power costs are mostly felt by the political, ruling elites whose state capture would not be possible with increased scrutiny and accountability from independent institutions. Exactly these independent institutions are empowered by the bona fides implementation of EU rule of law and democratization standards. First of all, a significant power cost for political, ruling elites associated with the full adoption and implementation of rule of law/democratization standards lies in these ruling elites being convicted in a court of law. Current state capture has advanced to such a degree that it provides political elites with impunity: “They have courts, prosecutors, oversight institutions which do not do their work.”²³⁸ That this is a genuine possibility is shown by the historical case of Croatia. The Croatian Prime minister Ivo Sanader came to power in 2003 as the leader of the HDZ party. His government made EU membership the prime target and made far-reaching reforms that reformed the judiciary and included empowered institutions to fight corruption: he did, however, not anticipate that those empowered institutions would come after him. Instead, he was indicted on a large number of corruption charges and sentenced to 10 years in prison by a Croatian court in November 2012.²³⁹ Control over the judiciary protects the political elite, but when it would be a genuinely independent institution, it would most likely go after corrupt practices as happened in Croatia. The risk of being convicted is a highly personal and crucial political cost for the political elites. It would cost Vučić dearly: “it would affect his inner circles and pals, who are heavily involved in corruption cases, the numerous corruption scandals involving his family members or his high-member from his party. Fully implementing the EU acquis, the values, and the rule of law means that the majority of these people will be prosecuted, and that is a huge political cost for him.”²⁴⁰

Second of all, a high political cost for political, ruling elites engaged in state capture lies in the risk of being voted out of political office, if the use of state resources for party-political reasons would be

²³⁷ Interview G.

²³⁸ Interview D.

²³⁹ Vachudova, Milada Anna (2014): EU Leverage and National Interests in the Balkans: The Puzzles of Enlargement Ten Years On. pp. 129.

²⁴⁰ Interview I.

made impossible in practice. Being voted out of office would enable the opposition to start dismantling the state capture, which Vučić has been building up over the past eight years. Without the political clientelism and the informal networks on which the power of state capture is based, it becomes doubtful whether they would still win the elections as they have during the past eight years.²⁴¹ The bona fides implementation of EU rule of law/democratization standards means that these political elites would have to withdraw from control spots in society, and as one interviewee asks: “what will there then be to make them stay?”²⁴² Firstly, the dependency of the Serbian media on government funding reduces their effectiveness as a watchdog to the government. Reversing this scenario by EU legislation demanding independent funding and institutions guaranteeing the safety and independence of journalists, would undermine the state capture of political elites and have significant power costs. Secondly, without political clientelism to obtain votes, the SNS would have to rely on its political program alone to win elections.²⁴³

Thirdly, step 2 (chapter 5.2.3.1) has shown how widespread the politicization of public administration and the appointment based on loyalty to the SNS party rather than on merit is in Serbia. With the implementation stage as a crucial policy phase in Serbia, it is vital to have bureaucrats loyal to the governing party at this level. Such appointments based on loyalty also occurs in the judiciary, which is an important protection of political, ruling elites against being sued, charged, and convicted of corruption scandals.²⁴⁴ The reduction of loyalty-based appointments in the judiciary means losing protection for state capture and extractive rent-seeking practices of political, ruling elites in Serbia.²⁴⁵ Giving up such a politicized public administration would, therefore, also entail substantial power costs.

All in all, the power costs of EU enlargement can be substantial for the political ruling elites when the adoption and implementation of EU acquis lead to a reduction in the state capture upon which their power is predicated. It opens up risks regarding losing access to political office, conviction for corruption, and empowering institutions that would provide transparency and accountability, which are two main enemies of state capture. Additionally, as state capture becomes more endemic and deep-seated into the state, the costs associated with reversing such a system become higher for the political, ruling elite who benefit so much from that system.²⁴⁶

²⁴¹ Interview F.

²⁴² Interview F.

²⁴³ Eric Gordy, Predrag Cvetičanin Alena (2018): Closing the gap between formal and informal institutions in Balkans. pp 161. Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 661.

²⁴⁴ Srdjan Cvijic (2018): When Law Doesn’t Rule: State Capture of the Judiciary, Prosecution, Police in Serbia. pp 23.

²⁴⁵ Vachudova, Milada Anna (2014): EU Leverage and National Interests in the Balkans: The Puzzles of Enlargement Ten Years On. pp. 158.

²⁴⁶ Interview B.

5.3.5.2 Welfare costs

Adopting and implementing EU acquis cause welfare costs due to the disruptive effects which these EU rules can have on the accession candidate.²⁴⁷ For example, opening up Serbian labour markets towards the EU also means that (even more) Serbian workers move away from Serbia to rich Western European countries due to higher wages. Most general welfare costs associated with EU accession would also be there if there was no state capture, so at first sight, there does not seem to be much direct influence of state capture on welfare costs. However, ineffective public policies, which focus on private or party-political interests, are not conducive to increasing the general welfare, so from this perspective, state capture does have welfare costs but less so linked directly to the implementation and adoption of EU acquis.²⁴⁸

Welfare costs can occur when countries previously relied on a certain socialist economic model and have to adjust to a more liberal “social-market economy” as part of the EU enlargement process.²⁴⁹ This has long-term benefits but might cause short-term disruption as well. If this liberalization takes place without proper rule of law in place, this process of liberalization can lead to emerging markets being captured by oligarchic actors who have ties to the political elite of Serbia. This is also part of Richter and Wunsch’s argument analysing how EU conditionality contributed to state capture, namely that liberalization without the rule of law empowered powerful economic actors. These powerful economic actors then lobby against further liberalization, which would remove their advantageous position on the economy.²⁵⁰ Welfare costs are often more relevant when seen from a public interest perspective as welfare costs are generally spread throughout society. On the other hand, political elites who engage in state capture are also eager to protect the extractive rent-seeking practices, which is enabled through state capture. The reversal of state capture through the bona fides implementation of EU acquis and rule of law standards, which would limit such rent-seeking, would thereby also create welfare costs specifically for such informal, oligarchic elements in society.

5.3.5.3 Opportunity costs

Opportunity costs occur when “adopting EU rules means rejecting alternative benefits from external actors whose benefits might have lower adjustment costs.”²⁵¹ During the CEE enlargement, there was practically no other external actor in place to offer any form of alternative benefits. Today, however, the presence of external actors in the Western Balkans, such as Russia or China, means that by choosing to adopt EU rules, they might have to give up benefits from other external actors with lower

²⁴⁷ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 666.

²⁴⁸ Begović, Boris (2009): Corruption, Lobbying and State Capture.

²⁴⁹ Barnes, Ian; Randerson, Claire (2006): EU enlargement and the effectiveness of conditionality: keeping to the deal? In *Managerial Law* 48 (4), pp. 351–365. DOI: 10.1108/03090550610681196.

²⁵⁰ Richter, Solveig; Wunsch, Natasha (2020): “Money, power, glory” pp. 41.

