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CARTEL CRIMINALIZATION: LEGITIMACY FOR ECONOMIC INTEGRITY IN THE WESTERN BALKANS?

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ABSTRACT

Background: *Cartel enforcement constitutes an important part of competition law. The European Union has largely harmonized the administrative enforcement of competition law. However, important differences remain between Member States regarding the criminalization of cartel conduct. These differences are also evident between the Western Balkan countries, where the EU accession process has aimed at aligning national competition law with EU standards. This article first examines whether administrative enforcement is enough and where criminal enforcement of competition law is needed. Second, this paper examines whether the existing enforcement mechanisms in the Western Balkans (WB) are effective in fighting serious competition law infringements.*

Method: *The study applied a doctrinal legal research methodology combining desk-review with comparative legal analysis. The desk-review examines the EU competition law framework, national legislation, and academic literature to identify the foundations of administrative and criminal enforcement. The comparative analysis evaluates the legal* *frameworks of the Western Balkan countries and selected EU Member States, identifying similarities, differences, and possible trends concerning cartel criminalization.*

Results and Conclusions: *The analysis demonstrates that, although administrative sanctions for undertakings are largely aligned with EU standards among Member States and across the Western Balkans, significant disparities remain regarding the criminal liability for cartel conduct. The article concludes that a harmonized hybrid enforcement model, combining administrative sanctions with criminal penalties for the most serious competition law infringements, would provide a more balanced and effective enforcement framework.*

1 INTRODUCTION

Cartel agreements represent the most severe form of competition violations. They undermine market integrity, distort prices, limit innovation, harm other actors in the market, and ultimately harm consumers. Different jurisdictions around the world have opted for various deterrence schemes against cartels, ranging from administrative fines to criminal sanctions, or a combination of both. Within the EU, the applied sanctions are administrative monetary fines, as introduced by Regulation 1/2003[1] and other instruments, as will be discussed in this article. However, several Member States have chosen to complement administrative penalties with criminal sanctions targeting individuals who conduct cartel activity.

As part of the EU integration process, WB countries (such as Albania, Kosovo, Montenegro, North Macedonia, and Serbia) have taken measures to align, *inter alia*, competition law enforcement with European standards. The EU *acquis* does not impose any obligations on WB countries regarding cartel criminalization. These countries share a communist past, which, despite their differences, has contributed to distorting the free market and economy. Considering the need for a comprehensive economic integrity of these countries, should they rely on administrative penalties only, or complement them with criminal sanctions? While criminalization is often advocated for its deterrent effects, it also raises questions of proportionality and capacity, especially in legal systems like those in WB countries undergoing important reforms.

This article explores the features of cartel criminalization in the WB in light of EU practices and selected Member State experiences. First, it focuses on the advantages and disadvantages of criminal and administrative enforcement of competition law. Second, it provides a report on the relevant EU secondary legislation and enforcement models in Member States such as Germany, France, Greece, and Croatia. Finally, it analyses the legal

1 Council Regulation (EC) no 1/2003 of 16 December 2002 on the Implementation of the Rules on Competition Laid Down in Articles 81 and 82 of the Treaty [2003] OJ L 1/1 <http://data.europa.eu/eli/reg/2003/1/oj> accessed 20 June 2026.

frameworks in WB countries, assessing their alignment with EU law and their approach towards cartel criminalization. The article concludes by considering which enforcement model is most suitable for the WB, assessing the positive and negative aspects of each jurisdiction, and taking into consideration the legal traditions, institutional capacities, and their European aspirations.

2 METHODOLOGY

This paper combines doctrinal legal research with comparative legal analysis. The research design was selected to analyze the legal and policy framework governing cartel enforcement in the EU and the Western Balkans in the context of the region's European integration process.

The first component of the methodology consists of a *desk review of primary and secondary legal sources*. Primary sources include the Treaty on the Functioning of the European Union, EU secondary legislation regarding competition law, the case law of the Court of Justice of the European Union concerning the enforcement of competition law, national legislation of selected Member States and Western Balkan countries, and policy documents and guidelines. Secondary sources include academic literature, articles, and books addressing the criminal and administrative enforcement of competition law.

The second component of the methodology consists of a *comparative legal analysis*. The analysis compares the legal frameworks of five Western Balkan jurisdictions (Albania, Kosovo, Montenegro, North Macedonia, and Serbia), and four European Union Member States representing different approaches to cartel enforcement (Germany, France, Greece, and Croatia). The latter jurisdictions were selected because they illustrate a range of enforcement models, from systems relying primarily on administrative sanctions to hybrid regimes combining administrative penalties with criminal liability for individuals. Germany and France were selected as two of the leading EU members in competition law enforcement, whereas the analysis of Greece and Croatia is relevant as these two EU countries are part of the Western Balkan region. The comparison focuses on the legal basis for cartel sanctions, the scope of criminal liability, the relationship between administrative and criminal enforcement of competition law, the treatment of natural and legal persons, and the role of deterrence and legal certainty within each system. The comparative analysis aims to identify convergences, divergences, and regional trends in competition law enforcement, and suggest solutions for better enforcement and harmonization of competition law.

3 CRIMINAL PROSECUTION V. ADMINISTRATIVE FINES IN CARTEL ENFORCEMENT. THE LEGITIMACY OF CRIMINAL SANCTIONS

Today, debates on competition law frequently centre on the dilemma of which sanctioning instrument – criminal prosecution of individuals or administrative fines against businesses – most effectively prevents hardcore cartels. Most legal scholars accept that the fundamental objective of price-fixing laws is deterrence: that is, to minimize the future formation of new cartels or recidivism by previous cartel violators.[2] This stance was confirmed by the CJEU jurisprudence in the *Musique Diffusion Française* case.[3]

Supporters of *criminal sanctions* for cartel activity highlight the unique deterrent effect of imprisonment on company executives. The threat of imprisonment is considered effective precisely because it imposes a personal and non-transferable risk on individual managers responsible for engaging in cartel behaviour.[4] Empirical evidence supports this view, particularly a study conducted by the Office of Fair Trading in 2010. The findings indicated that potential criminal penalties significantly exceeded administrative fines in their ability to discourage deliberate cartel participation.[5]

However, other academics stand against excessive criminalization, arguing that economic behaviours, such as cartel arrangements, may be perceived by many stakeholders as ethically neutral or purely business-driven decisions rather than inherently malicious fraud or corruption. Consequently, the extensive use of criminal sanctions could blur the distinction between clearly criminal activities and complex economic practices, potentially undermining the perceived legitimacy of competition enforcement.[6]

A key element to be considered when discussing cartel criminalization is its impact on some of the sharpest tools of public enforcement of competition law: *leniency programmes*. Connor and Lande argue that imprisonment could improve the operation of public antitrust leniency programmes because, by shifting corporate officers' expectations towards high personal penalties, top executives of cartel participants are more likely to seek the immunity from prosecution that accompanies awards of corporate amnesty.[7] In the authors' view,

2 John M Connor, *Price-Fixing Overcharges* (rev 3rd edn, Purdue University 2014) 16 <https://dx.doi.org/10.2139/ssrn.2400780> accessed 20 June 2026.

3 Joined cases 100/80 to 103/80 *SA Musique Diffusion française and others v Commission of the European Communities* (CEU, 7 June 1983) ECR 1825, para 108 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61980CJ0100> accessed 20 June 2026.

4 Florian Wagner-von Papp and others, 'Individual Sanctions for Competition Law Infringements: Pros, Cons and Challenges' (2016) 2 Concurrences Review 41 <https://ssrn.com/abstract=2782090> accessed 20 June 2026.

