

MARKET INTEGRATION AND COMPETITION AS A WAY TO STRENGTHEN THE RULE OF LAW AND DEMOCRACY IN THE ENLARGED EUROPEAN UNION

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ABSTRACT

The European Union has guaranteed peace and economic advancement for a long period since its creation. Nevertheless, the European project – in particular in 2024, year in which the European Parliament and the European Commission will be renewed – appears at the cross-road, threatened by the complex global geopolitical situation, the emergence of strong industrial players, the rise of populist parties, and an economic downturn which lowered the ‘social safety net’ which has always characterised the EU area. The correlation between the ‘health’ of the common market and its implications on the social and political level, with particular reference to democracy and the rule of law, have not been at the forefront of the political and legal debate and, especially, solutions have not been proposed in a satisfactory and effective manner. This paper aims at analysing the correlation between the state of the European market and its impact on democracy and the rule of law through the lens of competition law, in order to establish a link between the competitiveness of the European market and better social conditions for European citizens. This analysis will follow as lodestar the programmatic description of the ‘social market economy’ contained in Article 3, paragraph 3, of the Treaty on the European Union. The paper sustains that exactly a revamped version of the social market economy model – with its Ordoliberal roots – represents the key in order to boost the European economy and to restore a proper level of social protection in the European Union, being this a driver also towards a healthily democratic society. Furthermore, only by sticking to the core values permeating its market and its society, the EU could fight in the Global scenario, cause its model, differently from others, still represents the most mature sublimation of concepts such as democracy, rule of law, social wellness and inclusion. Therefore, the EU can regain its propulsive and attractive force – especially in light of the awaited expansion in the Western Balkans region – only by turning back to the Treaties and the political roots which were at the basis of the EU project, with particular reference to a healthy and workable competition in the market. Only this approach is deemed to provide the EU with the essential tools in order to find a proper role in the international scenario in light of challenges such as digitalisation (and the advent of AI), the

green transition, and the complex political scenario. This paper, in conclusion, will therefore provide a framework which explains how the European competitive market model is to be regarded as a 'guardian' of values such as democracy and the rule of law and how the EU can keep its leadership in the promotion and maintenance of these values through a renewed version of the 'social market economy' concept.

Keywords: *Competition Law, development, European Union, enlargement, Western Balkans*

1. COMPETITION, DEMOCRACY, AND RULE OF LAW

The European Union market model is based on the concept of *social market economy*, which comes from the conceptualisations advanced by the Ordoliberal thinkers.¹ In particular, according to Article 3, paragraph 3, of the Treaty on the European Union (TEU), where this concept is outlined, such a market structure is characterised by the fact of being “highly competitive and aimed at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall also promote scientific and technological advance”. Moreover, the internal market as such conceptualised, ought to “work for the sustainable development of Europe based on balanced economic growth and price stability”.

This conception of the market's functioning can be viewed as a *metriotes* between a totally liberalised economy, where regulation is left at the minimum level and market forces are called to shape the structure of the market, and a planned economy, where the State is the master of the market and the private initiative is almost totally stifled by the plan. The European Union's system represents a point of equilibrium between these two extremes because it tries to temperate the excesses characterising both of them. In particular, there is no doubt that the European Union's internal market is based upon the market economy system, along liberal lines, but with the room for wide regulatory intervention where it is needed.² This structure and conceptualisation represented for sure some of the elements that built the success of the European model and that made it particularly attractive for Countries which, during the time, joined the Union or requested to be part of it.

However, the system briefly introduced in the previous paragraph is founded on some pillars, devoted to bringing the outcomes enucleated in Article 3, paragraph 3, TEU, among which sustainable (and therefore inclusive) development plays a

¹ Gerber D.J., *Law and Competition in Twentieth Century Europe*, Oxford, 1998, pp. 238-241; Osti C., *Antitrust: a Heimlich manoeuvre*, European Competition Journal, 11, 1, 2015, pp. 228; Piletta Mas-saro, A., *Antitrust Political Side*, *Opinio Iuris in Comparatione*, 2023, 1, pp. 373-379; Hildebrand D., *The equality and social fairness objectives in EU competition law: The European school of thought*, *Concurrences*, 1, 2017, pp. 1-6.

² About the link between economic development and social cohesion in the internal market, see Craig P. And de Búrca G., *EU Law*, Oxford, 2020, p. 668.

pivotal role. These pillars are competition in the market (not casually it is defined as *highly competitive*) and the respect of the *rule of law* (as provided for by Article 2 TEU). The latter concept, which is declined in various linguistic forms across the Member States, represents a pillar of every democratic society, as it provides that all public powers *act within the constraints set out by law*.³ Subordinated declinations of this principle are functioning and healthy democratic institutions (across all the sphere of Montesquieu's division of powers⁴), inclusive living conditions and equality. The latter has been noteworthy conceptualised by the academician and former President of the Italian Republic Luigi Einaudi, in the concept of *equality of the starting points* (*uguaglianza dei punti di partenza*).⁵ Although not officially part of the Ordoliberal movement developed in Germany with the so-called Freiburg School, Einaudi was close to Ordoliberals' conceptualisations, and it is precisely in this realm that is necessary to find the link between rule of law, democracy and competition.

Competition is a concept typically pertaining to the features of liberal economies. It is intended as a process where *two or more economic agents engaged in strategic interaction and pursuing individual gain*⁶ or *when anybody who wants to buy or sell has a choice of possible suppliers or customers*.⁷ In general terms, competition should be the means through which the Smithian *invisible hand*⁸ which governs the market selects the most efficient firms and delivers to the consumers the best products at the lowest price, thus reaching a sort of Pareto optimal situation.⁹ However, this is only an ideal model, defined as perfect competition. The reality is much more complex and the benchmark that has been taken as a reference is that of workable competition.¹⁰ Although not delivering a utopian situation, this concept implies that the competition on the market is effective, and this brings anyway beneficial effects to the market and the consumers, in terms of better busi-

³ European Council, Rule of law, [<https://www.consilium.europa.eu/en/policies/rule-of-law/>], Accessed 8 April 2024. As part of the definition, it is also specified that *the notion of the rule of law includes a transparent, accountable, democratic and pluralistic law-making process, effective judicial protection, including access to justice, by independent and impartial courts and separation of powers. The rule of law requires that everyone enjoys equal protection under the law and prevents the arbitrary use of power by governments. It ensures that basic political and civil rights, as well as civil liberties, are protected and upheld.*

⁴ De S. Montesquieu, C.-L., *De l'esprit des lois*, in *Oeuvres complètes de Montesquieu*, Paris, 1859.

⁵ Einaudi L., *Lezioni di Politica Sociale*, Torino, 1949, pp. 169-246.

⁶ *Oxford Dictionary of Economics*, 5th edition, Oxford, 2017.

⁷ *Ibid.*

⁸ Smith, A., *An inquiry into the nature and causes of the wealth of nations*, Chicago, 1952.

⁹ According to the *Oxford Dictionary of Business and Management*, 6th edition, Oxford, 2016, *an alteration in the allocation of resources is said to be Pareto efficient when it leaves at least one person better off and nobody worse off. A state of Pareto optimality occurs when no further Pareto-efficient changes can be made.* See also Jones A., Sufrin B., Dunne N., *Jones & Sufrin's EU Competition Law*, Oxford, 2023, p. 12.

¹⁰ Jones A., Sufrin B., Dunne N., *op. cit.*, p. 29.

ness opportunities for the firms and better prices and quality for the consumers.¹¹ However, the concept of competition has also a sort of ‘dark side’, that is intrinsic in the rivalry among firms characterising it. In fact, the theoretical model based on competition provides that inefficient (or however not successful in the market) companies must leave the market, without taking into account the social losses linked to it. The overall system of competition rules does not allow, for instance, state aid of an inefficient firm, notwithstanding the fact that this could save a lot of workplaces or that the firm concerned constitutes an essential asset of a Country (the case of the former Italian flagship airline, Alitalia, is telling in this sense¹²). Side considerations might be considered in the assessment of cases (e.g., a merger), but they would never be the reason for allowing a restriction of competition in the market. Therefore, competition, when brought to the edge, to the limit, can also turn into something ‘toxic’, the market can experience, in the words of Professors Ezrachi and Stucke, an ‘overdose’ of competition, which determines negative consequences for the society in general.¹³ An example brought by the two mentioned Authors is that of private health systems, which toxically compete with the public health service (which will cover also the non-remunerative operations, which are not carried out by private actors), with the consequence of creating a sort of ‘privileged’ track for people who can afford it and a deterioration of the performances of the national health service, with negative conditions on people who cannot access the private one.¹⁴ This constitutes, in a broader sense, a *vulnus* to democracy, given that the right to health is a fundamental right, which should be guaranteed to every citizen in the same manner.¹⁵ This shows how competition in itself can bring also negative by-products and that is why a *social market economy* is needed, where competition constitutes the main pillar of the ‘economic constitution’, but it is kept under control by a strong state who supervises the market and intervenes when market forces cannot regulate it properly by themselves¹⁶ (a clear example for this purpose is the enactment of the Digital Markets Act, DMA, Regulation, aimed at putting some rules for the ‘game’ of competition in digital markets, where competition by itself just lead to the tipping of the market

¹¹ *Ibid.*

¹² See, *inter alia*, *ITA takes off, ending Alitalia's turbulent life*, Reuters, 15 October 2021, [<https://www.reuters.com/business/aerospace-defense/alitalia-dies-after-75-turbulent-years-hands-over-ita-2021-10-14/>], accessed 12 April 2024.