²⁵¹ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 666.

adoption costs. For example, EU labour standards are high, thus adopting EU acquis which would put Serbian legislation at the same high level, comes with high adoption costs. At the same time, non-EU foreign investors want lower labour standards, thus offering economic engagement without the ‘difficulty’ attached to EU labour standards.²⁵² Interviewees note how Serbian engagement with China is in the interest of the political elite, but not necessarily of all Serbians as one interviewee notes: “we do not want to ruin our environment with Chinese companies who do not have respect for it.”²⁵³ Vučić praises the Chinese Communist Party on many occasions, a party that is not democratic, referring to them as “brotherly China” while marginalizing the EU.²⁵⁴ One reason why Vučić welcomes Chinese economic engagement and Chinese loans is that there are no extensive ‘good governance’ reforms that are made conditional on receiving these loans.²⁵⁵ Attached to EU funding, there are high good governance standards with regards to transparency, public procurement, and proper oversight, which make it harder for those funds to fund clientelist networks. The inflow of external financing, which lacks ‘transparency, accountability and market orientation’ from China to a transitioning country such as Serbia, can, without the proper checks and balances in place, exacerbate corruption and undemocratic practice.²⁵⁶ Secondly, one interviewee noted how increasing geopolitical salience of the Western Balkans by engaging with China is part of the strategy of Vučić. Serbia engaging with external actors such as Russia and China is done in part as hope that it would move the EU to integrate Serbia even “when it is not ready rather than leave them to China ... hoping that the non-western actors will be more persistent here and that the EU will integrate them nevertheless.”²⁵⁷ All in all, the availability of external offers to Serbia with lower adoption costs increases the opportunity costs for Serbia. These costs can be particularly high for political, ruling elites engaging in state capture because the external offers are not attached to good governance reform, which would require them to give up their state capture.

5.3.6 Benefits of adoption and implementation of EU acquis

The benefits of EU rule adoption is an essential factor in determining the success of EU conditionality, and whether target states adopt and implement EU rules. The main reason for accession candidates to comply with EU conditionality lies in the ultimate carrot that the EU has to offer: EU membership.

²⁵² Interview F.

²⁵³ Interview D.

²⁵⁴ Interview D.

²⁵⁵ Frans-Paul van der Putten et al (Forthcoming): China and the EU in the Western Balkans: A zero-sum game. In Clingendael Brief.

²⁵⁶ John Morrell (2019): Channelling the Tide: Protecting Democracies Amid a Flood of Corrosive Capital’. Center for International Private Enterprise. Available online at <https://www.cipe.org/resources/channeling-the-tide-protecting-democracies-amid-a-flood-of-corrosive-capital/>. pp 2.

²⁵⁷ Interview G.

This EU reward is by far the most sizable that the EU has on offer. However, it is also a relatively distant reward: it would require continuous engagement and work on behalf of the Serbian government over a relatively long period of time to achieve. A significant reason why EU membership is such a large reward is, for example, that it provides unhindered access to the EU internal market, which would provide welfare benefits in the form of economic progress and the rise of living standards in Serbia. Such economic progress is a substantial benefit for the Serbian society at large, and it might be argued that a larger Serbian economy would also increase the extractive opportunities for the political, ruling elite of Serbia and affiliated informal actors. However, it is safe to say that the hawks of EU enlargement, such as the Netherlands and France, would demand that all Copenhagen criteria with regards to anti-corruption efforts be reached before allowing accession. Therefore, the benefit of increased economic opportunity has to be balanced against the fact that increased rule of law and strengthened institutions would prevent elites from enjoying these extractive opportunities. Most importantly, the EU accession process already provides benefits to political, ruling elites in Western Balkan countries without entirely demanding the implementation of far-reaching rule of law or democratisation acquis. These benefits, for example, through IPA (Instrument for Pre-Accession Assistance), are given throughout the process and can serve as a replacement for local funding, which makes funds available for networks of clientelism and state capture.²⁵⁸

5.3.7 Credibility of EU conditionality under state capture

Two other aspects remain as important elements of successful EU rule adoption in the EIM, which is a credible offer of membership and EU determinacy. First of all, with regards to the credibility of the EU offer, rewards might be sizable, but that they are also distant. This time-gap between when a country has to implement particular reform and when that country gets the rewards means that EU credibility depends on the fact that that EU membership should be assured once an accession country meets all the necessary criteria.²⁵⁹

On the one hand, EU countries and institutions have reiterated on multiple occasions that there is an EU perspective for WB countries.²⁶⁰ On the other hand, they also made clear that the applicant countries will need to fulfil all the checkboxes along the way. In this sense, an oft-repeated phrase

²⁵⁸ Richter, Solveig; Wunsch, Natasha (2020): "Money, power, glory" pp. 18.

²⁵⁹ Schimmelfennig, Frank; Sedelmeier, Ulrich (2020): The Europeanization of Eastern Europe: the external incentives model revisited pp. 4.

²⁶⁰ European Commission: Statement by President von der Leyen at the joint press conference with President Michel and Andrej Plenković, Prime Minister of Croatia, following the EU-Western Balkans Zagreb Summit. Available online at https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_825. & Bundesregierung: Western Balkans: strengthening European perspectives. Available online at <https://www.bundesregierung.de/breg-en/news/western-balkans-strengthening-european-perspectives-1510548>.

from countries like the Netherlands is that the process is “strict, but fair.”²⁶¹ Strict, because all standards have to be reached, fair because once they are reached, a seat will be waiting at the table. Furthermore, EU accession is also dependent on the capacity to integrate new member states, so technically, EU member states could rely on those grounds veto accession. However, there would be mounting political pressure on EU countries who continue to veto the accession of a country that has reached all the requirements. France has a specific clause in its constitution, which necessitates a referendum if there is not a 60% majority in the Assemblée Nationale on the accession of any particular country. However, it remains hard to imagine that any individual member state from the EU could stop the accession of a WB candidate in the long-run if that candidate has honestly and fairly met all the requirements embedded in the Copenhagen criteria.²⁶² As such, the requirement that all standards and Copenhagen criteria are reached before accession takes place does not undermine EU credibility.

For enlargement countries with liberal party constellations, that is to say, coalitions of political parties who are making much effort in bona fides implementing the EU rules across the board, credibility mostly comes from the time-gap problem. These countries ask themselves whether, when they will have finished the bona fides implementation of all the reform the EU asks of them, that the EU will be consistent and give these countries EU membership. For countries and political elites who are engaged in state capture, credibility is mostly not an EU side issue with regards to this time-gap problem. Instead, credibility becomes problematic because they know that they will probably never implement reforms to such a degree that it will satisfy the harsh standards set by the Copenhagen Criteria. Despite a recent re-engagement with enlargement that has come from the EU and the von der Leyen Commission, it has to be noted that the Juncker commission was characterized by a lower ambition in the Western Balkans.²⁶³ It is, therefore, important to recognise how credibility is not only dependent on the EU but is instead a two-way street in which actors on both sides need to show that they are committed to the process. With regards to Serbia, the interviewees doubted the credibility of the EU enlargement process in Serbia. Specifically, they are sceptical whether Vučić wants to accede into the EU or whether it is a façade that allows him to continue to capture the state and extract rents from the EU in the process.²⁶⁴

²⁶¹ Wouter Zweers (2019): ‘Strict – but Fair?’: Dutch Approach to EU Enlargement. Available online at <https://balkaninsight.com/2019/10/25/strict-but-fair-dutch-approach-to-eu-enlargement/>.