5 Andreas Stephan, 'An Empirical Evaluation of the Normative Justifications for Cartel Criminalization' (2017) 37(4) Legal Studies 624 <https://doi.org/10.1111/lest.12165> accessed 20 June 2026.

6 Wagner-von Papp and others (n 4) 41.

7 John M Connor and Robert H Lande, 'Cartels as Rational Business Strategy: Crime Pays' (2012) 34(2) Cardozo Law Review 437 <https://dx.doi.org/10.2139/ssrn.1917657> accessed 20 June 2026.

criminal prosecution could have a dual effect on leniency programmes. These programmes rely on undertakings voluntarily disclosing their involvement in cartels in exchange for reduced penalties. However, these programmes do not guarantee that whistleblowers would receive the same lenient treatment if they are criminally charged. Therefore, authorities must exercise considerable caution to ensure that criminal sanctions do not inadvertently compromise the overall efficacy of anti-cartel enforcement mechanisms.

Systems that rely only on *administrative fines* offer procedural advantages, such as flexibility and efficiency in sanctioning cartels. Administrative fines can be substantial without the standards required in criminal prosecutions, such as proof '*beyond reasonable doubt*'. This is important, considering that human and financial resources are not unlimited.

The logic of applying administrative fines often includes imposing large fixed amounts irrespective of the cartel's duration, explicitly designed to deter firms from entering into anti-competitive arrangements. The Commission's Fining Guidelines introduce an additional amount (the so-called 'entry fee'), ranging from 15% to 25% of the value of sales regardless of the duration of the infringement, with the explicit objective of deterring undertakings from entering into cartel agreements.[8] Nevertheless, it can be argued that administrative fines have limitations in their deterrence capacity. Companies, especially big corporations, can regard administrative fines as 'standard operating costs' as long as they do not exceed expected profits from cartel activity.

When comparing criminal prosecution to administrative fines, it becomes clear that each approach features distinctive advantages and limitations. Criminal prosecution offers powerful individual deterrence and strongly emphasizes societal condemnation of cartel behaviour. However, criminal procedures tend to be slower and inflexible in nature, tending to prove an infringement 'beyond reasonable doubt' and applying prosecutorial standards. There is some scope for a discord between the protections required by European human rights law in a criminal setting and the protections actually faced by an accused cartelist in an administrative setting.[9]

Moreover, the choice between administrative or criminal enforcement is not only a matter of 'effectiveness'. More importantly, the legitimacy of cartel criminalization depends on whether the criminal sanctions are necessary and proportionate to address conduct that can threaten fundamental economic interests. Consequently, while it is evident that severe infringements, such as cartels or bid-rigging, cause sufficient economic and social harm, other less serious infringements may be more appropriately sanctioned through administrative measures.

8 Guidelines on the Method of Setting Fines Imposed Pursuant to Article 23(2)(a) of Regulation no 1/2003 [2006] OJ C 210/2, para 25 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2006_210_R_0002_01> accessed 20 June 2026.

9 Peter Whelan, *The Criminalization of European Cartel Enforcement: Theoretical, Legal and Practical Challenges* (OUP 2014) 140-1.

Conversely, administrative fines enable quicker enforcement, higher procedural efficiency, and compatibility with the leniency policy discussed above. However, they must be well-calculated to have a deterrent effect. Consequently, neither approach alone reliably achieves optimal deterrence across all contexts. Researchers and practitioners thus increasingly advocate integrating the strongest elements of both criminal and administrative sanctions.[10]

Hybrid enforcement strategies can rely on criminal prosecution in severe or repeated offences, thus exerting strong immediate deterrent pressure. Administrative fines, on the other hand, should be imposed at a level that reflects the severity and duration of the infringement and ensures a sufficient deterrent effect.[11] Such combined strategies are recommended to optimize deterrence, maintain enforcement credibility, and achieve proportionality in penalties.

4 EU AND MEMBER STATE POLICIES ON CARTELS' SANCTIONING

4.1. EU Secondary Legislation

The EU has developed a strong framework for the public enforcement of competition law, which has been amended several times. Public enforcement of EU competition law is focused on the effective implementation of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) by EU institutions, particularly the Commission, which also provides guidance for the authorities of the Member States.[12] The public enforcement of competition law in the EU is governed by Regulation 1/2003, which replaced the previous Regulation 17,[13] introducing an *ex-post* control of anti-competitive agreements and abuse of dominant position, as compared to the previous *ex-ante* control.[14]

EU public enforcement of competition law relies exclusively on administrative measures to address anti-competitive behaviour in general and cartel activity in particular. Specifically, the Commission imposes monetary fines as provided in Regulation 1/2003 and the Commission Guidelines on the Method of Setting Fines.[15] Regulation 1/2003 stipulates that for each undertaking and association of undertakings participating in the infringement, the fine shall not exceed *10% of its total turnover* in the preceding business

10 See also, Stephan (n 5) 634-5.

11 *Guidelines on the Method of Setting Fines (n 8)* paras 4, 19–25.

12 Treaty on the Functioning of the European Union (consolidated version) [2012] OJ C 326/47 <http://data.europa.eu/eli/treaty/tfeu_2012/oj> accessed 20 June 2026.

13 Council Regulation (EC) no 1/2003 (n 1); EEC Council Regulation no 17: First Regulation implementing Articles 85 and 86 of the Treaty [1962] OJ P 13/204 <http://data.europa.eu/eli/reg/1962/17/oj> accessed 20 June 2026.

14 Alison Jones, Brenda Sufrin and Niamh Dunne, *EU Competition Law: Text, Cases and Materials* (7th edn, OUP 2019) 878 <https://doi.org/10.1093/he/9780198824657.001.0001> accessed 20 June 2026.

15 *Guidelines on the Method of Setting Fines (n 8).*

year.[16] Statistical analysis and assessments of the Commission decisions show that a significant use is made of the aggravating and mitigating circumstances listed in the Guidelines on the Method of Setting Fines to adjust the basic amount of the fine, as well as of the leniency and cartel settlement procedures.[17] In addition, the Guidelines emphasize the importance of deterrence, as reflected in Recital 4, which calls for a 'necessary deterrent effect'. Nevertheless, the Commission still retains wide discretion regarding the setting of administrative penalties.[18] It has become evident that the Commission is able to impose substantial fines that achieve a significant deterrent effect without resorting to criminal charges.[19] However, these fines are applicable to undertakings, not individual parties involved in cartels.

While the EU public enforcement system imposes only monetary fines on cartel infringements, it leaves Member States free to introduce criminal sanctions for cartel infringements. Regulation 1/2003 explicitly provides that national courts shall have the power to apply Articles 101 and 102 of the Treaty,[20] enabling them to introduce criminal law mechanisms, should they choose to do so. The approach adopted in Regulation 1/2003 reflects the traditional deference of the European institutions to national procedural autonomy.[21] A similar approach has been adopted by the OECD. In its Recommendation concerning Effective Action against Hard Core Cartels, the OECD calls on member countries to 'effectively halt and deter hard core cartels' through effective sanctions for firms and individuals and strengthening enforcement procedures.[22] Notably, however, the Recommendation does not expressly advocate the adoption of criminal sanctions.

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16 Council Regulation (EC) no 1/2003 (n 1) art 23.

17 Damien Geradin and Katarzyna Sadrak, *The EU Competition Law Fining System: A Quantitative Review of the Commission Decisions between 2000 and 2017* (TILEC Discussion Paper 2017-018, Tilburg University 2017) 1 <https://dx.doi.org/10.2139/ssrn.2958317> accessed 20 June 2026.