¹³ Stucke, M. E. and Ezrachi A., *Competition Overdose. How the Free Market Mythology Transformed Us From Citizen Kings to Market Servants*, New York, 2020, pp. 255-292.

¹⁴ *Ibid.*, pp. 162-191.

¹⁵ This fundamental right is guaranteed, *inter alia*, by Article 35 of the Charter of Fundamental Rights of the European Union and by Articles 11 and 13 of the European Social Charter.

¹⁶ Gerber D. J., *op. cit.*, pp. 249-250. See also Bonefeld W., *Freedom and the Strong State: On German Ordoliberalism*, *New Political Economy*, 2012, 17, 5, p. 633.

in favour of a dominant firm¹⁷). However, the possibility of these drawbacks and the need to ‘supervise’ competition in particular sectors or markets does not connote it as a negative policy, and it cannot serve as a justification for a more active role of the State in the economy. Contrariwise, competition law, when supervised and brought – through the right policy choices and enforcement paths – towards what has been defined as ‘noble competition’¹⁸ is the only force that can reconcile market and societal issues and problems and guaranteeing increased wellness to society. In fact, apart from its ‘rivalrous’ side, competition law means plurality and deconcentrated economic power, which is a form of power which can easily turn into political power (e.g., by controlling the media, influencing citizens’ choices, also policies, by imposing certain low working conditions in order to invest, even to governments). Plurality and dispersion of power, as the Ordoliberal school also thought, represent some of the main prerequisite for a democratic society which respects the rule of law’s requirements.¹⁹ It is exactly in this connection that lies the link between the three concepts which are at the basis of this paragraph and, more in general, of this reflection.

The concepts just expressed, as we saw, are a key element of the European Union’s institutional and juridical architecture, and their respect and performance are essential in order to be part of the Union. In fact, apart from the aspect more related to fundamental institutional requirements, if new Countries enter the internal market they must have sound competition also in their internal market, as this is the rule governing the ‘level playing field’ constituted, in fact, by the single market. Therefore, a functioning competition regime is needed both in order to allow other Member States’ firms to operate and invest in these national markets within the single one, and to face the competitive pressure brought by the integration in a system composed of various and heterogeneous national markets. In addition, in order to allow a regular conduct of business in the competitive environment so described, the respect of the rule of law and the presence of healthy democratic

¹⁷ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), published on the OJ of the EU 12 October 2022, L 265/1.

¹⁸ Stucke M. E. and Ezrachi, A., *op. cit.*, pp. 255-292.

¹⁹ In the words of Franz Böhm, Ordoliberals were interested in the issue of private power in a free society. Böhm F., *Die Forschungs und Lehrgemeinschaft zwischen Juristen und Volkswirten an der Universität Freiburg in den dreissiger und vierziger Jahren des 20. Jahrhunderts*, in Mestmäcker E. (ed.), *Franz Böhm – Reden und Schriften*, Heidelberg, 1960, p. 162, quoted by Gerber D. J., *op. cit.*, p. 235. See also Gerber D. J., *Constitutionalizing the Economy: German Neo-Liberalism, Competition Law and the “New” Europe*, *The American Journal of Comparative Law*, 1994, 42, 1, pp. 29-30.

institutions is viewed as an essential prerequisite, thus underlining again the inextricable nexus between these concepts and competition.²⁰

On the other side of the medal, a functioning market, based upon the game of competition – a ‘supervised’ noble competition – is essential to improve the economic and social indicators of a Country, thus benefitting all the citizens with more choice, quality, and competitive prices. In order to do this, it is necessary, especially in Countries where the State represented the main player on the market, to liberalise these markets, in order to gain quotas in terms of efficiency and productivity.

In the end of this introduction, aimed at establishing the given connection between all the elements that constitutes the concept of social market economy, it is natural – especially in light of the planned enlargement of the European Union²¹ – to decline the discourse on the Countries which are willing to join the EU, and in particular to the West Balkans Countries. The history – and legal history – that characterised the development of this area is very complex, and, apart from what is necessary for our analysis, falls outside the scope of the present work. However, the common denominator of this area, both from the legal and economic standpoint, was the presence of socialist systems, characterised by a highly centralised role of the State both concerning the area of legislative production and having regard to economic planning. Therefore, by considering the EU’s social market economy – and consequently competition law – as a model to be transplanted in this area according to the legal transplants theory,²² it can be seen as consequential a certain difficulty for these systems in interiorising the European market model, which anyway constitutes an essential part of the *acquis communautaire*, therefore essential to join the Union.²³ Indeed, as philosophy of law teaches,²⁴ from the mere formal enactment of certain provisions – such as, for our purposes, competition law ones

²⁰ Marković Bajalović D., *Competition Enforcement Models in the Western Balkans Countries – The Rule of Law Still Terra Incognita?*, Yearbook of Antitrust and Regulatory Studies, 22, 2020, pp. 29-31.

²¹ See [https://european-union.europa.eu/principles-countries-history/eu-enlargement_en], Accessed 12 April 2024.

²² See, *inter alia*, Ajani G., *Trapianto di norme “informato” e globalizzazione: alcune considerazioni*, in Ajani G. et al. (eds.), *Studi in onore di Aldo Frignani. Nuovi orizzonti del diritto comparato europeo e transnazionale*, Napoli, 2011, pp. 3-15. With regard to the relationship between legal transplants and economic performances, with specific regard to Eastern Europe, see Ajani G., *Legal Change and Economic Performance*, Global Jurist, 2001, 1, 1, pp. 1-12.

²³ Benacchio G. A., *National Courts and Comparative Law – The States of Former Yugoslavia (Slovenia, Croatia, Serbia, Bosnia-Herzegovina, Macedonia and Montenegro*, in Ferrari G. F. (ed.), *Judicial Cosmopolitanism. The Use of Foreign Law in Contemporary Constitutional Systems*, Leiden/Boston, 2020, p. 759. To get a wider overview about the Western Balkans legal systems, refer, *inter alia*, to Benacchio G. A., *La circolazione dei modelli giuridici tra gli Slavi del sud*, Padova, 1995; Benacchio G. A., *Jugoslavia: evoluzione e crollo di un modello*, Rivista di diritto civile, 1991, I, pp. 361-382.

²⁴ Bobbio N., *Teoria generale del diritto*, Torino, 1993, pp. 23-31.

– does not automatically derive the effectiveness of these provisions. In fact, if there is not social acceptance of these rules, they remain just *law in the books*, without providing all the beneficial effects that they should bring, and by giving only the illusion of compliance with the *acquis*, with all the negative consequences that this can imply for the Country in question, but also for the whole internal market.

Therefore, and in light of the above, this paper aims at scrutinising the current state of competition law in the Western Balkans area, with particular reference to the systems of Slovenia, Croatia and Serbia. The choice is not casual, since they represent the three major economies that emerged from the dissolution of the former Yugoslavia and they also portrait three different stages in the process of integration with the European Union, since Slovenia joined in 2004, Croatia in 2013, and Serbia, in its status of candidate Country, wishes to be soon part of the EU. As a consequential step, by applying the theory of formants advanced by Professor Sacco and his School, this work aims at underlining how competition law can improve the economic and social conditions of the Countries pertaining to the analysed area, and which reforms could be suggested in order to properly implement in this context a functioning competition law regime, which should bring beneficial effects to the market of the concerned Countries, the social conditions therein, and, lastly, to the whole European internal market.