²⁶² Hollander, Saskia (2019): *The Politics of Referendum Use in European Democracies*. Cham: Springer International Publishing. pp 114.

²⁶³ EUbusiness: Juncker to halt enlargement as EU Commission head. Available online at <https://www.eubusiness.com/news-eu/politics-juncker.x29>.

²⁶⁴ Interview H.

5.3.8 Determinacy of EU conditionality under state capture

Determinacy refers to the precise specification of the conditions and standards which target states must reach before they can enter. With regards to most EU acquis, it is clear what rules need to be adopted and implemented. However, with regards to political conditionality and the Copenhagen criteria, this is more difficult.²⁶⁵ Copenhagen criteria requirements such as respect for “the rule of law,” “pluralism,” and “democracy” are all required by the EU. However, there is not a single thing that a government can do, which will directly produce these outputs.²⁶⁶ Instead, they are the combination of a range of policies, institutions, and political culture, which together combine to produce these broad requirements. So how clear is EU determinacy with regards to the problem of state capture in the Western Balkans and Serbia in particular? The EU has only quite recently begun to mention state capture in the credible enlargement strategy published by the Commission, and it has also been mentioned in the progress rapport on North-Macedonia in 2018. The Commission also recently renewed its attention on a “fundamentals first” approach, where it focusses more on issues related to the rule of law, public procurement, and reform of the judiciary.²⁶⁷ The EU only has ordered two precise investigations into state capture in the Western Balkans, which were able to lay bare the scope and size of state capture in those countries.²⁶⁸ No similar reports have been produced for Serbia, nor have any roadmaps been created with precise specifications that Serbia would have to fulfil regarding how to reduce state capture specifically. All in all, despite the lack of specific reports on state capture in Serbia, it is hard to believe that Serbian elites engaging in state capture do not know that their actions do not comply with EU standards and values. Instead, the problem is a lack of political will on behalf of the political, ruling elites of Serbia to disband state capture, as a *modus operandi* on which their power is based.

5.3.9 Social-learning hypothesis: State capture and the lack of legitimacy of EU rules

The alternative hypothesis formulated in chapter 4 stated that it is the lack of legitimacy of EU rules that prevents Serbia from engaging in the adoption and implementation of EU acquis which would make state capture impossible. As mentioned by step 1, the SNS party from Vučić is a broad-catch all party, which nominally is pro-EU, but also contains elements of actors from the Serbian Radicals who

²⁶⁵ Börzel, Tanja A.; Schimmelfennig, Frank (2017): Coming together or drifting apart? The EU’s political integration capacity in Eastern Europe. In *Journal of European Public Policy* 24 (2), pp. 281. DOI: 10.1080/13501763.2016.1265574.

²⁶⁶ European Commission: Accession criteria. Available online at https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accession-criteria_en.

²⁶⁷ European Commission (2020): Enhancing the accession process – A credible EU perspective for the Western Balkans. Available online at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/enlargement-methodology_en.pdf.

²⁶⁸ These reports focused on North Macedonia and Bosnia & Herzegovina. See for example: Reinhard Priebe (2015): The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts’ Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015. Available online at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf.

oppose EU membership.²⁶⁹ Some interviewees especially doubted whether ordinary people in the street were making rational calculations on their stance vis-à-vis the EU or whether they were socialized into believing anti-EU rhetoric because of constant media messaging.²⁷⁰ It is difficult to see how much of the negative perceptions which some Serbian citizens hold are merely their own opinions or were caused by the negative portrayal of the EU in Serbian media over the past years. A quote from Interviewee C with regards to the Serbian media is relevant here: “If you read Serbian media, which are completely state controlled than most of the signs they talk about of what the EU is doing are very negative.”²⁷¹ When discussing EU membership, the narrative of the SNS and Vučić seems to be focused on the economic benefits that membership entails, rather than the superiority of EU values.²⁷² It is very doubtful whether Vučić is a big supporter of liberal values, he was not when he was a minister of Information under Milošević or more recently when engaging in widespread state capture throughout Serbia.

Serbia is a country with a mixed party constellation, indicating that liberal and antiliberal parties compete for political power.²⁷³ While SNS started seemingly liberal: implementing some anti-corruption campaign and vowing support for EU accession, it has increasingly shifted towards a more authoritarian, less liberal outlook.²⁷⁴ State capture is likely accompanied by a lower perceived legitimacy of EU democratic standards from the EU, besides influencing how adoption and implementation costs are calculated as well.

Interviews confirm that Vučić does care about his popularity and stability in Serbia: the statements about wanting to join the EU are a guarantor of the normalcy he wants to portray to his population.²⁷⁵ Nonetheless, with regards to the alternative hypothesis, it does not seem that large parts of society are ideologically opposed to implementing EU rule of law or democratisation standards. After all, as interviewee A mentions: “normal people do not have anything to lose from reforming state capture.”²⁷⁶ Most people in the Serbian society would have nothing to lose if state capture was stopped, as this form of grand corruption mainly benefits the supporters of the SNS and enriches political, ruling elites by extracting rents from the state. As state capture has no intrinsic link to Serbian identity, an identity-related explanation also does not seem to be able to have much explanatory

²⁶⁹ Stojić, Marko (2018): *Party Responses to the EU in the Western Balkans. Transformation, Opposition or Defiance?* Cham: Springer International Publishing (Global Political Transitions).

²⁷⁰ Interview A.

²⁷¹ Interview C.

²⁷² Interview F.

²⁷³ Schimmelfennig, Frank (2007): *European Regional Organizations, Political Conditionality, and Democratic Transformation in Eastern Europe*. In *East European Politics and Societies* 21 (1), pp. 139. DOI: 10.1177/0888325406297131.

²⁷⁴ Freedom House: “Nations in Transit 2020: Dropping the Democratic Facade”. Available online at <https://freedomhouse.org/report/nations-transit/2020/dropping-democratic-facade>.

²⁷⁵ Interview D.