18 Case C-289/04P *Showa Denko KK v Commission of the European Communities* (CEU, 29 June 2006) ECR I-5859, para 36 <> accessed 20 June 2026.

19 See, for instance, Case COMP/E-1/37.512 *Vitamins*, decision 2003/2/EC, C(2001) 3695 (EC, 21 November 2001) [2003] OJ L 6/1 <http://data.europa.eu/eli/dec/2003/2(1)/oj> accessed 20 June 2026; Case COMP/E-1/38.823 *Elevators and Escalators*, C(2007) 512 final (EC, 21 February 2007) [2008] OJ C 75/19 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2008_075_R_0019_01> accessed 20 June 2026; Case AT.39824 *Trucks*, C(2016) 4673 (EC, 19 July 2016) [2017] OJ C 108/6 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2017_108_R_0005> accessed 20 June 2026; Case AT.39740 *Google Search (Shopping)*, C(2017) 4444 (EC, 27 June 2017) [2018] OJ C 9/11 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2018_009_R_0008> accessed 20 June 2026.

20 Council Regulation (EC) no 1/2003 (n 1) art 6.

21 Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases and Materials* (5th edn, OUP 2011) 256.

22 OECD, *Recommendation of the Council Concerning Effective Action against Hard Core Cartels* (adopted 25 March 1998, rev 2019) para I A <https://www.oecd.org/en/publications/review-of-the-1998-oecd-recommendation-concerning-effective-action-against-hard-core-cartels_58c38ceb-en.html> accessed 20 June 2026.

4.2. Legal Framework on Cartel Criminalization. Policies Applied by Some EU Member States

The criminalization of cartel activity in the EU has developed unevenly among Member States, with each jurisdiction adopting its own legal instruments. Even though EU competition law provides a harmonized basis for administrative enforcement against cartels through Articles 101 and 102 of the TFEU, the question of criminal sanctions remains a matter of national discretion. While some Member States have a long history of competition enforcement and culture, others (especially the former communist states) are still trying to raise awareness among businesses. [The latter] may (wisely) wish to see a 'competition culture' develop in their respective countries before experimenting with criminal sanctions.[23] However, introducing criminalization of competition infringements should be associated with additional guarantees, in accordance with the principle of legitimacy, fairness, and proportionality. In those Member States whose national law allows the imposition of criminal sanctions on natural persons for violations of Articles [101] or [102] EC or for related offences, the stricter case law of the European Court of Human Rights is of course applicable to the corresponding investigations by national competition authorities.[24]

This section examines how several EU Member States – Germany, France, Greece, and Croatia – have dealt with the issue of criminalizing cartel behaviour, most opting for a hybrid system of administrative and criminal sanctions, depending on the severity and/or consequences of the competition infringements.

4.2.1. Germany

Germany operates in the continental European legal system, like most other European jurisdictions. Rules on competition are mainly laid down in the German 'Act against Restraints of Competition'.[25] The Act largely reflects EU competition law as provided in Articles 101 and 102 of the TFEU. The above law provides for *administrative fines* for anti-competitive conduct (including cartel activity). Under section 81 (4)(2) GWB, the maximum fine for substantive competition law offences by undertakings or associations of them is 10% of the total turnover achieved in the business year preceding the authority's decision, if the offence is committed intentionally. For negligent offences, the maximum fine is capped at half of this amount, section 17 (2) OWiG, i.e., 5% of the total turnover achieved in the business year preceding the authority's decision. Fines for procedural breaches are

23 Whelan, *The Criminalization* (n 9) 175.

24 Wouter PJ Wils, *Principles of European Antitrust Enforcement* (Hart, Bloomsbury 2005) 139.

25 German Act against Restraints of Competition of 26 August 1998 'Gesetz gegen Wettbewerbsbeschränkungen (GWB)' [2013] BGBl I 1750, 3245, as amended by Art 1 of the Act of 25 October 2023 [2023] BGBl I 294 <https://www.gesetze-im-internet.de/englisch_gwb/index.html> accessed 20 June 2026.

provided under sections 54-62 GWB in conjunction with the general provisions on administrative procedure of the Federal Republic or the competent Bundesland.[26] Moreover, the above infringements are recorded in a 'competition register'. Public contracting authorities are required to check the competition register before awarding a contract, and an entry in the competition registry may lead to exclusion from a contract.[27] This 'black list' mechanism extends the consequences of competition breaches beyond monetary fines, prohibiting undertakings from accessing procurement opportunities, and could serve as a valuable example for other European legal frameworks.

The German legal framework recognizes only *one criminal offence* concerning competition law. Section 298 of the German Criminal Code[28] sanctions *bid-rigging*. Under this provision, individuals who limit competition through agreements in public tendering procedures can be punished with a criminal fine or imprisonment for up to five years. As usual in criminal procedure, the enforcement of this offence is reserved only for prosecution authorities, excluding competition authorities. Furthermore, the current German enforcement framework attempts to balance voluntary compliance with harsh sanctions for law infringers. So far, this seems to be working quite well. However, it seems fair to expect that the development of competition law *sanctions is not yet complete and that further changes are likely to follow.*[29]

4.2.2. France

Cartel enforcement remains a priority for French competition authorities, which enforce competition law and contribute to drafting the legal framework. The successful implementation of all the components of the French leniency programme has made the French competition authority more like a regulator.[30]

France is one of the EU Member States that provide *criminal sanctions* for substantive violations of the antitrust law, along with administrative fines. In France, criminal fines

26 Carsten Koenig and Fernanda Luisa Bremenkamp, 'Competition Law Sanctions in Germany' in Tihamér Tóth (ed), *The Cambridge Handbook of Competition Law Sanctions* (CUP 2022) 382.

27 Sergej Bräuer and Dimitra Karakioulaki, 'Germany' in Euan Burrows and Denis Fosselard, *Cartels: Enforcement, Appeals and Damages Actions* (13th edn, Global Legal Insights 2025) 89.

28 German Criminal Code of 13 November 1998 'Strafgesetzbuch (StGB)' [1998] BGBl I 3322, as amended by Art 2 (2) of the Act of 7 November 2024 [2024] BGBl I 351 <https://www.gesetze-im-internet.de/englisch_stgb/index.html> accessed 20 June 2026.

29 Koenig and Bremenkamp (n 26) 405.

30 Marc Lévy and Natasha Tardif, 'France: Cartel Regulation' in Pallavi Guniganti and others (eds), *The European, Middle Eastern and African Antitrust Review 2017: A Global Competition Review Special Report* (GCR 2016) 122; Sarah Subrémon S, David Reingewirtz D and Luca Nicco L, 'France' in Euan Burrows and Denis Fosselard, *Cartels: Enforcement, Appeals and Damages Actions* (13th edn, Global Legal Insights 2025) 77 <https://globalcompetitionreview.com/review/europe-middle-east-and-africa-antitrust-review-archived/the-european-middle-eastern-and-african-antitrust-review-2017> accessed 20 June 2026.

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and imprisonment may be imposed against individuals whose acts were crucial to the conception, organization, and implementation of the prohibited practices.[31] Consequently, the French system adopts a *hybrid* enforcement model by combining administrative liability for undertakings with criminal liability for individuals responsible. In this regard, if the offender is not an undertaking, the maximum amount of the penalty shall be 3 million Euros[32] or imprisonment in cases of designing, organizing, or implementing cartel agreements, abuse of dominance, or abuse in the grocery retail sector.[33] On the other hand, the maximum amount of the penalty for an undertaking shall be 10% of the highest global pre-tax turnover made during the closest financial year.[34] The latter provision reflects the EU standards addressing administrative competition law enforcement. Concerning individual responsibility, the French legal framework has adopted a *hybrid (administrative and criminal) sanctioning* system. However, unlike the German approach, its criminal liability has a broader scope, as it extends beyond bid-rigging to include a broader range of anti-competitive behaviour.