2. THE LEGAL CONTEXT CHARACTERISING THE WESTERN BALKANS COUNTRIES

The peculiarities characterising the various territorial legal traditions in the Balkans region gain interest for the purposes of this analysis since 1918, when the above-mentioned territories were reunited by King Karadjordjevic into what in 1929 was officially named the Kingdom of Yugoslavia. The cultural pluralism of the territory thus united is evident from the diversity of religions, languages and even alphabets (both the Latin and Cyrillic alphabets are used). Various legal systems were in force in those territories: In Croatia there was the coexistence, depending on the subject, of the Austrian model with the Hungarian one; in Slovenia and in some Croatian regions the Austrian system was in full force; in Serbia there was the coexistence of Serbian law (in some regions) with the Hungarian model, and an informal system based on precedents in other territories, such as Vojvodina; Serbian law was also applied in Macedonia, whilst in Montenegro an autochthonous system was applied and in Bosnia-Herzegovina reference was made to a plurality of sources, including the Austrian ABGB, the Turkish *Megelle* and even the Sharia for Muslim citizens. In such a context, it is clear that a ‘Yugoslavization’ of the law belonging to the various systems was necessary, in order to harmonize the rules applied within the newly

established Kingdom. In this regard, the comparison was conducted both through studies of the main Western systems, namely the French, German and Austrian ones – which constituted the basis of the various regional systems – and through the comparison of the latter, but in a perspective of abandoning local peculiarities in favour of a unified approach. However, this evolution occurred almost exclusively in the doctrinal debate, while the jurisprudential formant, due to various factors, remained static on a more territorial character.

The subsequent historical point of demarcation is represented by the advent of the socialist Federal People's Republic of Yugoslavia in 1946. As a consequence, a formal repeal of the pre-existing laws was performed, but, in the absence of a complete substitute legal system, the previous legislation continued to apply, in the form of non-binding principles.²⁵ Also in this context, comparative law played a fundamental role, as it was essential to know the various territorial regulations in order to reach the most suitable solution. Subsequently, once the most disruptive effects of socialism had disappeared, solutions from the main Western legal systems also found space and it became possible for judges to refer to foreign or pre-existing regulations.²⁶ The importance of the role played by comparative law in the context of the former Yugoslavia is also evident from the fact that the first institute of comparative law founded in a socialist state was the *Institut za uporedno pravo* in Belgrade, dating back to 1955.²⁷

Following the dissolution of the former Yugoslavia, six original independent states were gradually re-created: Bosnia-Herzegovina, Croatia, North Macedonia, Montenegro, Serbia, Slovenia. The key to understanding this new historical phase in the context of the Balkan legal systems is the reference to the 'classic' systems of continental law and the rapprochement (more or less marked between the various states) to the law of the European Union. In fact, among the newly established states, first Slovenia (2004) and then Croatia (2013) joined the Union, while the other Countries began the process of joining the EU.²⁸ The perspective to join the EU led to the need for reforms (which are still ongoing in the candidate Countries) aimed at integrating the *acquis communautaire* into the concerned legal systems. In particular, it is necessary to align the various systems with the dictates of the rule of law, as well as to prepare the relevant economies for entry into the single

²⁵ Benacchio G. A., *National Courts and Comparative Law*, *op. cit.*, pp. 751-752.

²⁶ *Ibid.*, p. 753.

²⁷ *Ibid.*, p. 754. More information about the Institute is available at [<https://iup.rs/en/>], Accessed 12 April 2024.

²⁸ Having regard with Bosnia and Herzegovina the European Council decided on 21 March 2024 to open accession negotiations with Bosnia and Herzegovina. See [[https://www.europarl.europa.eu/thinktank/it/document/EPRS_ATA\(2024\)760409](https://www.europarl.europa.eu/thinktank/it/document/EPRS_ATA(2024)760409)], Accessed 12 April 2024.

market, with the consequent rules on competition, state aid, consumer protection, etc. These innovations were also stimulated by external entities, such as the World Bank or the International Monetary Fund, in order to provide both training and financial assistance in the transitional phase of the Countries concerned.²⁹ It is clear that comparative law has played a role of considerable importance in providing the appropriate tools for this purpose, especially through the analysis of the solutions – both legislative and judicial – adopted in the systems of the States that are part of the EU.³⁰ In fact, with particular reference to the judiciary, the judges of the Balkans States often refer, both (more rarely) expressly and (mostly) indirectly, to interpretative solutions adopted in the systems of other continental States.³¹

However, being the aim of this paper that of showing how a competitive market – along the lines of the EU's *acquis* – could stimulate competitiveness in the Western Balkans area, it is necessary not to limit this analysis to the legal features, but to also provide an overview of the area's economic landscape, based upon data collected and elaborated at the international level with regard to some key economic indicators.

3. THE ECONOMIC LANDSCAPE OF THE WESTERN BALKAN COUNTRIES

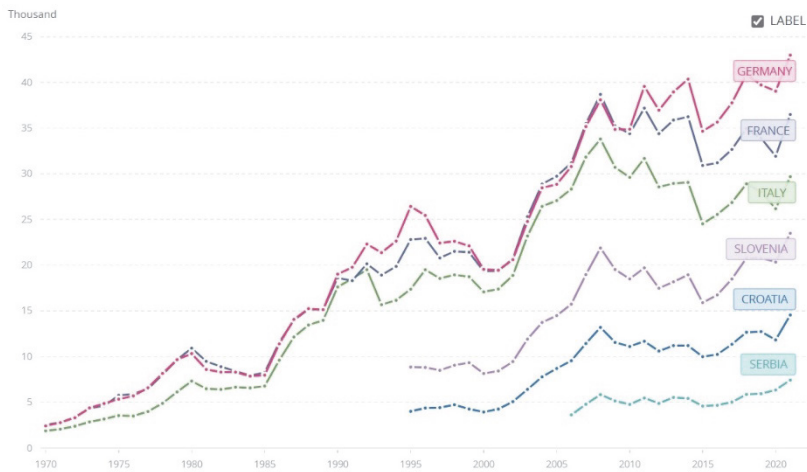
The dataset that we took into consideration for the analysis carried out in this paragraph is based upon some of the main indicators registered by the economic development datasets elaborated by the World Bank. The first parameter that we want to outline is the one regarding the analysed Countries' adjusted national income per capita. As the Image below (Image 1)³² shows there is a marked difference in the result among the three Balkans Countries considered, with Slovenia registering an important increase in the datum after the entrance in the EU. Also Croatia registers – notwithstanding the concurrent impact of the financial crisis – an overall positive trend in respect of Serbia. Moreover, although on different levels of the graph, the two Countries part of the single market follow the shape of the datum registered for the three major EU economies, Germany, France and Italy, taken as a benchmark. Serbia, contrariwise, notwithstanding a slight increase, follow an average more stagnant line with regard to this parameter.

²⁹ Ajani G., *Il modello post-socialista*, Torino, 2008, pp. 59, 125.

³⁰ Ferreri S. and Piletta Massaro, A., *Casi di diritto comparato*, Milano, 2024, pp. 18-22.

³¹ Benacchio G. A., *National Courts and Comparative Law*, cit., pp. 751-753.

³² Image 1: Adjusted net national income per capita (current US\$) – Croatia, Italy, France, Germany, Serbia, Slovenia, The World Bank, [<https://data.worldbank.org/indicator/NY.ADJ.NNTY.PC.CD?end=2021&locations=HR-IT-FR-DE-RS-SI&start=1970&view=chart>], accessed 10 April 2024.



Having regard to other indicators that can be of interest in the context of the current analysis, a mention is for sure deserved by some trade-relevant parameters such as control of corruption,³³ government effectiveness,³⁴ and the rule of law.³⁵ These factors have been defined as trade related since they involve almost all the macro-features required for the establishment of the proper level playing field needed for fostering trade and investments. In fact, reliance on a legal system anchored on a high level of compliance with the rule of law is necessary for investors to provide their funds, and the same can be said for the presence of a government which can pursue an effective progressive agenda and tries to eradicate corruption, which is one of the principal enemies of competition, and, more in general, of trust for trading and investing in a given Country.³⁶ Data show as control of corruption registers a particularly high datum in France and Germany, and a datum with tendency to alignment to these two benchmark economies is recorded in

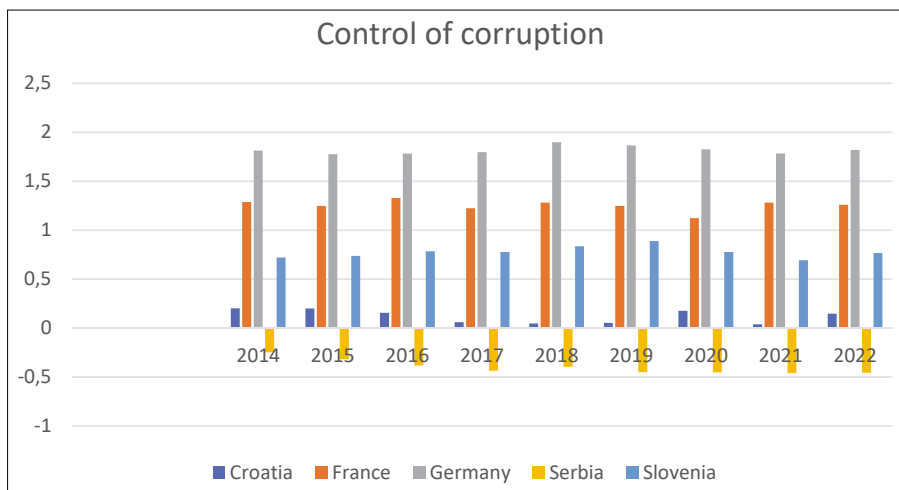
³³ According to the World Bank, the ‘Control of Corruption: Estimate’ indicator (CC.EST) captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as “capture” of the state by elites and private interests. See [<https://databank.worldbank.org/reports.aspx?source=World-Development-Indicators>], accessed 10 April 2024.