²⁷⁶ Interview A.

power in this case. Most Serbians also prefer a state where they enjoy legal certainty and judicial protection, as one interviewee mentions: “tell me one person that would not want legal security for a business or get their right in the court within three months and not 15 years.”²⁷⁷ While the SNS does show rhetorical support for the battle against corruption, which is a popular position in Serbia, in practice, it shows little actual progress, especially in politically sensitive cases of SNS associated elites.²⁷⁸

Legitimacy arguments explain the reluctance of some Serbian actors from adopting EU acquis or democratic standards, which they do not hold to be legitimate. Despite this, there is no society-wide conviction that such EU rule of law reform should not be implemented because it would lack legitimacy. Therefore, the argument that elites do not implement rule of law/democratisation reform because there is an idea spread throughout society that such reform is illegitimate is not very strong. The observation that political elites who engage in state capture are also not big supporters of liberal-democratic values remains valid. It does contribute to the reluctance of political elites to reform in the field of the rule of law and their acceptance to adopt in less controversial areas of EU acquis. Lastly, it should be noted that the external-incentive model and the social-learning model are not necessarily mutually exclusive and can reinforce each other.²⁷⁹

5.3.10 Step 3 conclusion

In this third step, we have seen how political, ruling elites in Serbia balance the costs and benefits of EU rule adoption when deciding whether or not to go ahead with EU rule adoption. In making this calculation these political, ruling elites take a perspective focused predominantly on particularistic, private interests rather than broad public interests. Especially power costs are high to adopt and implement rule of law/EU democratic standards, as is other acquis which affects the role of government power in Serbia. The political, ruling elites risk independent institutions starting to prosecute members of the SNS-party for corruption. They also risk losing power over control spots in society, which could then provide checks and balances, reigning in the executive power away from the political elites led by Vučić. Formal progress can be achieved in fields that do not impact the power position of elites to a considerable degree. Most of the power costs are born by the political, ruling elites who engage in state capture and whose political will is highly important for their eventual adoption and proper implementation. The alternative hypothesis of lack of legitimacy does partially

²⁷⁷ Interview H.

²⁷⁸ Sasa Dragojlo (2020): BIRN Fact-check: Has Serbia’s Ruling Party Kept Its Promises? Available online at <https://balkaninsight.com/2020/06/17/birn-fact-check-has-serbias-ruling-party-kept-its-promises/>.

²⁷⁹ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 670.

explain the non-implementation of the rule of law reform from political elites, but not from the general public in whose interests it is to counter state capture and corruption.

5.4.1 Step 4: Transformational Mechanism:

This step is about connecting micro-level calculations and actions with macro-level outcomes and outputs. The specific sub-question to be answered by this step is: *What do high adoption costs mean for compliance with the adoption and implementation of EU acquis and democratic standards in Serbia?*

5.4.2 State capture and the political will for reform

The benefits that Serbian political, ruling elites have accumulated over the years is high, and the interviews indicate doubts whether these elites “would be willing to exchange their current positions for EU accession which is vague and not tangible.”²⁸⁰ The political will of the political, ruling elite of Serbia is vital with regards as to whether rule adoption and implementation is successful or not.²⁸¹ It is precisely this political will that is lacking when it comes to the implementation of reforms that would undo the hard-won hold on power and extractive opportunities of these ruling elites led by Vučić. As interviewee H remarks: “If there would be a true wish to reform when you have 2/3 of parliament [they could]: if that is not happening, the answer is clear.”²⁸²

5.4.3 Balancing engagement and disengagement

A complete rejection of EU enlargement and rule adoption would be costly as well for the political, ruling elite of Serbia. They require at least the façade of EU enlargement, behind which they can continue with state capture and the advantages it brings. Balancing costs and benefits does not lead to a direct rejection of EU enlargement, even though the full, bona fides adoption and implementation of individual pieces of EU acquis would severely hinder state capture. There is no complete rejection of EU enlargement, because of the significant benefits which political, ruling elites who are engaged in state capture get from appearing to engage with the enlargement process.²⁸³ While the IPA funds are not comparable “to what you can suck out of the state through state capture,” the advantage is that Serbia has been receiving these while making little progress in EU rule of law reform. This lack of progress is also shown by a recent report issued by the Council of Europe’s Group of States against

²⁸⁰ Interview I.

²⁸¹ Srđan Majstorović (2019): Serbia needs to rethink, reset and restart its EU accession agenda. Available online at <https://europeanwesternbalkans.com/2019/06/03/serbia-needs-rethink-reset-restart-eu-accession-agenda/>.

²⁸² Interview H.

²⁸³ Interview B & H.

corruption that stated how 0% of the body's recommendations to tackle corruption were fully implemented in Serbia.²⁸⁴

Instead Serbian, political elites seem to engage in an opportunistic balancing act where they seek to obtain whatever benefits that they can get out of the process, without going so far that they have large power-costs. It is here that selective adoption and selective implementation, which was discussed in chapter 5.3.4 becomes so crucial. By being selective about what is being adopted and implemented, political ruling elites ensure that reform is held back once it starts producing power costs. It then becomes a question for the political elites of "how much EU integration do we need so that we can profit from the benefits, but to the extent that we do not actually commit."²⁸⁵ A practical example can be found in Serbia's media reform, in which formal laws were adopted, but were selectively implemented, and partially and inconsistently enforced.²⁸⁶ Several examples pointing to the inconsistent enforcement of the Serbian legal framework with regards to fundamental rights, public procurement, media freedom, and integrity in public service were highlighted in the most recent report by the European Commission.²⁸⁷ Whereas adaption costs might be too high for full implementation and consistent enforcement, control over the enforcement stage means that progress in politically sensitive sectors is mainly seen on paper and not in practice.²⁸⁸

In the theoretical chapter (3.3.4), the different forms of rule adoption and implementation were discussed. Using the terms mentioned there, we do not find high levels of substantive adoption in the fields which are related to state capture and the power interests of political, ruling elites. Nevertheless, in technical matters unrelated to the power position of elites, compliance can be high.²⁸⁹ We see cases of formal adoption, but low implementation, leading to "Potemkin harmonization" as through this way the façade of EU enlargement is kept up, but few power costs are actually incurred through control over the implementation stage.²⁹⁰ The last option of discursive adoption where the rhetorical willingness is shown but little results materialize also occurs, due to the low actual costs this incurs for the political, ruling elite.

²⁸⁴ Group of States against Corruption (2019): 20th General Activity Report. Available online at <https://rm.coe.int/20th-general-activity-report-2019-of-the-group-of-states-against-corr/16809e8fe4>.

²⁸⁵ Interview F.

²⁸⁶ WAN-IFRA (2015): Media reform stalled in the slow lane: Soft Censorship in Serbia. Available online at <https://statewatch.org/media/documents/news/2015/oct/serbia-soft-censorship-media-reform-report.pdf>.

²⁸⁷ European Commission: Serbia 2019 Report pp 25.

²⁸⁸ Sandra Maksimović (2020): Serbia's fall on media freedom list: "If it continues like this, there will no longer be anything to measure". Available online at <https://europeanwesternbalkans.com/2020/05/05/serbias-fall-on-media-freedom-list-if-it-continues-like-this-there-will-no-longer-be-anything-to-measure/>.

²⁸⁹ Interview B.

²⁹⁰ European Commission: Serbia 2019 Report pp 25.