4.2.3. Greece

Greece has been added to the list of jurisdictions providing for custodial sanctions for horizontal anti-competitive agreements.[35] The Greek competition law regime is enshrined primarily in Law 3959/2011 (the 'Greek Competition Act'),[36] which prohibits agreements and concerted practices that restrict competition[37] and abusive practices by dominant undertakings[38], and establishes a mandatory pre-closing filing for all concentrations meeting the relevant turnover thresholds.[39] Moreover, Article 1A of the Competition Act aims to capture offences such as tacit collusion and price signalling by explicitly prohibiting any invitation to collude or announcement of future pricing intentions for products and services between competitors.

31 French Commercial Code ‘Code de commerce’ (amended 29 May 2026) art L420-6 <https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000005634379/2026-05-28> accessed 20 June 2026.

32 ibid, art L464-2.

33 ibid, art L420-6.

34 ibid, art L464-2(i).

35 Vasiliki Brisimi and Maria Ioannidou, ‘Criminalizing Cartels in Greece: A Tale of Hasty Developments and Shaky Grounds’ (2011) 34(1) World Competition: Law and Economics Review 157 <https://doi.org/10.54648/woco2011008> accessed 20 June 2026.

36 Law of the Hellenic Republic 3959/2011 on the Protection of Free Competition ‘Greek Competition Act’ [2011] Government Gazette A 93, as amended by Law 5317/2026 [2026] Government Gazette A 108 <https://www.epant.gr/en/legislation/protection-of-free-competition.html> accessed 20 June 2026.

37 ibid, art 1.

38 ibid, art 2.

39 ibid, arts 5–10.

A major reform to the Greek Competition Act is the newly added Article 1A, which prohibits two distinct types of unilateral conduct: the invitation to the conclusion of an unlawful agreement and the announcement of future pricing intentions between competitors ('price signalling'), making these two unilateral practices self-standing antitrust infringements under Greek law as of 1 July 2022. Article 1A, however, applies only to undertakings with a turnover of at least EUR 50 million and at least 250 employees and does not apply where the conduct in question falls under Articles 101 or 102 TFEU (or Articles 1 and 2 of Greek Competition Act). On 1 February 2023, the Hellenic Competition Commission issued guidelines on the application of Article 1A but significant legal uncertainty remains.[40]

In Greece, cartels are investigated and sanctioned by the Hellenic Competition Commission (HCC) through an administrative law procedure whereby *administrative fines* are imposed on undertakings and individuals in accordance with the Competition Act.[41] In addition, the Competition Act also provides for the imposition of *criminal sanctions*, including jail sentences, on individuals involved in cartel infringements. The Greek approach to criminalizing cartels closely resembles the French model, as it provides for the criminal prosecution of a broad range of serious competition infringements.

4.2.4. Croatia

Croatia is the newest EU Member State and is close to the neighbouring WB candidates for EU membership. Croatian competition rules are provided in the Competition Act of 2009,[42] amended in 2013 and 2021. The Croatian Competition Act applies to all forms of anti-competitive behaviour where they have effect in the Croatian territory.

Under Croatian competition law, cartel agreements are prohibited and are considered null and void: 'agreements between undertakings..., explicit or tacit agreements, coordinated practice... which have as their object or effect distortion of competition are prohibited, in particular those by which undertakings determine directly or indirectly purchase or sale prices, or other commercial terms'.[43]

Administrative sanctions for cartel activity in Croatia are governed by Article 61 of the Croatian Competition Act, which provides for fines of up to 10% of total annual turnover of the undertaking in the financial year preceding the decision. In line with the practices of

40 Anastasia S Dritsa, Konstantinos V Sidiropoulos and Vasiliki Labrinoudi, 'Greece: An Introduction to Competition/European Law' (*Chambers*, 8 April 2025) <https://chambers.com/content/item/6425> accessed 20 June 2026.

41 Greek Competition Act (n 36) art 25B.

42 Croatian Competition Act [2009] Official Gazette 79, as amended [2013] Official Gazette 80; [2021] Official Gazette 41 <https://www.aztn.hr/en/competition/legal-framework/> accessed 20 June 2026.

43 ibid, art 9.

other jurisdictions, Croatian law distinguishes between 'serious' and 'less serious' violations, with cartel conduct, as expected, classified among the most serious infringements.

In addition to administrative measures, Croatia is among the EU Member States that *criminalize cartels*. The Croatian Criminal Code provides that *'whoever in a legal entity ... enters into an agreement or performs an action by which a legal person or the consumers are limited or restrained with regard to the free circulation of goods and services or their access to the market, ... shall be punished by imprisonment for six months to five years*'.[44] Unlike some Member States (such as Germany) that criminalize only specific aspects of anti-competitive conduct, the Croatian legislation adopts a broader approach by criminalizing not only agreements, but also (unilateral) actions that restrain competition. This approach, in the authors' view, could amount to legal uncertainty as to whether an act or agreement should be treated as an administrative infringement or a criminal misdemeanour.

4.3. Comparative Analysis on the Four Member States - Beyond Administrative Fines

In general, Germany, France, Greece, and Croatia have introduced criminal liability for serious infringements of competition law. This approach is consistent with the prevailing scholarly view (discussed above) that effective competition enforcement requires punitive and deterrent sanctions, provided that criminalization is reserved as an ultima ratio measure, in accordance with the legitimacy principle. However, there are significant differences in how this principle is implemented.

Germany presents an interesting model through the introduction of the Competition Register, which enables the exclusion of competition infringers from participating in public contracts. Although this does not constitute a criminal sanction, it enhances the punitive and deterrent effects of administrative measures while preserving the proportionality of the sentence. This diversified enforcement model, combined with the criminalization of only one particular offence (bid-rigging), demonstrates that a balance between administrative and criminal measures can achieve effective deterrence.

In contrast, the *French* model has adopted a broader approach, extending criminal liability beyond hardcore cartels by including the abuse of dominance. Although this approach may reinforce deterrence, it raises questions regarding proportionality and necessity.

Another legislative model is offered by *Greece*, which introduces criminal liability for cartels through its competition legislation rather than the criminal code. Although this approach may be practical from the enforcement point of view, it may also raise concerns regarding legal certainty, as criminal offences are expected to be easily identifiable in the legal framework, thus potentially affecting the legitimacy of cartel criminalization.

44 Croatian Criminal Code of 26 October 2011 [2011] Official Gazette 125, art 288, as amended <https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=111330> accessed 20 June 2026.

A different form of legal uncertainty is evident in *Croatia*, where the broad wording of the Croatian Criminal Code risks confusing administrative infringements with criminal offences. Such ambiguity may weaken the legitimacy of criminal enforcement, contrary to the principle that criminal offences need to be defined with precision.

5 WESTERN BALKANS' COUNTRIES POLICIES IN SANCTIONING CARTELS

5.1. Practices in Western Balkan (WB) Countries

5.1.1. Albania

The most important piece of legislation governing competition in Albania is the Law 'On protection of competition',[45] alongside the additional regulatory framework issued by the Albanian Competition Authority. The above law is the cornerstone national legal instrument that regulates the material and some procedural aspects of competition law.[46]

The Albanian Law on Protection of Competition and the Competition Authority's Regulation 'On fines and their Leniency'[47] closely mirror EU competition law on fines, providing for *administrative sanctions for undertakings* that infringe competition law. Article 74(1) of the Law on Protection of Competition establishes a maximum fine limit for 'serious violations' which is 10% of the company's turnover of the previous financial year, for each participating company.