³⁴ According to the World Bank, the ‘Government Effectiveness: Estimate’ indicator (GE.EST) captures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government’s commitment to such policies. See [<https://databank.worldbank.org/reports.aspx?source=World-Development-Indicators>], accessed 10 April 2024.

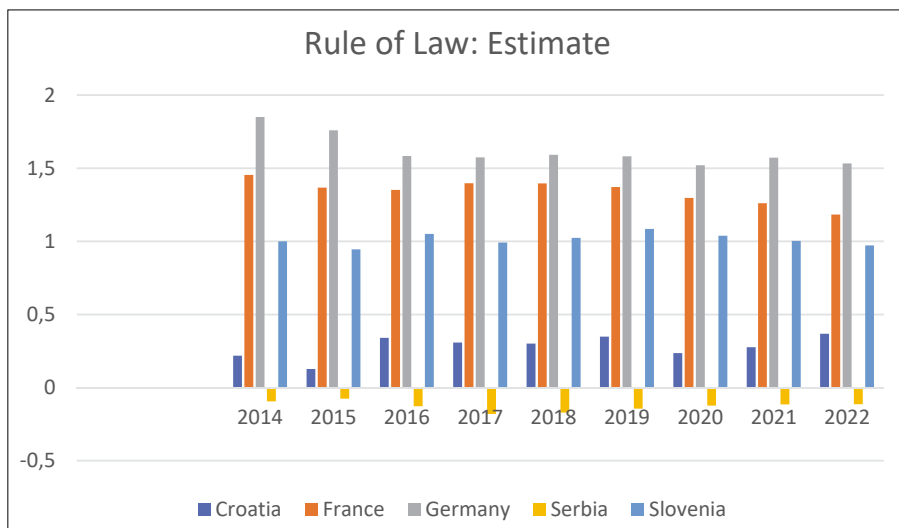
³⁵ According to the World Bank the ‘Rule of Law: Estimate’ indicator (RL.EST) captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. See [<https://databank.worldbank.org/reports.aspx?source=World-Development-Indicators>], accessed 10 April 2024.

³⁶ OECD, Croatia Country Profile, 2022, p. 20.

Slovenia, in lower but improving value in Croatia and a very low level in Serbia (image 2³⁷):



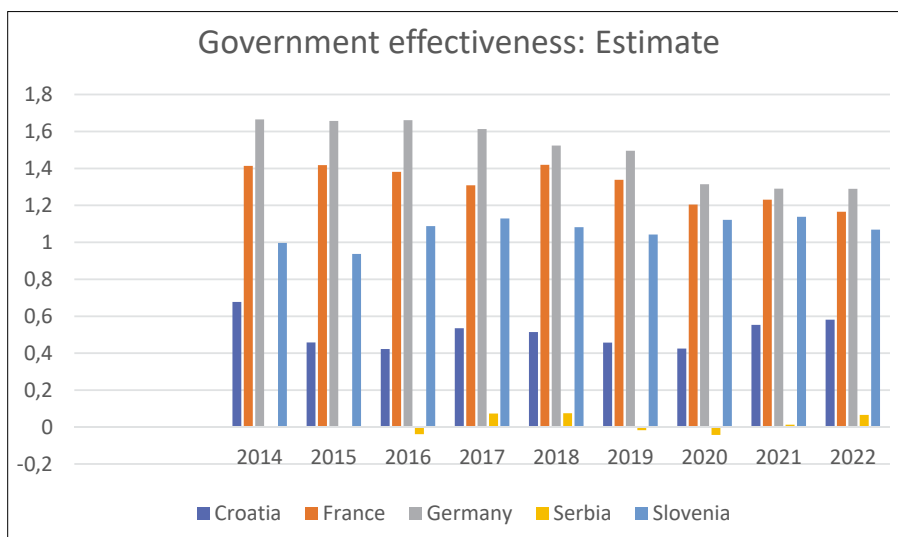
The same path is illustrated with regard to the estimate of the rule of law compliance and on the effectiveness of the government action (image 3³⁸ and 4³⁹):



³⁷ Image 2: Control of corruption, 2014-2022, Croatia, France, Germany, Serbia, Slovenia, [<https://databank.worldbank.org/reports.aspx?source=World-Development-Indicators>], Accessed 10 April 2024.

³⁸ Image 3: Rule of Law: Estimate, 2014-2022, Croatia, France, Germany, Serbia, Slovenia, [<https://databank.worldbank.org/reports.aspx?source=World-Development-Indicators>], Accessed 10 April 2024.

³⁹ Image 4: Government effectiveness: Estimate, 2014-2022, Croatia, France, Germany, Serbia, Slovenia, [<https://databank.worldbank.org/reports.aspx?source=World-Development-Indicators>], Accessed 10 April 2024.



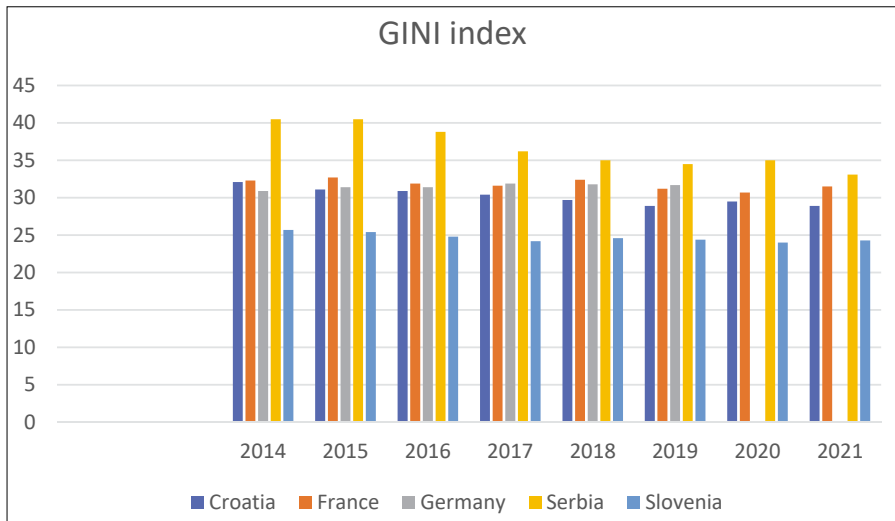
After having analysed these datasets, that we can define as ‘preparatory’ for doing business, as they represent the conditions in which firms would operate and investment may occur, it is now worth analysing some other indicators, which show a sort of outcome of the performance of these Countries’ economies in various areas, that we consider key in order to delineate a picture of a competitive developed, inclusive and sustainable economy.

First, it is worth considering how a competitive economy should certainly increase the wealth of certain firms or subjects, but, generally, it is a mean that should disperse economic power and therefore it could have also a distributive impact,⁴⁰ through – among others – the already mentioned better services, opportunities, and prices. Therefore, a developed and competitive economy, in line with the social market economy model, should register lower levels of income inequality. The analysis of the data through the comparison among Countries that we performed confirms this affirmation, thus showing the beneficial effects of a dynamic and competitive economy, and the need to increase these performances in the Western Balkans area, with the exception – not casual – of Slovenia, which registers one of the lower levels of income inequality in the EU area.⁴¹ This parameter can be

⁴⁰ For an overview about the link between competition law and distribution of wealth, see, *inter alia*, Ezrachi A., Zac A., Decker C., *The effects of competition law on inequality – an incidental by-product or a path for societal change?*, Journal of Antitrust Enforcement, 2023, 11, for pp. 1-27; Stiglitz J., *The Price of Inequality*, New York, 2014, p. 104.