5.4.4 Distracting away from state capture with Kosovo

Engaging in this balancing act is only possible if the EU continues to apply conditionality in such a way that there are still rewards despite not fully implementing EU rule of law/democratization standards. Under a stringent policy of conditionality, where without demonstrable progress in these fields, the benefits of the process are cut immediately, this balancing act would be untenable. Arguably, the EU's goal of regional stability (and not wanting to disturb Serbian-Kosovan relations) has ensured a more relaxed form of conditionality, at the cost of putting pressure on democratization.²⁹¹ Vučić himself argued that resolving Kosovo was the most important issue remaining before EU membership.²⁹² In a sense, Vučić is using the Kosovo process to keep himself relevant to the EU and focus on the potential instability of Serbian-Kosovo relations to distract from his build-up of control over the Serbian state and society at the same time.²⁹³ One interviewee mentioned how "signing off on Kosovo would be a child's play as opposed to adopting the rule of law."²⁹⁴ Nevertheless, with Kosovo resolved attention of the EU would soon turn to focus on rule of law and democratization reform alone, and it remains to be seen whether Vučić's façade can hold up under continued pressure and investigation.

5.4.5 Step 4 conclusion

Political, ruling elites have good reasons why they cannot cooperate with the EU in the bona fides implementation of previously mentioned reforms as these reforms would undermine the system of state capture on which their power is based. These reforms, with their high adoption costs, would force Serbia to be more transparent on how Serbia spends state resources and how political decisions favour actors loyal to the SNS. As interviewee C notes, "the prime enemy of the system [of state capture] is transparency."²⁹⁵ The balancing act in which Serbian political elites try to engage through selective adoption, implementation, and enforcement is enabled by providing advantages to Serbian elites, which are not wholly conditional on the actual progress in the field of democracy and the rule of law. This allows local political, ruling elites to institutionalize the EU enlargement process for their own benefit and continue to extract rents from the process itself.²⁹⁶

²⁹¹ Toeglhofer, Theresia; Wunsch, Natasha (2011): EU-Erweiterungspolitik auf dem Westlichen Balkan: Zwischen Stabilisierung und Integration. In S+F 29 (3), pp. 143. DOI: 10.5771/0175-274x-2011-3-141.

²⁹² Financial Times (2018): Interview: Serbia's Vučić insists 'I'm obsessed with Kosovo'. Available online at <https://www.ft.com/content/286fad4-5444-11e8-b3ee-41e0209208ec>.

²⁹³ Interview C.

²⁹⁴ Interview E.

²⁹⁵ Interview C.

²⁹⁶ Börzel, Tanja A.; Pamuk, Yasemin (2012): Pathologies of Europeanisation: Fighting Corruption in the Southern Caucasus. In West European Politics 35 (1), pp. 81. DOI: 10.1080/01402382.2012.631315.

Chapter 6: Discussion of findings

This section seeks to discuss what the implications are of the findings shown in chapter 5 on the effectiveness of EU conditionality. As explained in the theoretical section, EU conditionality works by making membership conditional on the full implementation of the EU acquis and reaching the Copenhagen criteria. Two main mechanisms through which conditionality works were identified: altering cost/benefit calculations of the target state and a more indirect manner, the differential empowerment of domestic actors who wish to adopt EU rules vis-à-vis those in a society that do not.²⁹⁷ State capture reduces the effectiveness of these two mechanisms in a variety of ways.

6.1 Impact of state capture on the effectiveness of EU conditionality

First of all, state capture affects the effectiveness of EU conditionality as a top-down bargaining model. Once a state gets “captured” by political elites from a particular party, the costs of good-faith implementation of the acquis in fields that hurt the power position of ruling elites may outweigh the general, long-term interests of the society at large. By increasing adoption costs and thereby reducing the political will which is required to push through substantive and long-term change, the effectivity of EU conditionality is reduced. Secondly, not only are adoption costs pushed up because of state capture, but the same actors who engage in state capture are the ones who have to negotiate with the EU on enlargement. As these actors become empowered through their state capture, this undermines their incentives to negotiate with the EU in good faith.

EU conditionality also works “bottom-up” by seeking to change domestic opportunity structures to favour those who seek to join the EU and adopt EU rules. State capture reduces the effectiveness of this mechanism in 3 ways. Firstly, state capture involves attacks on domestic checks and balances to the benefit of the political elites who seek to obtain a political monopoly and a fully empowered executive. It was noted in step 2 (chapter 5.2.4) how constant engagement and pressure for reforms has to come from voters, civil society organizations, and opposition to the government, to ensure that accountability structures and good governance come to Serbia.²⁹⁸ When state capture ensures that vertical constraints on the executive are weakened, then the effectiveness of this bottom-up mechanism is also reduced.

Secondly, EU conditionality cannot influence domestic opportunity structures to its full extent if those domestic opportunity structures are being controlled through state capture. It was noted how state capture could turn into ‘society capture’ by affecting opportunity structures through particularistic

²⁹⁷ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): “Governance by conditionality”: pp. 661.

²⁹⁸ Vachudova, Milada Anna (2014): EU Leverage and National Interests in the Balkans: The Puzzles of Enlargement Ten Years On. pp. 131

government power. By making the granting of a building license, the appointment of a public procurement contract, or a job in the state administration conditional upon loyalty to the ruling party and its elites, domestic opportunity structures get captured, and the EU bottom-up influence is weakened.²⁹⁹

Thirdly, this bottom-up mechanism usually empowers domestic actors who seek EU membership against those that do not. However, we see that all ruling parties among the WB6, including Serbia, at least rhetorically welcome EU integration. In their balancing act, Serbian political elites still need to be seen at least rhetorically engaging with the EU to receive the external and domestic benefits that this process brings. By appearing to share the goal of EU membership, while simultaneously engaging in state capture, it becomes less clear to voters whether a vote for the SNS will put their country on a path for EU membership, or that they should be voting for an opposition party to obtain that goal instead.³⁰⁰ In conclusion, the two main mechanisms of EU influence through conditionality on Serbia become less effective as state capture entrenches itself.

6.2 Undermining the credibility of EU conditionality and the enlargement process.

Engaging in the current process of accession, despite significant levels of state capture such as found in Serbia, undermines the credibility of EU conditionality and the enlargement process. Firstly, the current process can give the impression of progress but may turn out to be lousy expectation management when it becomes clear that the perceived 'front-runner' position accorded to Serbia and Montenegro, is unfounded. The current system of EU conditionality might seem to make progress here and there, to the extent that it does not touch the power base or interests of political elites.³⁰¹ However, such rhetorical changes, while indeed amounting to some progress, can also lead to an overestimation of progress, which leads to the impression that EU enlargement is just around the corner. When the lack of progress dashes these hopes, the disappointment can lead to reduced engagement from citizens in pushing for the difficult but necessary changes which EU accession requires to take place.³⁰²

Secondly, as the same political elites who engage in state capture are the same actors who are negotiating with the EU on Serbia's accession, the public's trust in the credibility of the enlargement process is undermined. Political elites appear to be pro-European but are compromising the EU

²⁹⁹ Eric Gordy, Predrag Cvetičanin Alena (2018): Closing the gap between formal and informal institutions in Balkans. pp 144.

³⁰⁰ Schimmelfennig, Frank; Sedelmeier, Ulrich (2004): "Governance by conditionality": pp. 661.

³⁰¹ Interview A & D.