Nevertheless, Albanian competition law diverges from EU provisions concerning *individual sanctions* for competition law violations. While Regulation 1/2003 does not provide for individual (administrative) sanctions arising from competition infringements, Article 78 of the Albanian competition law stipulates that the competition authority can impose fines of up to five million ALL (approximately fifty thousand Euros) on individuals who, intentionally or negligently, provide incorrect, incomplete, or false data in response to the request or decision of the authority, *take part in cartels,* or abuse their dominant position. Do these sanctions help deter anti-competitive behaviour? Despite the substantial nature of the amount of fine (which can be considered a large amount for an individual, given the average income of an Albanian citizen), a part of academia believes that individual fining

45 Law of the Republic of Albania no 9121 of 28 July 2003 ‘On Protection of Competition’, as amended by Law no 10317 of 16 September 2010 <https://caa.gov.al/en/laws/law-no-9121-dated-28-07-2003/> accessed 20 June 2026.

46 Mirela Bogdani and Monika Canco, ‘The Right to Access the File in Competition Preceedings: Albanian and Western Balkans Challenges in their European Path’ (2024) 23 Balkan Social Science Review 34 <https://doi.org/10.46763/BSSR242323023b> accessed 20 June 2026.

47 Decision Competition Authority of the Republic of Albania no 684 of 9 September 2020 ‘Regulation on Fines and Leniency’.

does not serve as an adequate deterrent. For instance, Whelan argues that companies can relatively easily compensate their agents in advance for taking the risk of being fined and/or indemnifying them ex-post when they have to pay the fine.[48]

The Albanian Criminal Code[49] provides a foundation for *prosecuting competition violations* under certain circumstances. This code specifies that competition infringements during the exercise of commercial activity, exhibited through threats or violence, are punished with imprisonment from one to four years. When the competition infringements are directed towards activities financed fully or partly or in any way by the state or by the public entities, the sentence of imprisonment is increased by one–third.[50] This is a noteworthy article in several aspects. First, since the criminal sanction entails imprisonment, it addresses natural persons engaged in the infringement, rather than undertakings as legal persons. Second, the criminalization of competition infringements is not linked to a certain (more serious) form of infringement, such as a cartel. On the contrary, it is exclusively linked to the use of threat or violence, which is punishable independently by the Albanian Criminal Code. Consequently, the authors of this paper believe that, despite the existence of this article, Albania lacks a substantial legal framework to criminalize cartels *per se*. In 2025, Albania introduced a draft Criminal Code, proposing, inter alia, the criminalization of additional forms of anti-competitive conduct. However, the draft is still subject to amendments.

5.1.2. Kosovo

The primary legal framework regulating competition in Kosovo is the Law on Protection of Competition.[51] Adopted in 2022 and replacing the former 2010 law, this is a recent legal instrument that aims to further align with the EU standards. Similar to the EU and Albanian practices, Articles 57 and 58 of the above law delineate *administrative sanctions* for competition infringements. Similar to the EU and Albanian legislation, violations are classified according to their severity, with cartels categorized as 'serious violations'.[52] Article 57 of the law establishes that serious infringements (including cartels) are punishable by a fine of up to 10% of the total turnover it has achieved worldwide in the last year for which the financial report was completed. Moreover, this law also allows for the imposition of periodic penalty payments.[53] All the above procedural actions, from the moment of the

48 Peter Whelan, 'Antitrust Criminalization as a Legitimate Deterrent' in Tihamér Tóth (ed), *The Cambridge Handbook of Competition Law Sanctions* (CUP 2022) 101 <https://doi.org/10.1017/9781108918015.007> accessed 20 June 2026.

49 Criminal Code of the Republic of Albania no 7895 of 27 January 1995 (amended 2024) <https://www.refworld.org/legal/legislation/natlegbod/1995/73471> accessed 20 June 2026.

50 ibid, art 170/b.

51 Law of the Republic of Kosovo no 08/L-056 of 13 May 2022 'On Protection of Competition' [2022] Official Gazette 14 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=59498> accessed 20 June 2026.

52 ibid, art 57.

53 ibid

initiation of the investigation until the final receipt of the [Competition Authority]'s decision, are administrative in nature and must take place in accordance with the Law on Administrative Procedure of the Republic of Kosovo.[54] However, the implementation of these administrative measures in practice has faced challenges, particularly regarding the competition authority's reasoning and assessment of evidence as well as the limited experience of the judiciary in competition law when reviewing the Authority's decisions.[55]

Kosovo's competition law provides for *individual sanctions* applied to natural persons. Unlike the Albanian practice, which restricts such penalties to specific cases of infringements, Kosovo's legal framework applies them to all types of competition violations. This may be perceived as excessively punitive, given that the individual sanctions may be imposed even for smaller, procedural infringements. However, the maximum value of individual fines is capped at 4000 Euros,[56] which is lower (less than one-tenth) than the amount stipulated by the Albanian law. The authors of this study consider that this amount is insufficient to contribute to a deterrent effect.

Kosovo's Criminal Code contains several provisions targeting *serious competition infringements*. Under the title 'Abuse of monopoly position', the criminal code provides that the responsible person who carries out one or more of the economic activities that abuse a monopolistic or dominant position in the market or in a substantial part of the market, by engaging in one or more of the activities, shall be punished by imprisonment for up to 3 years.[57] Participation in cartel activity is subject to harsher penalties, including one to five years of imprisonment and a fine equal to 25% of the value of the goods sold by his business organization, which was the subject of the joint agreement.[58] Kosovo's Criminal Code also addresses bid-rigging, stipulating that anyone who, through an invitation to tender for commercial goods or services, makes an offer based on an unlawful agreement and the purpose of such an offer is for the organizer to accept a specific offer, shall be punished by a fine or imprisonment for up to five years.[59]

Kosovo represents a comprehensive approach to the full criminalization of competition law, establishing sanctions for all kinds of serious competition violations and prosecuting all core competition offences: cartels, abuse of dominance, and bid-rigging. Could this

54 Orhan M Çeku, 'Competition Law in Kosovo: Problems and Challenges' (2015) 8(11) Yearbook of Antitrust Regulatory Studies 114 <https://press.wz.uw.edu.pl/yars/vol8/iss11/5> accessed 20 June 2026.

55 See also, Avdylkader Mucaj, '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' (2020) 13(22) Yearbook of Antitrust and Regulatory Studies 101-2 <https://doi.org/10.7172/1689-9024.YARS.2020.13.22.4> accessed 20 June 2026.

56 Law of the Republic of Kosovo no 08/L-056 (n 51) art 59.

57 Criminal Code of the Republic of Kosovo no 04/L-082 of 23 November 2018 [2019] Official Gazette 2, art 295(1) <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413> accessed 20 June 2026.

58 ibid, art 295(2).

59 ibid, art 303.

approach be regarded as excessively punitive? The authors of this paper believe that this may be the case. The administrative fines of a maximum of 10% of the annual turnover would be added to the criminal fine of 25% of the value of goods sold under the cartel, while the natural persons involved would face administrative fines, as well as imprisonment. This situation would very probably lead to the bankruptcy of an entity, which is not the final aim of competition regulation.