⁴¹ OECD, Government at a Glance 2021, Country Fact Sheet, Slovenia, 2021, [https://www.oecd.org/gov/gov-at-a-glance-2021-slovenia.pdf], Accessed 12 April 2024; Eurostat, Living conditions in Europe - income distribution and income inequality, [https://ec.europa.eu/eurostat/statistics-explained/

analysed through three datasets, which are the GINI index,⁴² the percentage of income held by the top 10% of the population in comparison with the one held by the bottom 20%⁴³ (image 5⁴⁴, 6⁴⁵ and 7⁴⁶):



index.php?title=Living_conditions_in_Europe_-_income_distribution_and_income_inequality&stable=1#Income_inequality], Accessed 12 April 2024; Filipovič Hrast M.; Ignjatović M., *Slovenia: An Equal Society Despite the Transition*, in Nolan B. et al. (eds.), *Changing Inequalities and Societal Impacts in Rich Countries: Thirty Countries' Experiences*, Oxford, 2014, pp. 593-615.

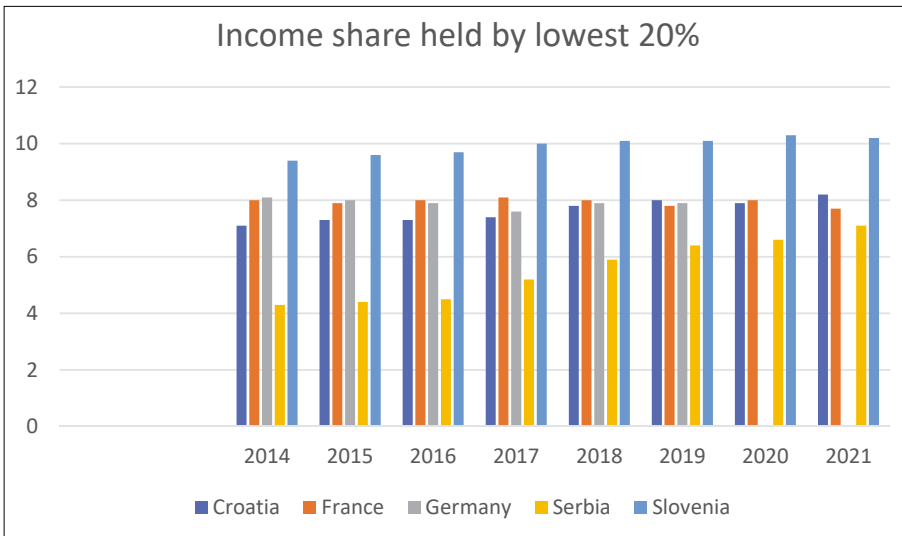
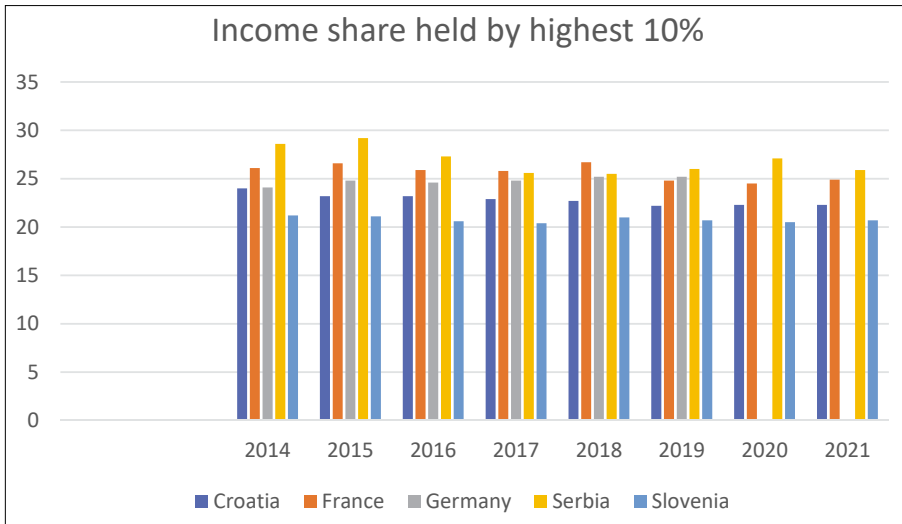
⁴² The GINI index for the representation of inequality has been introduced at the beginning of XX Century by the Italian economist Corrado Gini. It is based on values from 0 to 1: 0 represents a total equality scenario, where every society's member has the same income, whilst 1 represents a total inequality scenario, where one individual holds the total income. The values between 0 and 1 represents various among total equality and total inequality. Often, and for practical reasons, values between 0 and 1 are multiplied in order to express a range between 0 and 100. See B. Keeley, *Income Inequality: The Gap between Rich and Poor*, OECD Publishing, 2015, p. 22. See also the item 'Gini coefficient' in the *Oxford Dictionary of Economics*, Oxford, 2009.

⁴³ According to the World Bank, the percentage share of income or consumption is *the share that accrues to subgroups of population indicated by deciles or quintiles*,

⁴⁴ Image 5: GINI index, 2014-2021, Croatia, France, Germany, Serbia, Slovenia, [https://databank.worldbank.org/reports.aspx?source=World-Development-Indicators], accessed 10 April 2024.

⁴⁵ Image 6: Income share held by highest 10%, 2014-2021, Croatia, France, Germany, Serbia, Slovenia, [https://databank.worldbank.org/reports.aspx?source=World-Development-Indicators], accessed 10 April 2024.

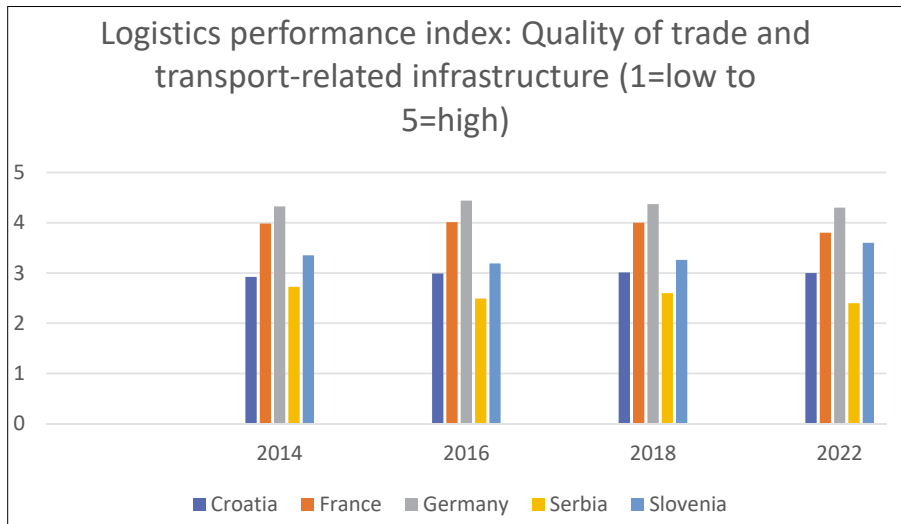
⁴⁶ Image 7: Income share held by lowest 20%, 2014-2021, Croatia, France Germany, Serbia, Slovenia, [https://databank.worldbank.org/reports.aspx?source=World-Development-Indicators], accessed 10 April 2024.



Another telling and important factor for the competitiveness of an economy is represented by the logistics performances, since this result essential in for the purpose of moving goods and materials (image 8⁴⁷). In this sense the action of

⁴⁷ Image 8: Logistics performance index: Quality of trade and transport-related infrastructure, 2014, 2016, 2018, 2022, Croatia, France, Germany, Serbia, Slovenia, [https://databank.worldbank.org/reports.aspx?source=World-Development-Indicators], Accessed 10 April 2024. According to the World Bank, the 'Logistics performance index: Quality of trade and transport-related infrastructure (1=low to 5=high)' indicator (LP.LPI.INFR.XQ) represents *logistics professionals' perception of country's quality of trade and transport related infrastructure (e.g. ports, railroads, roads, information technology), on a rating ranging from 1 (very low) to 5 (very high)*.