³⁰² Pierre Mirel (2018): The Western Balkans: between stabilisation and integration in the European Union. Fondation Robert Schuman. pp 13. Available online at <https://www.robert-schuman.eu/en/doc/questions-d-europe/ge-459-en.pdf>.

integration process in a range of areas.³⁰³ This leads to, as Interviewee I pointed to, a cynical manipulation of public opinion and support towards the EU in which it seems that “while Serbia is dedicated to EU enlargement, it is the EU who does not want Serbia as a member.”³⁰⁴ Interviewee I holds this to be so cynical as it is the political elites themselves whose engagement in state capture prevents progress from being made.³⁰⁵ Control of the narrative, which is made possible in part due to state control over the media, is essential as a public backlash on the lack of progress made towards EU membership is a potential threat to the power of the political, ruling elites of Serbia led by Vučić. When the leaders of an accession candidate like Serbia are seen delaying the process, influencing the narrative against the support of EU integration, and generally upholding an illiberal democratic system, then it also becomes more difficult for the EU member states politicians to sell enlargement towards their voters.³⁰⁶

Thirdly, the credibility of the EU as an actor is also undermined when it continues to engage with the Serbian government despite clear democratic backsliding and even state capture.³⁰⁷ There are various examples of EU politicians who continue to compliment Vučić and the SNS party despite the state capture in Serbia. In a visit to Serbia as president of the European Council, Donald Tusk, the current leader of the EPP, said in 2018 that he could “hardly imagine a greater Serb than Aleksandar Vučić.”³⁰⁸ More recently, he praised Vučić’s “strong leadership” and “economic success” and wished him good luck in the Serbian elections in a tweet posted on his official EPP twitter account.³⁰⁹ After the recent Serbian elections, the current commissioner for Enlargement Várhelyi said he looked forward to working together with the new government but did not draw any attention to the fact that the entire democratic opposition boycotted these elections. For those parts of Serbian society who are supporters of European integration, such a stance can lead to a reduction of trust in the EU to put pressure on Vučić properly. The EU might be careful to upset their relationship with Vučić because they need his cooperation to implement EU *acquis* and resolve the tense Kosovo-Serbia relationship. However, this can also come at the cost of no longer being regarded as an actor who consistently and strictly upholds the values embedded in Article 2 TEU.

³⁰³ Bieber, Florian (2020): *The Rise of Authoritarianism in the Western Balkans*. Cham: Springer International Publishing. pp xi.

³⁰⁴ Interview I.

³⁰⁵ Interview I.

³⁰⁶ Kapidžić, Damir (2020): *The rise of illiberal politics in Southeast Europe*. pp. 10.

³⁰⁷ Aleks Eror (2018): *How Aleksandar Vučić Became Europe’s Favorite Autocrat: The EU is undermining its credibility by choosing stability over democracy in Serbia*. Available online at <https://foreignpolicy.com/2018/03/09/how-aleksandar-vucic-became-europes-favorite-autocrat/>.

³⁰⁸ European Council, “Remarks by President Donald Tusk after his meeting with President Aleksandar Vučić of Serbia”, <https://www.consilium.europa.eu/nl/press/press-releases/2018/04/25/remarks-by-president-donald-tusk-after-his-meeting-with-president-aleksandar-vucic-of-serbia/>.

³⁰⁹ Donald Tusk (2020): Available online at <https://twitter.com/donaldtuskEPP/status/1272516480370868224?s=20>.

By undermining both input legitimacy, in the form of political representation, and output legitimacy, in the form of effective public policy, state capture has been argued to subvert the very fabric of transitioning democracies.³¹⁰ This aids the withdrawal from the political sphere, resulting in apathy among citizens and can ultimately lead to Serbians “voting with their feet” and moving abroad.³¹¹ It is not the case that EU conditionality cannot work: the many instances in which it has managed to induce compliance of EU standards, norms, and values are proof of the power of this mechanism. Nonetheless, the effectiveness of EU conditionality is dependent on the context in which it is embedded, how it is executed, and the extent it is consistently and strictly applied. This section has demonstrated how state capture diminishes the effectiveness and credibility of EU conditionality. It does so to such an extent that it becomes questionable whether far-reaching, sustainable change, and improvements in the adoption and implementation of contested EU acquis can be expected with high levels of state capture still in place.

6.3 Policy recommendations: what action can be undertaken to reduce state capture?

It has become clear throughout this thesis that state capture represents a significant problem for those who seek democratic societies led by the rule of law. Reforming deep rooted practices like state capture requires a recognition that this is not merely technical but rather a political problem and that it will therefore require a political approach to overcome.³¹² This section will seek to put forward policy recommendations with regards to how state capture, which is currently holding EU enlargement back, can be reduced.

First of all, the EU should recognize its influential role in the Western Balkan region and the extent to which civil society organisations look at it as their hope for a more just and equitable society led by the rule of law. This large responsibility means that the EU should be additionally careful that it does not inadvertently empower state capture through the mechanisms of “Money, Power, and Glory,” as explained in the analysis of Richter and Wunsch.³¹³ It should recognise that its incentive-based strategy of EU conditionality works less well when dealing with regimes whose power is based on state capture and clientelism. Instead, it requires an approach that focusses on engagement beyond the executive and improving domestic accountability structures, which allow for bottom-up engagement and bottom-up checks on government power. In the long-run, only domestic pressure for political reform,

³¹⁰ Dimitrova, Antoaneta L. (2018): “The uncertain road to sustainable democracy” pp. 263.

³¹¹ European Western Balkans (2020): WEF: Four Balkan countries top global ranking with biggest brain drain. Available online at <https://europeanwesternbalkans.com/2020/02/03/wef-four-balkan-countries-top-global-ranking-with-biggest-brain-drain/>.

³¹² Francis Fukuyama (2016): What is corruption? Available online at http://www.ridge.uy/wp-content/uploads/2016/05/Fukuyama_Francis.pdf.

³¹³ Interview J, held with expert on 13-07-20 & Richter, Solveig; Wunsch, Natasha (2020): “Money, power, glory” pp. 41.

which prevents state capture, can produce sustainable and lasting results: it is in the EU's best interests to support these long-term bottom-up processes.³¹⁴

Secondly, due to the problematic situation in Serbia and other WB countries regarding media freedom, state capture can continue to operate in the shadows. Considering how transparency and accountability are the main enemies of state capture, the EU should provide clarity on the extent of state capture in the WB6, as was done with the Priebe Reports in the case of North Macedonia.³¹⁵ Here, Priebe reports were able to lay bare the extent of state capture by Gruevski, which could start the long process of dismantling the deep roots of state capture. Such an independent commission should be empowered to have a full investigation into the breadth and depth of state capture in Serbia (and all other countries in the Western Balkans). By making clear what exactly the problem is, it would add to the EU's determinacy by making crystal clear that the EU will not allow state capture among accession candidates.