5.1.3. Montenegro

Montenegro's Law on Protection of Competition[60] serves as the main legal instrument governing competition in the country. The law's section titled 'Penal Provisions' provides *fines* of 1% to 10% of aggregate annual turnover in the preceding financial year if the company: takes part in prohibited agreements (like cartels); engages in the practice of abuse of a dominant position; implements prohibited concentration; does not suspend implementation of concentration until the Agency adopts decision approving intended concentration; or does not comply, fully or partially, with the measures, conditions, and time limits imposed by decisions [of the competition authority].[61] These violations are deemed 'penal misdemeanours'. These infringements are established in a competition legal instrument (rather than the Criminal Code) and prescribe only fines as sanctions, resembling in description and amount the administrative sanctions applied in the EU, Albania, and Kosovo legal framework. However, they are not of an administrative nature, but more of a criminal one, as the Montenegrin Competition Authority does not have the competence to impose them, only to propose them. Periodic penalty payments are also applicable, provided under Article 60 of the above law.

The same article of the Montenegrin law specifies *individual sanctions*, mandating that a fine in the amount of 1000 to 4000 Euros shall also be imposed on the responsible person in an undertaking, as well as on the responsible person in a public body, state administration body, local administration body, and local self-government body, if such body acts as an undertaking, for the above misdemeanours.[62] Again, it is noteworthy that these penalties are modest and likely lack the deterrent effect, as they can be easily covered by the undertakings or the individuals, taking into consideration that the expected profits from cartel activity are substantial.

In contrast with practices in Albania and Kosovo, the Montenegrin Criminal Code does not address any competition law infringements. This may stem from the fact that the misdemeanours established in the Law on Protection of Competition are considered penal. Consequently, it can be concluded that competition violations in Montenegro are only

60 Law of Montenegro no 44/12 of 26 July 2012 'On Protection of Competition' [2012] Official Gazette 44, as amended [2018] Official Gazette 13; [2021] Official Gazette 145.

61 ibid, art 67(1).

62 ibid, art 67(2).

subject to monetary fines, regardless of the severity of the infringement. Since hardcore cartels and bid-rigging remain punishable solely by administrative fines under Montenegrin law, questions arise as to whether fines alone are capable of achieving an effective deterrent effect. The authors believe that for very serious offences, this is not enough.

5.1.4. North Macedonia

The primary legal framework governing competition in North Macedonia is the Law on Protection of Competition.[63] In line with other WB legislations, this law is classified into two main categories: 'serious misdemeanours' and 'procedural misdemeanours', both subject to *administrative penalties*. According to Article 62, serious infringements like participating in cartels, may result in fines up to 10% of the sum of the aggregate annual turnover calculated in absolute and nominal amount of each member of the association acting on the relevant market. The law provides that the amounts of the fine shall be determined with regard to aggravating and mitigating circumstances. In proceedings before the Commission for Protection of Competition, the rules of the Misdemeanour Law and the Law on General Administrative Procedure are applied as subsidiary rules to the Law on Protection of Competition, which leads to problems in their interpretation and increases legal uncertainty.[64]

Notably, North Macedonian competition law regulates the liability of *natural persons* engaging in *cartel activity or other serious misdemeanours*. In addition to financial penalties, individuals may face a ban on the performance of an occupation, activity, or duty for a duration of 3 to 15 or 30 days, depending on the severity of the offence.[65] However, this provision does not contribute to legal security, as the amount of fine is not mentioned in this article. In addition, a short-term performance ban of only 15 days does not have a deterrent effect.

Further enforcement is provided by the North Macedonian Criminal Code. It *criminalizes only core competition infringements like cartels*, stipulating that 'the responsible person in the legal entity who shall conclude an agreement or shall participate in the concluding of an agreement, decision or agreed behaviour, prohibited by law, and aiming to prevent, limit or cause competition disorder, and thus the legal entity obtains property benefit of greater extent or causes damage of greater extent, shall be sentenced to imprisonment of one to ten years'.[66] The maximum sentence of ten years of imprisonment is the highest in

63 Law of the Republic of North Macedonia no 145/2010 'On Protection of Competition' [2010] Official Gazette 145, as amended [2011] Official Gazette 136.

64 Dijana Marković-Bajalović, 'Competition Enforcement Models in the Western Balkans Countries – The Rule of Law Still Terra Incognita?' (2020) 13(22) Yearbook of Antitrust and Regulatory Studies 54 <https://doi.org/10.7172/1689-9024.YARS.2020.13.22.2> accessed 20 June 2026.

65 Law of the Republic of North Macedonia no 145/2010 (n 63) art 63(1) and (2).

66 Criminal Code of the Republic of North Macedonia of 23 July 1996 [1996] Official Gazette 37, art 283, as amended <https://www.refworld.org/legal/legislation/natlegbod/1996/124105> accessed 20 June 2026.

the WB, which indicates a strong emphasis on deterrence. Interestingly, the second paragraph of the above article introduces leniency policy to criminal infringements of competition law, granting immunity from the criminal sanctions to natural persons who contribute to the discovery of the infringement.

5.1.5. Serbia

As in other WB countries, the Serbian competition regime is regulated by the Law on Protection of Competition.[67] This law attempts to correct the issues that characterized the previous laws on competition in Serbia, being more aligned with EU legislation.[68] Regarding *administrative sanctions*, the law stipulates that, for serious offences including cartel activity, the measure for protection of competition is in the form of an obligation to pay a monetary sum in the amount up to 10% of the total annual turnover generated on the territory of the Republic of Serbia.[69] In contrast, procedural infringements are sanctioned with daily fines ranging from 500 EUR to 5,000 EUR per day, for each day of such infringement.[70]

In contrast to most WB jurisdictions, Serbia's competition legislation does not specify *individual sanctions* directed at natural persons engaged in cartel conduct. Fines and other [administrative] sanctions under Serbian law can only be imposed on undertakings, thus excluding the personal liability of the responsible individuals.[71] Nevertheless, as seen below, individuals are sanctioned by criminal penalties for engaging in cartel activity, which introduces a separate deterrent effect.

In addition to administrative penalties, Serbia *criminalizes cartel activity*, establishing that whoever in a business entity concludes a restrictive agreement where the prices are determined, production or sales is restricted, that is, market is divided, shall be punished with imprisonment of six months to five years and fined.[72] Similar to other jurisdictions in the region, Serbia has adopted a hybrid enforcement model, targeting individuals who participate in cartels.

67 Law of the Republic of Serbia no 51/2009 'On Protection of Competition' [2009] Official Gazette 51, as amended [2013] Official Gazette 95 <https://www.paragraf.rs/propisi/law-on-protection-of-competition-serbia.html> accessed 20 June 2026.

68 Elizabeta Tosheva and Branko Dimeski, 'The Competition Policy in Western Balkan Countries: How Far Have They Come on the EU Accession "Road?"' (2019) 14 Balkan Social Science Review 44 <https://js.ugd.edu.mk/index.php/BSSR/article/view/3338> accessed 20 June 2026.

69 Law of the Republic of Serbia no 51/2009 (n 67) art 68.

70 ibid, art 70.

71 Alexandr Svetlicinii, 'The New Serbian Law on the Protection of Competition: A Critical Assessment' (2009) 12(4) Legal Life: Journal for Legal Theory and Practice of the Jurists Association of Serbia 577 <https://ssrn.com/abstract=1520667> accessed 20 June 2026.

72 Criminal Code of the Republic of Serbia [2005] Official Gazette 85, art 229(1), as amended 2026 <https://www.paragraf.rs/propisi/krivicni-zakonik-2019.html> accessed 20 June 2026.