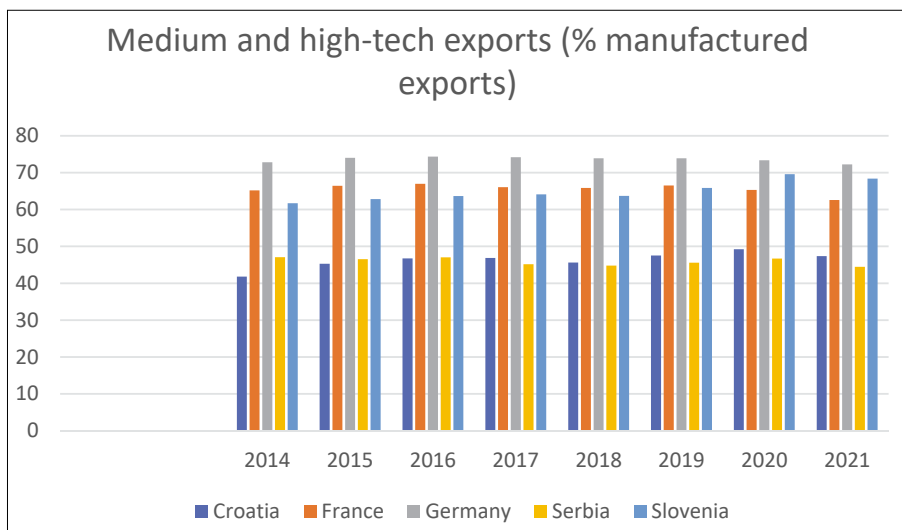
competition can be twofold: It can be viewed both as competition to improve infrastructures, and as an important prerequisite for stimulating investments and consequently more competition on other markets. Of course, with regard to the former, it is inextricably linked to public procurement, and corruption in this sector can therefore stifle competition and the overall economic performance. Also in this case data are telling, and they show how the passage from a centralised planned economy to a competitive market economy leads, over the years, to an improvement of the related indicators:



Going more in detail, but on the same trail of parameters more related to production and productivity, an essential aspect related to competition is innovation.⁴⁸ Innovation should be a natural positive by-product of competition, since the rivalry among firms for the market leadership should stimulate investments and research in new and innovative products, with the societal beneficial effect of leading the advancement of society through the natural dynamics of the market. Moreover, one particular and specific declination of innovation can be the research and introduction of more efficient and environmental friendly products and processes, which can lead to less energy consumption, and therefore less Co2 emissions and lower energy costs – which means also more competitiveness – on the economic side, but also improved health conditions on the social side. Also in this case,

⁴⁸ On the relationship between competition and innovation see, *inter alia*, Ezrachi A. and Stucke M E., Digitalisation and its impact on innovation, Report for the European Commission, 24 August 2020, [https://op.europa.eu/en/publication-detail/-/publication/203fa0ec-e742-11eaa25-01aa75ed71a1/language-en], accessed 12 April 2024; Robertson V. H.S.E., *Competition Law's Innovation Factor. The Relevant Market in Dynamics Context in the EU and the US*, Hart Publishing, 2020; Gilbert R. J., *Innovation Matters: Competition Policy for the High-Technology Economy*, The MIT Press, 2020.

the analysed data show how more developed markets have better performances in terms of innovation. For the sake of this analysis we took into examination the datasets related to medium and high-tech exports (image 9⁴⁹) and the overall emissions of Co2 (image 10⁵⁰), being the latter the example of innovation applied in a specific and crucial aspect of our societies' future.⁵¹ Moreover, it is worth underlining how the implementation of the green agenda adopted by the European Union is an essential task required to candidate Countries, such as Serbia, in order to align their system to the EU requirements.⁵²

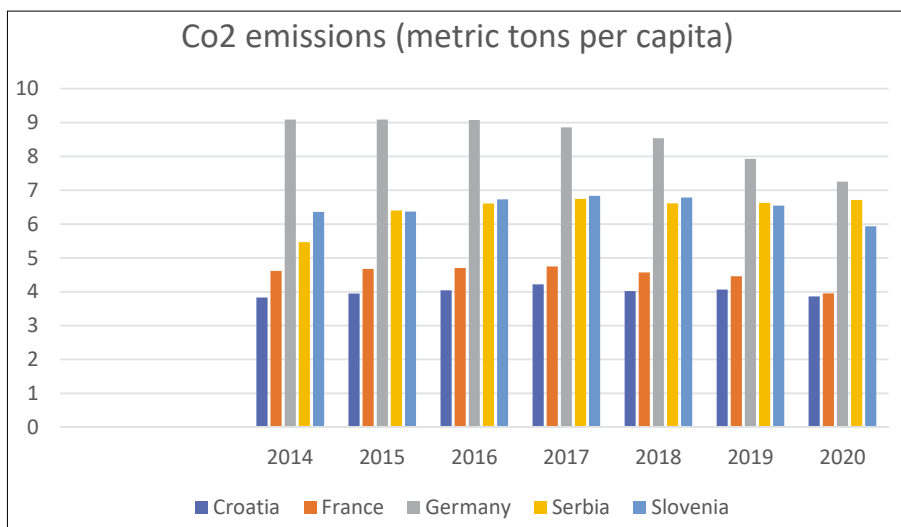


⁴⁹ Image 9: Medium and high-tech exports (% manufactured exports), 2014-2021, Croatia, France, Germany, Serbia, Slovenia, [<https://databank.worldbank.org/reports.aspx?source=World-Development-Indicators>], accessed 10 April 2024. According to the World Bank, the 'Medium and high-tech exports (% manufactured exports)' indicator (TX.MNF.TECH.ZS.UN) represents *the share of medium and high-tech manufactured exports in total manufactured exports*.

⁵⁰ Image 10: Co2 emissions (metric tons per capita), 2014-2020, Croatia, France, Germany, Serbia, Slovenia, [<https://databank.worldbank.org/reports.aspx?source=World-Development-Indicators>], Accessed 10 April 2024. According to the World Bank, the 'CO2 emissions (metric tons per capita)' indicator (EN.ATM.CO2E.PC) shows *the Carbon dioxide emissions are those stemming from the burning of fossil fuels and the manufacture of cement. They include carbon dioxide produced during consumption of solid, liquid, and gas fuels and gas flaring*.

⁵¹ It is worth specifying here that the datasets show the two benchmark Countries, France and Germany, as having the highest amount of Co2 emissions. However, this datum has to be parametrised to the extension and especially the economic and industrial development of these two Countries. The telling datum, in reality, is that Serbia registers almost the same emissions of France or Germany, but with a completely different size and scale of business. Therefore, this shows a great underdevelopment in the innovations related to Co2 emissions' reduction.

⁵² See, *inter alia*, Article 111 of the Stabilisation and Association Agreement between the EU and the Republic of Serbia, published on the Official Journal of the EU 18 October 2013, L278.



4. COMPETITION POLICY IN THE WESTERN BALKANS

Competition law has been formally enacted in all the Western Balkans Countries object of the present analysis, as part of the necessary alignment of national systems with the *acquis communautaire* in order to join the EU. Also Serbia, which is not a member State yet, but a candidate one, has adopted a competition law regime back in 2009, with significant modifications in 2013. However, what is worth pointing out in this context is that one fact is the formal adoption of competition law provisions, and another is the effective implementation of them, with the consequential effects in the economic realm. The analysis of the datasets outlined in the previous paragraph clearly showed a direct proportionality link between the durable and effective implementation of a competition law regimes and the improvement of economic development indicators, thus establishing a correlation between competition, rule of law, government effectiveness, market performance and, more in general, well-being of citizens.⁵³

However, the data showed also put into question, especially with regard to Serbia, and, with a certain extent, Croatia, the slightly sub-effective application of competition rules in these markets, notwithstanding the formal datum given by the existence of competition rules shaped along the lines of the EU model. This emerges, with particular reference to Croatia, especially from the work of Jasminka Pecotic

⁵³ Buccirosi P. and Ciari L., *Western Balkans and the Design of Effective Competition Law: The Role of Economic, Institutional and Cultural Characteristics*, in Begović B. and Popović D. V. (eds.), *Competition Authorities in South Eastern Europe*, New York, 2018, p. 7.

Kaufman and Ružica Šimić Banović,⁵⁴ from which it appears the portrait of a system which tries, through the formal implementation of the *acquis*, to look at the future, but remains anchored to some social and cultural behaviours and customs deeply embedded in the society. This represents a clear example of transplant of rules from another, considered more efficient, model, but having a scarce effectiveness due to the lack of acceptance of the norms by the social context, which is probably still not ready to assimilate these innovations. Indeed, according to the mentioned Authors, in post-socialist Countries, *competition systems reflect mostly a slow transformation from a relations-based to rule-based governance*.⁵⁵ The problem, therefore, appears to be the embedded custom of relying on informal institutions and relations in order to get something (such as the connection system that can be summarised in the Serbian and Croatian word *veza*), instead of relying on the formal and institutionalised processes. Therefore, according to the same Authors, *the gap between Western-like formal and (post)socialist-like informal institutions appear to be considerable and results in additional transaction costs*,⁵⁶ which, we may add, brings to lower trade and economic performances, which, consequently, because of the inseparable nexus that bounds market and society in modern economies, delivers poor social conditions and development.