Thirdly, once state capture has embedded itself deeply into a society, it takes considerable time to dismantle and as such the EU should not lose attention too quickly.³¹⁶ State capture is not merely an issue of changing the heads at the top of the state apparatus (though it is an integral part of it), but also requires long-term engagement and structural change. A danger remains that if the pressure to remove state capture reduces after a new government has taken place, that this new government is tempted to keep mechanisms of state capture in place to their advantage. After all, it would be costly to give up the newly gained power that has come with control over the government. This would repeat the cycle of state capture, rather than put countries on a course for European integration. Part of such a long-term approach is also to think about how to reconsolidate the different parts of Serbian society as state capture has created rifts in Serbian society through its destructive influence on the political culture in Serbia.³¹⁷

Lastly, the EU should recognize the relationships between state capture emerging within the EU and outside it. Only through an integrated focus on the rule of law, which affects not only the EU accession countries but also the EU itself can the EU aspire to be the geopolitical player projecting its values around the world. The EU is, as a union of laws founded on mutual and sincere cooperation, vulnerable to democratic backsliding in its member states, and it has an important task ahead of itself to prevent state capture from gaining a (further) foothold inside the EU,

³¹⁴ Vachudova, Milada Anna (2014): EU Leverage and National Interests in the Balkans: The Puzzles of Enlargement Ten Years On. pp. 131.

³¹⁵ Interview C.

³¹⁶ Interview I.

³¹⁷ Interview I.

Resisting democratic backsliding is a difficult task, especially when the conditions under which this fight for good governance and the rule of law take place are structurally in favour of the political elites who have the might of the state at their disposal. At the end of the day, while the fight against state capture in Serbia can only be won in the domestic political arena, the EU cannot rely on Serbian citizens to win an unfair fight against state capture on their own. Instead, it should recognize the importance of tackling state capture, its own role in inadvertently enabling its growth, and lastly that the EU is a much-needed ally in the fight against state capture in Serbia and elsewhere.

Chapter 7: Conclusion

7.1 Wolves in Sheep's clothing: state capture in Serbia and its effects on EU enlargement

The title of this thesis referred to wolves in sheep's clothing: while seemingly wanting to engage with the EU, the political, ruling elite of Serbia led by Vučić are increasingly engaging in state capture. Through state capture, private or party-political interests are served while cloaked and legitimized by formal institutions.³¹⁸ This thesis has attempted to lay bare some of these practices to elucidate our understanding of the effect which state capture has on the EU accession process.

7.2 Answering the main question

The following section seeks to answer the main question of this thesis which was: *How does state capture affect the domestic adoption costs and benefits of EU accession in Serbia?*

State capture empowers political, ruling elites in Serbia by giving them access to state resources and powers which these actors can use for private or party-political gain. These political, ruling elites are the same actors whose cost/benefit calculations directly matter when deciding whether or not to adopt, and in *bona fides* implement EU rules. In a situation of state capture, the position of the executive is strengthened, while the position of veto players is weakened, leading to reduced checks on government power. The corrosive effects of state capture on these constraints to government power have enabled state capture to entrench itself into Serbian society in the period from 2014 until today.³¹⁹

State capture and clientelism lead political elites to care more about private interests rather than the public interest. There are high power, welfare, and opportunity costs associated with the *bona fides* implementation of those parts of the EU *acquis* that are important for those engaging in state capture. Truly adopting EU rules would make it hard for state capture to function in Serbia. The

³¹⁸ Richter, Solveig (2017): Der Wolf im Schafspelz. Illegitime Herrschaft durch State Capture in Nachkriegs- und Transitionsgesellschaften. pp. 183.

³¹⁹ Soeren Keil (2018): The Business of State Capture and the Rise of Authoritarianism in Kosovo, Macedonia, Montenegro and Serbia. pp. 72.

increased domestic adoption costs do not lead to a complete rejection of the EU accession process, as such a rejection itself would also be costly. This requires a balancing act in which political elites uphold a nominally liberal façade behind which they continue to selectively implement EU rules and standards and continue to capture the state.³²⁰

With domestic pressures for reform, accountability, and good governance curtailed, there remains little room in society for those actors and citizens who want to speak up for change.³²¹ By weakening both the effectiveness of the EU conditionality mechanism, as well as the credibility of the process itself, state capture has considerable negative impacts on the transformative power of the EU accession process. State capture in Serbia therefore affects the calculation of domestic adoption costs and benefits in such a negative manner that it has broad consequences for the EU enlargement process and whether or not it achieves EU rule adoption in good faith.

7.3 Looking beyond Serbia: State capture in the Western Balkans and the EU

While this thesis focusses on Serbia, it is still important to place the findings presented here in a broader context. As we move our scope beyond Serbia, we see that state capture is playing a significant role throughout other Western Balkans countries.³²² Bosnia & Herzegovina, Kosovo, Montenegro, North-Macedonia, and Albania all possess elements of state capture and the abuses of power that come with it. Some progress is made in the fight against state capture, such as in North Macedonia, where former prime minister Nikola Gruevski, after a decade of illiberal reform, was forced to flee the country (and obtained asylum in Hungary). In other countries, such as Bosnia & Herzegovina and Kosovo, it remains challenging to transform societies in which powerful elites benefit so much from that state capture.

The role of state capture as part of democratic backsliding within the EU also deserves further attention. The use of state resources for the benefit of a dominant political party can be seen to take place in countries such as Hungary and Poland.³²³ State capture can be especially dangerous for the EU as a union based on the rule of law and mutual, sincere cooperation.³²⁴ State capture gives actors direct incentives to ignore the rule of law (since state capture is based on the partial use of government resources) and sincere cooperation (because they can extract large rents by not acting in sincere cooperation). Recent meetings have shown the close ties between Hungary's prime minister Viktor Orbán and Vučić, and the impact of several EU members showing signs of state capture on the EU

³²⁰ Freedom House: "Nations in Transit 2020: Dropping the Democratic Facade". Available online at <https://freedomhouse.org/report/nations-transit/2020/dropping-democratic-facade>.

³²¹ Vachudova, Milada Anna (2014): EU Leverage and National Interests in the Balkans: The Puzzles of Enlargement Ten Years On. pp. 131.

³²² Heinrich Böll Stiftung (2017): Perspectives Southeastern Europe #4: Captured states in the Balkans. pp 5.

³²³ Abbey Innes (2014) The political economy of state capture in central Europe.