5.2. WB Policies on Cartel Criminalization: Their Path to a Greater Harmonization with European Member States Best Practices

As discussed above, most WB countries have introduced a mixed system of administrative and criminal sanctions for cartel infringements. While the administrative monetary penalties in WB are *well-aligned* with the EU secondary legislation, the scope and nature of criminal sanctions *vary significantly* across WB jurisdictions. For instance, Albania limits criminalization to competition infringements involving threats or violence. Kosovo extends criminal accountability to a large range of infringements, including cartels, abuse of dominance, and bid-rigging. Montenegro prosecutes only serious competition infringements, such as cartels, but the applicable penalties are only monetary fines. North Macedonia and Serbia criminalize prohibited agreements more broadly, with North Macedonia providing the harshest maximum sentence of 10 years of imprisonment. A more detailed comparative overview of the administrative and criminal enforcement of competition law across WB jurisdictions is provided in Appendix 1 to this paper.

Given the ongoing challenges that WB countries face in transitioning to fully functioning economies, considering the need for legal certainty, as well as the sometimes-fragile conditions where businesses operate, it is important to establish a *foundation of trust* between the private sector and public authorities. This needs to be done *without compromising the deterring effect* of sanctions on competition violations and at the same time guaranteeing the *legitimacy* of criminal sanctions in terms of proportionality and consistency. To achieve this, WB countries need to *harmonize a regional approach* to cartel prosecution. As mentioned in this article, the EU does not mandate cartel criminalization or its alignment between candidate members. However, following similar paths towards EU integration and having closely interconnected economies, the WB would benefit from pursuing a more consistent (albeit not identical) approach to criminal enforcement.

Relying only on administrative monetary fines may be insufficient to achieve a deterrent effect, considering that cartel activity may involve large companies in the region that can afford fines. Especially in cases of abuse of public funds, such as bid-rigging, or cartel activity with grave social or economic consequences, fines alone may not reflect the gravity of the offence.

However, the criminalization of all anti-competitive agreements could undermine the effectiveness of leniency policies in the region. Leniency policy, introduced by almost all systems of public enforcement of competition law around the globe, has been perfected by the EU. It concerns offering (full or partial) immunity to the first cartelist who reports the cartel to competition authorities. This policy has played a crucial role in cartel discovery in the EU. Although WB countries have introduced leniency policy into their national systems, they have not reached comparable levels of cooperation. Excessive criminal prosecution of involved individuals could further discourage whistleblowers from coming forward.

In their path towards European Union accession and the strengthening of their competition enforcement regimes, WB countries can benefit from adopting best practices of EU Member States in criminalizing cartels. As discussed above, several Member States, such as Germany, France, Greece, and Croatia, have developed hybrid enforcement systems that combine administrative fines with criminal sanctions, particularly in cases involving serious infringements, such as bid-rigging or repeated cartel behaviour. This approach could be beneficial to take into consideration by WB countries.

In light of these considerations, the authors of this article advocate for the adoption of a *hybrid deterrence model* for competition infringements in WB. This model would be founded on a *primary enforcement mechanism of administrative monetary punishments* (imposed separately for undertakings and individuals). Criminalization, on the other hand, could be reserved for the most serious cases of violations, such as hardcore cartels (as introduced by the French, Croatian, and Greek models) and bid-rigging (as established in the German legal framework). The latter is especially severe, as it not only distorts competition but also misuses public funds. For this reason, the authors recommend the application of a hybrid system: primarily administrative fines (substantial to reach the deterrence level) applied to the companies involved and criminal sanctions to the individuals involved in these severe cases of competition violations. As regards the conception of a successful leniency policy within a hybrid enforcement model, the authors argue that when hybrid enforcement systems that incorporate criminal sanctions for serious competition infringements are adopted, participation in a leniency programme should also be recognized as a mitigating circumstance in the criminal proceedings of the individuals concerned.

In addition, the effectiveness and legitimacy of competition enforcement in WB will largely depend on strengthening the institutional capacity of enforcement institutions. In this aspect, some measures to be taken by the WB policymakers include increasing the staffing level of competition authorities, ensuring diversified funding (as also provided in the ECN+ Directive),[73] and promoting specialized training for personnel.

6 CONCLUSION

This article has attempted to explore the most appropriate models to enforce competition law, particularly regarding cartel conduct, in the developing economies of WB countries. While administrative measures are regulated by EU secondary law and the accompanying guidelines, the criminalization of competition violations remains at the discretion of each

73 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 [2019] OJ L 11/3 <http://data.europa.eu/eli/dir/2019/1/oj> accessed 20 June 2026.

state's legal framework. In this regard, WB countries have demonstrated a creative range of approaches. The analysis of cartel enforcement legislation in the Western Balkans is seen in comparison with EU Member States practices. While the Member States' jurisdictions analyzed in this paper impose administrative sanctions, only some extend these measures to include criminal liability for individuals involved in cartel conduct. Germany reserves criminal penalties for bid-rigging, while France, Greece, and Croatia have introduced broader criminal provisions targeting cartel behaviour. Interestingly, this study revealed that while the *administrative fines towards competition violations are applied uniformly in all WB* (reflecting the Commission's guidelines on Fines) of up to 10% of the annual turnover, the *criminalization* of these infringements differs at many levels.

Albania has demonstrated a *commitment to align* its legislation with EU competition law, particularly regarding the implementation of monetary fines. However, its approach to criminalization is *underdeveloped*. The only criminalized violation of competition law involves threats or violence. The latter are treated separately as offences in the Albanian Criminal Code. As such, the actual criminal provisions do not contribute significantly to effective cartel deterrence.

Kosovo has a relatively *comprehensive legal framework*, with clear provisions for both administrative and criminal sanctions. This clarity can improve the level of predictability and legal certainty among businesses. However, this approach may become *overly punitive*: criminal penalties apply to cartels, abuse of dominance, and bid-rigging regardless of the consequences or severity, raising concerns over proportionality and possible overdeterrence.

Montenegro has adopted a model of imposing *only monetary fines*. However, there is ambiguity regarding the legal nature of the sanctions: they are classified as 'penal misdemeanours' without clear grounding in the Criminal Code. In addition, the fines are imposed not by the competition authority, but by a court. This duality can jeopardize legal certainty. In addition, monetary fines may be *insufficient in deterring* serious competition violations, especially when imposed on financially powerful undertakings.

North Macedonia presents a *focused model by criminalizing* only the most serious competition infringements: prohibited agreements. This targeted criminalization helps to reach *efficiency in enforcement*. However, the criminal sanctions imposed on individuals engaging in cartels are among *the harshest in the region*, with imprisonment sentences of up to 10 years, raising questions about proportionality.

Serbia is a positive example of *alignment with EU rules* on administrative fines against undertakings. However, its enforcement system is weakened by the absence of administrative sanctions for individuals. Instead, it only imposes criminal sanctions, which may be disproportionate, limiting the flexibility of enforcement authorities.

This article argues in favor of harmonized enforcement in WB countries, given their common EU integration background and interconnected economies. In this context, various enforcement models of several EU Member States have been explored. Considering the economic and legal context of the region, the adoption of a hybrid enforcement model appears to be the most appropriate solution. This system would primarily rely on administrative monetary sanctions, while reserving criminal sanctions only for cartel cases with severe consequences and bid-rigging. There is little evidence of convergence towards a common enforcement model in WB. Even though these jurisdictions are under no obligation to align their competition enforcement regimes, their shared aspiration towards European integration serves as a rationale for greater alignment. In addition to the common European path, alignment is important given the economic interdependence in WB countries, where undertakings conduct business in multiple WB jurisdictions. Divergent enforcement models could increase compliance costs and legal uncertainty. Against this background, policymakers need to strengthen regional cooperation to align enforcement frameworks. While complete uniformity is not necessary, more convergence in the principles governing administrative and criminal enforcement would both support EU integration of the region and the development of a stable regional market.