This aspect is of particular interest under a comparative law perspective, since it shows how a ‘misalignment’ among the various formants can bring to sub-average performances in the transplanted provisions. In fact, and also by bearing in mind what was explained above – in more general terms – about Western Balkans Countries’ legal systems, the innovations introduced by the legislative formant were often not properly followed by the jurisprudential one and cryptotypes deeply embedded in the society (like the mentioned *veza*) remained almost unchanged.⁵⁷ The impression is that of a different ‘speed’ among all these factors. Indeed, the enactment of competition rules in these Countries was part of the reforms needed, suggested, and in a way required in order to participate not only in the European Union, but also to receive financing by institutions such as the World Bank, the International Monetary Fund, and to be part of the international trade exchanges.⁵⁸ The solutions proposed aimed of course at the transition between the socialist planned economic system to the market one. At this purpose, the legislative formant almost completely aligned the legislation of these countries

⁵⁴ Pecotić Kaufman J. and Šimić Banović R., *The Role of (Informal) Governance and Culture in a National Competition System: A Case of a Post-Socialist Economy*, *World Competition*, 44, 1, 2021, pp. 81-108.

⁵⁵ *Ibidem*, 81.

⁵⁶ *Ibidem*, 82.

⁵⁷ Buccirosi P. and Ciari L., *op. cit.*, p. 8.

⁵⁸ Ajani G., *op. cit.* (n. 28), pp. 59, 125.

to the western models proposed in the field of competition, foreign investments, rule of law and accountability of political and administrative institutions, liberalisations, and so on. However, this quite huge modernising normative production, for various reasons, was not followed by the jurisprudential (and also administrative, especially in the field of competition law) formant and society in general. The reasons for this are multiples, but, for the sake of the present analysis, we can for sure mention a certain cultural resistance also of the judiciary, probably a lack of knowledge and also familiarity with the theoretical and legal concepts of the EU and, more generally, of market economy, plus the permanence of some contrasting interest which can get more advantage from an informal economy rather than in the context of a competitive market. In fact, some old customs are culturally difficult to eradicate exactly because of the very nature of competition, the rivalry we mentioned in the beginning of the present work. As we already outlined – and especially in a background where the plan and the presence of the State were the normality – the fact that, because of this rivalry, there will be some ‘winners’ and some ‘losers’ can be feared,⁵⁹ whilst informal structures and methods can result in a more reassuring scenario, especially when current needs are at stake and future development appears to be as something farther away. Moreover, in this context – and for the same background reasons – a strong role of the State in the economy remains, with the control over key sectors such as energy production.⁶⁰ This, of course, discourages external investments in these fields and the consequent entry of new operators, which can bring less expensive and more efficient services, that, in the field of energy production or transportation can also turn into a better and faster transition towards more environmentally sustainable services.

By entering more into the detail of the analysed Countries’ competition law systems, all of them have opted for an administrative enforcement model, thus based upon an independent authority which should enforce competition rules through proceedings regulated by fixed rules and the fair proceeding principles in general.

In particular, the Slovenian Competition Protection Agency was established in 2013 as an independent administrative authority. However, it had to follow a peculiar regime form conducting its investigation and imposing a fine. In fact, it was required to establish an infringement of competition law through a first administrative proceeding, and, in order for a fine to be imposed, a second misdemeanour proceeding had to be carried out, with the consequent dispersion of time and resources, also because the decisions issued in the two proceedings were subject

⁵⁹ Pecotić Kaufman J. and Šimić Banović R., *op. cit.*, p. 94.

⁶⁰ *Ibid.*, pp. 88-89.

to two distinguished appeals.⁶¹ Subsequent innovations have been introduced in September 2022 and entered into force on 26 January 2023 to render more effective the enforcement activity of the Slovenian competition Authority.⁶² Anyhow, the data reported by the OECD in the annual report on competition law in Slovenia portray a satisfactory enforcement track record and a quite well-staffed and budgeted Authority.⁶³ Moreover, the innovations brought through the mentioned reform of the Slovenian competition act also designed a more efficient and less burdensome procedure for the notification and evaluation of mergers. Both the addressed improvements will for sure render the activity of the Slovenian Competition Authority more efficient in terms of time and cost of proceedings, with the consequent likely positive effects on an economy that – as previously reported – already shows good indicators in term of growth, development and wealth distribution. Finally, according to the same OECD report, the Slovenian Competition Protection Agency is actively involved in competition advocacy activities,⁶⁴ which turned out in an essential tool for shifting the predominant cultural basis from a resistance to competition and the market economy into its acceptance and the positive economic data already mentioned, which have a big significance if we consider that the three Balkans Countries analysed were part of the same State entity.

Shifting the attention to Croatia, the situation of competition law and enforcement in the Country showed the crucial time shift in the adoption and application of competition rules – and of a culture of competition – marked by the more recent entrance into the internal market. Indeed, as the mentioned paper by Pecotić Kaufman and Šimić Banović showed, some resistances still exist in the Croatian context, but it is also worth underlining the general improving trend in the datasets analysed above, which shows an increased development of the economy. The Croatian Competition Act was introduced in 2009, amended in 2013 and subsequently in 2021⁶⁵). The last development occurred in response to the input

⁶¹ OECD, Annual Report on Competition Policy Developments in Slovenia – 2021, 2022, p. 4, [[https://one.oecd.org/document/DAF/COMP/AR\(2022\)32/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2022)32/en/pdf)], accessed 12 April 2024. See also Smiljanic V. And Rihtar K., *Institutional Design, Efficiency and Due Process in Competition Enforcement: Lessons from Slovenia and Serbia*, Yearbook of Antitrust and Regulatory Studies, 2020, 22, p. 70.

⁶² Šešok J., *Main Developments in Competition Law and Policy 2022 – Slovenia*, Kluwer Competition Law Blog, 2023, [<https://competitionlawblog.kluwercompetitionlaw.com/2023/02/02/main-developments-in-competition-law-and-policy-2022-slovenia/>], accessed 12 April 2024. The English version of the Slovenian Prevention of Restriction of Competition Act (unfortunately without the 2021 amendments) is available at [https://www.varstvo-konkurence.si/fileadmin/varstvo-konkurence.si/pageuploads/angleska_stran/ZPOMK-1-AN_REV-za_objavo_na_spletu.pdf], Accessed 12 April 2024.

⁶³ OECD, Annual Report on Competition Policy Developments in Slovenia – 2021, cit., 13-14.

⁶⁴ *Ibid.* p. 11.

⁶⁵ The English version of the Croatian Competition Act is available at [<https://www.aztn.hr/ea/wp-content/uploads/2023/02/COMPETITION-ACT-2021-consolidated-241122-ENG.pdf>], Accessed 12 April 2024.

represented by EU law through Directive 1/2019 (the so-called ECN+ Directive, aimed at empowering the effectiveness and strengthening the independence of European national competition Authorities⁶⁶), which was implemented in Croatia by means of the Act on the Amendments to the Competition Act, entered into force on 24 April 2021.⁶⁷ This reform fully aligned the Croatian Competition Agency (AZTN, established in 1995 and operational since 1997) with the EU *acquis* and empowered it with new tools aimed at rendering its enforcement activity more effective. It introduced tools such as periodic penalty payment and settlement in cartel cases. In addition, the reform defined terms such as cartel, leniency statement, and outlined the procedure for the disclosure of leniency statements and settlement submissions. However, apart from an institutional design that fits the mainly recognised standards, additional efforts are needed with regard to State Owned Enterprises, especially in network industries, such as the energy sector,⁶⁸ and to control corruption and clientelism, which are considered to be still a quite widespread phenomenon, especially in public procurement.⁶⁹ Having regard to the track record of competition decisions, according to OECD data it is below average in respect of economies comparable to Croatia, with 45 decisions issued by the Croatia Authority in the period 2015-2019 against the average of 60 in other 15 comparable economies during the same period.⁷⁰

Being the most advanced and industrialised economy among non-EU member States in the area, Serbia represents probably the best example of the economic and social transition that the implementation of a competitive market should bring. As the economic indicators reported above showed, improvements are undergoing through the years in Serbia, but much more work needs to be done, especially with regard to government effectiveness, the rule of law, and the control of corruption. All these three profiles are needed in order to establish a healthy competitive market, since no effective competition can occur if there still exists arbitrariness in certain procedures or the negative outcome that corruption brings, especially in the public procurement sector, which is the most touched by this phenomenon in

⁶⁶ Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, published in the Official Journal of the EU 14 January 2019, L 11/3.