³²⁴ See Article 2 TEU and Article 4(3) TEU.

enlargement process should not be underestimated.³²⁵ It is safe to say that member states who engage in party state capture themselves, are unlikely to regard it as a political priority to tackle in EU accession candidates. Lastly, if the EU is not able to stop the decline of the rule of law within the EU, then this raises the question of how it can be credible in reducing state capture outside its borders.³²⁶ The rule of law crisis inside the EU could have enormous consequences, potentially even for the survival of the EU. This warrants additional attention to processes of state capture, both outside the EU, as well as in it.³²⁷

Lastly, the issue of state resources being used to create unequal democratic playing fields is a vital threat to the proper functioning of democracies all around the world. It reminds us of the fact that such a level playing field is an essential condition to ensure that democracy functions properly and orients itself to increasing public welfare while protecting core political and civil liberties. The use of government resources to the advantage of one side can ensure that the appearance of democracy is created, whereas no legitimate form of democracy exists. This erodes the public's trust in democracy as a form of governance that can yield results. In countries that experience state capture, public policy is oriented to the enrichment of a limited part of society, which has destructive effects on the quality of education, healthcare, infrastructure, and the state of the economy. This might even give incentives to certain geopolitical actors to promote corrupt governments and graft, both to undermine the legitimacy of the democratic model and to increase influence in other countries.³²⁸

7.4 Theoretical and societal relevance

With regards to theoretical relevance and implications, this thesis has picked up the theoretical challenge laid out by Richter and Wunsch, who stated that “traditional cost-benefit calculations fail to explain observed decoupling between formal compliance with membership criteria and stagnating, if not declining, democratic performance.”³²⁹ This thesis has contributed to the theoretical debate on state capture and enlargement by showing how cost/benefit calculations as part of the EIM are still an important and relevant tool in understanding the decisions that local actors make when engaging with the EU. Despite its name referring to external incentives, this thesis shows it is also well suited to explain the conditions in which external incentives alone are not enough to induce rule adoption. This thesis does concur with Richter and Wunsch's conclusion that state capture has high explanatory power with regards to the decoupling between compliance in

³²⁵ Euractiv, “BELGRADE – Vučić meets Orbán in Budapest”, https://www.euractiv.com/section/all/short_news/belgrade-vucic-meets-orban-in-budapest/.

³²⁶ Interview I.

³²⁷ <https://verfassungsblog.de/the-rule-of-law-crisis-as-the-watershed-moment-for-the-european-constitutionalism/>

³²⁸ Philip Zelikow, Eric Edelman, and Celeste Ward Gventer (2020): The Rise of Strategic Corruption. How States Weaponize Graft. Available online at <https://www.foreignaffairs.com/articles/united-states/2020-06-09/rise-strategic-corruption>.

³²⁹ Richter, Solveig; Wunsch, Natasha (2020): Money, power, glory: pp. 41.

some fields of the *acquis*, yet a backsliding of democratization and the rule of law in others.³³⁰ This thesis has shown how more theoretical attention should be given to the incentives and disincentives which particular Western Balkans elites have when deciding whether or not to engage with the EU.

With regards to societal relevance, it is safe to say that this thesis does contain substantial societal implications for how the EU enlargement process is organized. The insight of this thesis that the effectiveness and credibility of EU conditionality is reduced by state capture means that state capture is a vital issue to be addressed in the EU enlargement process. As the current Commission tries to reform the region, the insights produced in this thesis make clear that this will only be effective if it is successful in reducing state capture first. If the EU contributes to state capture (as Richter and Wunsch have shown), and that state capture makes progress in EU enlargement very difficult (as this thesis has made clear), then the EU might be pursuing a counterproductive enlargement strategy with Serbia. This strengthens the importance of reducing state capture as a necessary step to bring the EU enlargement process forward in a sustainable way. The policy proposals included in this thesis are meant to translate the theoretical insights into practice, which enhances the societal relevance of this thesis.

7.5 Critical reflection

While this thesis has sought to be both theoretically and societally relevant, it is also important to critically engage with specific potential weaknesses of this thesis. First of all, it is important to recognise that due to the sensitive nature of state capture and corruption, it is hard to access elite considerations directly. This is especially the case in the context of EU enlargement as it is in the interest of political, ruling elites to deceive the international community and hide their state capture from public view. This thesis has tried to triangulate its findings by holding various interviews with knowledgeable experts and using multiple additional sources. However, it must still be recognised that it remains impossible to look directly into the mind of Vučić himself. Nevertheless, the extensive process tracing of this thesis has tried to portray in-depth the weigh-offs and considerations involved with making the cost/benefit calculation of EU accession. Secondly, the choice to focus in-depth on one case study in this thesis has, to an extent, traded generalizability for internal validity. However, this thesis does represent a good starting point for more research to be done on state capture in the Western Balkans and the EU.

7.6 Future research

This thesis has only scratched the surface with regards to the influence of state capture on EU politics, rule of law decline, and EU enlargement in a broader sense. More in-depth research is required on the different manifestations of state capture both in EU and potential EU member states, and the extent

³³⁰ Richter, Solveig; Wunsch, Natasha (2020): Money, power, glory: pp. 56.

to which state capture is affecting a backsliding of the rule of law within and outside the EU. Further research is also needed on the influence of informality and informal relationships on the functioning of EU enlargement as this represents an important institution through which politics are mediated in the Western Balkans. Lastly, more research is needed on the negative aspects of Europeanization on the domestic politics of countries where the political, ruling elites engage in state capture and where these elites are instrumentalising EU policies to further their own interests.³³¹

³³¹ Börzel, Tanja A.; Pamuk, Yasemin (2012): Pathologies of Europeanisation: Fighting Corruption in the Southern Caucasus. In *West European Politics* 35 (1), pp. 81.

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Appendix

Interview guide

1. Introduction: explanation of subject thesis, interview, acceptance of recording, and anonymized use.
2. Could you briefly explain a bit more about your organization and what your role is within that organization?
3. Could you describe the current situation regarding State capture in Serbia?
 - a. How widespread is state capture in Serbia?
 - b. What is the role of Serbian elites in state capture? Could you give examples of Serbian elites engaged in state capture?
 - c. What is the role of the leading party SNS and president Vučić in state capture?
 - d. To what extent does state capture prevent the proper implementation of reform in Serbia?
 - e. Why are citizens/civil society not able to reduce state capture?
 - f. Would you say that the opposition or other societal actors are able to veto decisions made by Vučić and his government?
 - g. Do state captured elites have veto power over the decision to engage in EU rule adoption?
 - h. To what extent do you think that Serbian elites are socialized with EU rules and values? Do Serbian elites perceive their own corruption to be legitimate?
4. Regarding the mechanisms
 - a. Situational mechanism: To what extent are Serbian elites involved in state capture, and what is the role of the culture of informality? How did transition after Yugoslavia influence state capture?
 - b. Action-Formation: Would you say that Serbian elites balance the costs and benefits of enlargement? What domestic adoption costs (power, welfare, opportunity) do Serbian elites face when implementing EU reform despite state capture? How high would you say are these costs? Are these adoption costs different regarding the rule of law/democratic acquis and regular technical EU acquis? Does the lack of legitimacy explain why certain EU rules are adopted, but others not?
 - c. Transformational mechanism: Do you think that if state capture increases domestic adaptation costs that this could explain Serbian elites not implementing the rule of law reform? Do you think Serbian elites would lose if they were to implement reform that reduces state capture? Do you think Serbian elites face high adoption costs adopting EU rules?
5. Regarding the EU
 - a. Would you say that EU conditionality has been more or less effective due to state capture?
 - b. Has EU conditionality been able to overcome state capture, in your opinion?
6. Solution/Policy proposals
 - a. What do you think the EU could do to reduce state capture?
7. Do you have any further questions yourself?
8. Final remarks.