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APPENDIX

Table 1. Sanctioning cartels in WB Countries

	EU Regulation 1/2003	Albania	Kosovo	Montenegro	North Macedonia	Serbia
Administrative sanctions / AS for companies engaging in cartels	Yes, the Regulation provides fines up to 10% of the annual turnover of the company.	Yes, the Law on Protection of Competition provides fines up to 10% of the annual turnover.	Yes, the Law on Protection of Competition establishes fines up to 10% of the annual turnover.	No, the sanctions are not considered administrative (even though criminal sanctions are limited exclusively to fines / monetary fines).	Yes, the Law on Protection of Competition provides fines up to 10% of the sum of the aggregate annual turnover of each member and performance ban of 3-30 days.	Yes, the Law on Protection of Competition provides fines up to 10% of the total annual turnover generated on the territory of the Republic of Serbia.
Administrative sanctions / AS for individuals engaging in cartels	No - it does not provide fines for individuals, but each Member State had approved their national rules on the matter.	Yes, the law provides fines up to 5,000,000 ALL (approx. 50,000 EUR).	Yes, the law provides fines from 1000 EUR to 4000 EUR.	Yes, it provides fines from 1000 EUR to 4000 EUR.	Yes, the law provides fines and performance ban of 3 to 15 or 30 days, depending on severity of offence.	No.
Criminal sanctions for individuals engaging in cartels	No, the Regulation does not provide criminal sanctions but they are regulated at a national level in Member States.	Partially covered, only if competition is distorted through violence or threat (up to 4 years of imprisonment).	Yes, the law sanctions: cartels (up to 5 years) abuse of dominant position (up to 3 years) and bid-rigging (up to 5 years) and fines.	Yes, the law on competition provides for 'penal misdemeanours' but they are sentenced only by fine and not mentioned in the Criminal Code.	Yes, prohibited agreements that distort competition are sentenced by imprisonment of 1 to 10 years.	Yes, prohibited agreements that distort competition are sentenced by imprisonment of 6 months to 5 years and fined.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

КРИМІНАЛІЗАЦІЯ КАРТЕЛІВ: ЛЕГІТИМНІСТЬ КРИМІНАЛЬНО-ПРАВОВИХ ЗАСОБІВ ЗАБЕЗПЕЧЕННЯ ЕКОНОМІЧНОЇ ДОБРОЧЕСНОСТІ В КРАЇНАХ ЗАХІДНИХ БАЛКАН?

Моніка Цанко* та Мірела Богдані

АНОТАЦІЯ

Передумови. *Протидія картелям є одним із ключових напрямів конкурентного права. Європейський Союз значною мірою гармонізував адміністративне правозастосування у сфері захисту конкуренції, проте між державами-членами ЄС зберігаються істотні розбіжності щодо криміналізації картельних змов. Такі розбіжності характерні і для країн Західних Балкан, де в межах процесу європейської інтеграції триває адаптація національного законодавства до стандартів ЄС. У статті досліджено, чи є адміністративні санкції достатніми для забезпечення ефективного правозастосування, визначено межі необхідності застосування кримінально-правових засобів, а також оцінено ефективність наявних механізмів протидії серйозним порушенням конкурентного права в країнах Західних Балкан.*

Методи. *У дослідженні використано доктринальний та порівняльно-правовий методи. Доктринальний аналіз охоплює нормативно-правову базу ЄС, законодавство окремих країн і наукову літературу щодо засад адміністративної та кримінальної відповідальності. Порівняльно-правовий аналіз застосовано для зіставлення правових систем п'яти країн Західних Балкан (Албанії, Косова, Чорногорії, Північної Македонії та Сербії) та чотирьох держав-членів ЄС (Німеччини, Франції, Греції та Хорватії) з метою виявлення тенденцій у сфері криміналізації картелів.*

Результати та висновки. *Дослідження засвідчує, що попри гармонізацію адміністративних штрафів для суб'єктів господарювання відповідно до правил ЄС,* *підходи до встановлення індивідуальної кримінальної відповідальності за картельні змови на Західних Балканах суттєво відрізняються. Автори доходять висновку, що поєднання дієвих адміністративних штрафів для суб'єктів господарювання з кримінальними санкціями щодо фізичних осіб за найбільш тяжкі порушення конкурентного права в межах гібридної моделі могло б забезпечити більш збалансоване та ефективне правозастосування, зокрема щодо «hardcore»-картелів та спотворення результатів публічних закупівель.*

Ключові слова: *Картелі, криміналізація, Західні Балкани, європейська інтеграція, конкурентне право, адміністративні штрафи, правозастосування.*

PËRMBLEDHJE NË SHQIP*

Artikull Kërkimor

KRIMINALIZIMI I KARTELEVE: LEGJITIMITET PËR INTEGRITETIN EKONOMIK NË BALLKANIN PERËNDIMOR?

Monika Canco*, Mirela Bogdani

ABSTRAKT

Sfondi. *Implementimi i rregullave kundër karteleve përbën një pjesë të rëndësishme të legjislacionit të konkurrencës. Bashkimi Europian ka harmonizuar kryesisht zbatimin administrativ të legjislacionit të konkurrencës. Megjithatë, mbeten dallime të rëndësishme midis Shteteve Anëtare të BE në lidhje me kriminalizimin e karteleve. Këto dallime janë gjithashtu të dukshme midis vendeve të Ballkanit Perëndimor, ku procesi i anëtarësimit në BE ka synuar përafrimin e legjislacionit kombëtar të konkurrencës me standardet e BE-së. Ky artikull së pari shqyrton nëse zbatimi administrativ është i mjaftueshëm dhe kur është i nevojshëm zbatimi penal i legjislacionit të konkurrencës. Së dyti, ky punim shqyrton nëse mekanizmat ekzistues të zbatimit në Ballkanin Perëndimor janë efektivë për të luftuar shkeljet serioze të rregullave të konkurrencës.*

Metodat. *Studimi zbatoi një metodologji kërkimore ligjore doktrinare duke kombinuar desk-review me analizën ligjore krahasuese. Desk-review shqyrton kornizën e ligjit të konkurrencës të BE-së, legjislacionin kombëtar dhe literaturën akademike për të identifikuar themelet e zbatimit administrativ dhe penal. Analiza krahasuese vlerëson kuadrin ligjor të vendeve të Ballkanit*

* The publication metadata in Albanian is presented as submitted by the authors.

Perëndimor dhe disa Shteteve Anëtare të BE-së, duke identifikuar ngjashmëritë, ndryshimet dhe tendencat e mundshme në lidhje me kriminalizimin e karteleve.

Rezultatet dhe Përfundimet. *Analiza tregon se, megjithëse sanksionet administrative për ndërmarrjet janë kryesisht në përputhje me standardet e BE-së midis Shteteve Anëtare dhe në të gjithë Ballkanin Perëndimor, mbeten dallime të konsiderueshme në lidhje me përgjegjësinë penale për pjesëmarrjet në kartele. Artikulli arrin në përfundimin se një model i harmonizuar hibrid i zbatimit, që kombinon sanksionet administrative me dënimet penale për shkeljet më të rënda të ligjit të konkurrencës, do të ofronte një kuadër zbatimi më të balancuar dhe efektiv.*

Fjalët kyçe: *Kartele, Kriminalizim, Ballkani Perëndimor, Integrimi Europian, e Drejta e Konkurrencës, Gjobat Administrative, Zbatimi i Ligjit.*