⁶⁷ Published in the Official Journal of the Republic of Croatia 16 April 2021, no. 41.

⁶⁸ OECD, Croatia Country Profile, cit., pp. 21-24, [<https://www.oecd.org/south-east-europe/programme/Croatia-country-profile.pdf>], Accessed 12 April 2024.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, p. 24.

Serbia,⁷¹ but which also represents a key field for the development of the country (especially with regard to infrastructures and networks). The control of competition in the Country is entrusted to the Commission for the Protection of Competition (CPC, established in 2005), whose statute, together with the relevant competition legislation (the Law on Protection of Competition, enacted in 2009 and reformed in 2013⁷²), is quite in line with the EU standards. The competition Authority is independent from the Government, and it has the power to impose fine on infringers of competition law and it has advocacy duties.⁷³ Moreover, it is equipped with tools which are commonly used by the main competition Authorities, such as leniency programmes. However, the budget of the Authority, according to the OECD suggestions, should be increased and this need is reflected by the quite low track record of decisions registered by the Serbian Competition Authority in the period 2015–2019, with a track record of 30 decisions versus the average 60 issued in other 15 comparable economies analysed by the OECD.⁷⁴ However, according to the European Commission, the transparency of the Authority needs to be strengthened, together with the advocacy efforts.⁷⁵ Moreover, the European Commission defined *modest* the specialisation of the judiciary in competition law matters, suggesting that it has to be *improved significantly*.⁷⁶ Competition in Serbia needs to be strengthened especially in network sectors, such as energy. In these fields, a part of the European rules has been adopted, but there is still much work to be done. In particular, the energy sector is regulated by a public Authority, the Energy Agency of the Republic of Serbia (AERS), which however can be subject to political influence (its funding and structure are subject to the Parliament's approval).⁷⁷ Moreover, it has not the power to impose fines, and its staff is considered below what is needed to carry out its mandate.⁷⁸ Improvements are also needed in order to liberalise the energy market and to make public procurement

⁷¹ OECD, Serbia Country Profile, 2022, p. 18, [<https://www.oecd.org/south-east-europe/programme/Serbia-Country-Profile.pdf>], accessed 12 April 2024.

⁷² The English version of the Serbian Competition Act is available at [<https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/07/Law-on-Protection-of-Competition2.pdf>], Accessed 12 April 2024. For an overview of the Serbian competition law regime, see also Marković Bajalović D., *op. cit.*, pp. 55–59.

⁷³ About the Serbian CPC's advocacy duties see Lukić G. and Potpara J., *Competition advocacy in the legislative procedure to ensure competitive markets in the Republic of Serbia*, in OECD, *Competition Policy in Eastern Europe and Central Asia. Advocacy of competition*, January 2024, pp. 21–23, [<https://www.oecd.org/daf/competition/oecd-gvh-newsletter23-january2024-en.pdf>], Accessed 12 April 2024.

⁷⁴ OECD, Serbia Country Profile, *cit.*, p. 21. See also Smiljanic V. and Rihtar K., *op. cit.*, 70.

⁷⁵ European Commission, Serbia 2023 Report, 2023, p. 107, [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_695_Serbia.pdf], Accessed 12 April 2024.

⁷⁶ *Ibid.*

⁷⁷ OECD, Serbia Country Profile, *cit.*, p. 19.

⁷⁸ *Ibid.*

decisions in line with the EU *acquis*.⁷⁹ In addition, the Country registers – as a sort of heritage from its past – an important presence of SOEs, active especially in public services markets (such as district heating or water management).⁸⁰ However, especially under the influence of international entities such as the World Bank, Serbia has made progress in this sector, and in November 2023 passed a reform which should improve the management of SOEs, introducing a centralised management (not for the energy sector).⁸¹

5. CONCLUSION: COMPETITION AS A RECIPE FOR GROWTH

The present paper tries to establish a starting point for the development of a theoretical-empirical analysis on the correlation between economic performances of Countries and the development and implementation of a proper and functioning competition law regime. Moreover, it is aimed at proving the positive effects of the legal transplants incentivised by the requirement to implement the *acquis communautaire* on the economies shifting from a post-socialist to a market economy. The method underlying this work is the comparative method, with specific reference to an analysis-synthesis based upon the theory of formants.

After having recalled the importance of competition on the internal market and the factors underlying its essential role, the paper introduced the main peculiarities of the Western Balkan Countries' legal systems, based mostly in their history, characterised by the dissolution of the socialist Yugoslavia and directed towards the integration in the European Union. Subsequently, the analysis turned on its empiric prong, by scrutinising a series of datasets aimed at showing the beneficial effects of the European market system, based upon competition, and therefore on competition in itself. The analysis covered both features that should ease or render more difficult the establishment of a proper competition on the market, such as corruption, and the beneficial effects that this market system should bring in terms of social improvement, innovation and development in the markets concerned. The results of this analysis confirmed our assumptions, by showing the differences between three Western Balkans Countries which were part of the same entity, Yugoslavia, but that then followed a different path towards their 'Europeanisation', *i.e.*, Slovenia, Croatia and Serbia. These outcomes show how Slovenia,

⁷⁹ *Ibid.*

⁸⁰ The World Bank, *Reforming Serbian State-Owned Enterprises May Unleash Growth and Investments, 2023*, [<https://www.worldbank.org/en/news/opinion/2023/11/30/reforming-serbian-state-owned-enterprises-may-unleash-growth-and-investments>], Accessed 12 April 2024.

⁸¹ *Ibid.*

the first one to adopt the European model, presents development and growth indicators more similar to the benchmark Countries France and Germany, followed by Croatia and with Serbia as last and far away from Slovenia, but with improving results, due, we assume, to the progressive alignment with the EU requirements.

This shows how the transplants of the European market model in these Countries proved to be beneficial. However, the following analysis showed how some cryptotypes deeply embedded in these societies' fabric are still present and they partially stifle these Countries' path towards a complete development. Also in this case, the analysis shows a better positioning of Slovenia, followed by Croatia and Serbia, thus reinforcing the evidence regarding the beneficial effects brought by the EU *acquis*' adoption. Anyhow, the presence of these cryptotypes demonstrates how the simple implementation of the European prescriptions does not guarantee their full effectiveness, since they are still not fully followed – in certain contexts – by the society and also by certain institutions.⁸² An example is the scarce familiarity of the Judiciary of some former Yugoslavian Countries with regard to competition law⁸³ and, more in general, the persistence of some operational formant inherited from the socialist past. Also the population, given the persistence of certain customs based on clientelism, has still to fully understand the beneficial effects that competition can bring to individuals, especially pertaining to the lower classes, since for their improvement they do not have to rely on someone's help, but simply on their abilities, along the line of Einaudi's mentioned 'equality of the starting points'.

Therefore, having in mind the positive results reached by Slovenia, the policies that the other Western Balkans Countries have to follow in light of the planned enlargement of the EU in this area have to be founded on competition law and on the implementation of a culture of competition and sound administration as first step. This must be reached through advocacy, promoted by the same EU and by markets by stimulating local Institutions. This can generate a bottom-up positive feedback loop bringing to a renewal of these societies and an improvement of their performances related to rule of law and legality. The competition-development-legality relationship at the basis of the present paper relies on the Ordoliberal concept of what we can define 'free market in a free State', which can be described as a system in which a strong State, not captured by private power, establishes the *level playing field* of the market activities, but without detrimentally influencing them (of course, the State can also participate in the market, with shares in com-

⁸² Mucaj A., *Competition Law Framework in Kosovo and the Role of the EU in Promoting Competition Policies in Other Countries and Regions Wishing to Join the Block*, Yearbook of Antitrust and Regulatory Studies, 2020, 22, p. 109.

⁸³ European Commission, Serbia 2023 Report, *op. cit.*, p. 106.

panies, but subject to the same rules of competition directed at private firms, with the exception represented by the essential services of general interest). This is the only model which, by establishing limits to both the private and public power, can really empower the individuals' situation. This shows – in a crucial moment of history – how the European Union model, notwithstanding all its (big, but not object of the present paper) pitfalls, represents not a problem but a guarantee of pluralism, development and democratic values. In this sense, the strengthening of rule of law-based institutions is necessary in order to build, in the words of Luigi Einaudi, “The state as a limit, the state which imposes limits on physical violence, on the dominance of one man over others, of one class over others, which seeks to give men the most evenly distributed opportunities to set off towards destinations that are as diverse or distant from each other as possible. The rule of law as a condition for the anarchy of spirits.”⁸⁴

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