Public regulatory arrangements for private higher education in the Western Balkans

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Introduction: The Western Balkans joins a global private movement

There is much agreement that higher education policy has considerable impact on the economic, social and cultural development of our societies. More contested is whether such impact is better attained through higher education sectors that are publicly funded and organized, or through one or another mixture of public and private provision. While this issue attracts considerable interest as many countries (Pachuashvili, 2011) and sub-national higher education systems such as U.S. states (Zumeta, 2011) struggle to develop policies that match the ambitious roles set for higher education, it is a difficult issue to analyze due, in part, to specific national characteristics and historic trajectories related to the development of private higher education (PHE). For example, in Eastern and Central
Europe overall, the rise of PHE largely followed the collapse of communist regimes and significant parallels emerged across countries although considerable variation emerged as well (Slantcheva and Levy, 2007); the same can be said about similarities and differences in the ways in which private higher education today is regulated and is allowed to work (Levy, 2011; Pachuashvili, 2011).

However, in general it is possible to identify a number of reasons why and how private higher education emerges (Levy, 2006). Most potent in quantitative terms, private higher education can be an alternative way of expanding a system when public resources are scarce and therefore as a desirable or even necessary route to the greatly expanded access that is central to many visions of development. Private higher education can also be a means to increase or otherwise enhance competition in an existing higher education system, or as a way to boost innovation or even excellence. It can also foster more diversity and differentiation of educational offerings (Levy, 1986). The reasons identified and the
ambitions set for private higher education can vary country to country;
the variation may depend on conscious policy assessments of the status,
achievements, and roles of the public and private sectors or it might result
in less planned manner from myriad social, economic, and political forces;
regardless, the possible mixes and their implications for provision of
offerings underline the argument that “public policy for private higher
education is a matter of global importance” (Levy and Zumeta, 2011: 346).

This issue of how private higher education can be brought into a public
policy mix has often not been prominent in national regulatory agendas. In
a historical perspective private higher education often grew and
developed almost without any conscious and deliberate public policy
attached, but increasingly governments are trying to catch up through
what an increasing number of scholars label as “delayed regulation” (Levy,
2006).

We find the Western Balkans (WB) to be yet another region characterized
by such delayed regulation of private higher education. Due to the special
circumstances of this region after the split-up of Yugoslavia into new and independent countries, the whole higher education system, including that of private higher education, can be said to lag behind developments in other former East European countries (Zgaga et al., 2013). In a recent article describing the dynamics of private higher education developments in the region, Brankovic (2014: 141) argues that issues related to both market adaptation and a search for strengthening the legitimacy of private higher education providers is central to understanding the dynamics within the private sector, although the role played by public laws and regulations in this process is often quite unclear.

We take up in this article the challenge of providing some further clarity on laws and regulations through a more in-depth analysis of the regulatory arrangements of private higher education in the Western Balkans. This effort should contribute to a better understanding of the conditions affecting the region’s private higher education development. As such, it contributes to the growing global literature on private higher
education by advancing knowledge of a hitherto little-studied region.

Hence, through providing more knowledge on the Western Balkans and their higher education systems, the aims of the current article is to: 1) Map the regulatory arrangements for private higher education in the Western Balkans; 2) Analyze how current regulatory arrangements in Western Balkan countries frame the roles and the relationship between public and private higher education and; 3) Reflect on the current regulatory designs in light of the challenges facing higher education in the region.

The Western Balkans in this article refers, as many regional treatments do, to Albania, Bosnia and Herzegovina (BH), Croatia, Kosovo¹, Montenegro, Serbia, and the Former Yugoslav Republic of Macedonia (FYROM). The regulatory arrangements in these countries will be mapped and analyzed for the period from 1990 – 2015. The remainder of the article: a) Sets out the theoretical framework of the study, b) Describes the methodology of

¹ UNESCO omits Kosovo
the study, c) Presents the findings, and d) Reflects on the role of private higher education- historically and in a more future-oriented perspective.

Theoretical framework

After the collapse of the communism in Eastern and Central Europe, most countries in this region initiated reforms of their higher education systems that were inspired by ideas of a “return to Europe” (Rupnik, 1992), and where institutions in the region have been actively engaged in European cooperation initiatives (Papadimitriou, Gornitzka and Stensaker, 2015). At the same time, private higher education - which had not been central element of European higher education even prior to communism (Levy, 2014) - was allowed to be established in the region due especially to the large gap between soaring new demand for HE and the extant capacity of the public sector, though ideological and religious or other identity also played roles (Slantcheva and Levy, 2007). Yet central political deliberations about how higher education should develop were rare in determining the size and shape of PHE (Levy, 2006).
As European higher education generally has experienced numerous reform initiatives during recent decades, there are no shortage on studies of how new forms of regulation have affected the higher education sector in areas such as funding, quality assurance, institutional autonomy, etc. (see e.g., Shattock 2014, Westerheijden et al. 2007, Texeira et al. 2004). These studies have tended to focus on particular governance instruments and tools (Hood 1986), and have often provided detailed analysis of particular reform initiatives (changes in legal frameworks, organization, funding, etc.). Only few studies have studied the reform initiatives in private higher education (see e.g., Levy 2011), and it is even rarer to find studies analyzing public and private higher education in a comparative perspective.

While existing studies have provided the field with considerable insight on how the governance of higher education is changing, they tend to share some limitations. First, reform and policy-development are often interpreted as pro-active governmental initiatives. However, while a pro-
active state indeed produces policy, it is less recognized that governmental non-decisions also should be seen as regulatory decisions (Bemelmans-Videc et al., 1998), even if non-regulation may be a product of both decision aversion and deliberate choice. This is an important distinction as deciding upon what and how to regulate can be associated with quite different views of how higher education systems should operate, from being under strict governmental control on the one side to allowing substantial autonomy on the other (Olsen, 2007). The ‘delayed’ regulation observed with respect to private higher education can as such be interpreted as an attempt by various governments to re-think the roles of public and private higher education – an important dimension to include in analysis of public policy. Second, in recent decades it is also possible to note that many European governments are re-thinking their general approach to governance, and that the prior interest in particular governance tools has shifted towards how the many tools can be better aligned and how more coherent policy strategies and policy designs can be
achieved (Levi-Faur, 2011) – what some have labelled as broader policy designs Howlett (2014). The basic idea behind this approach is that the ‘new public management’ initially created by the early waves of reform need to be re-placed by ‘new public governance’ approaches aiming at a better alignment of public, private and civic actors involved in the governance process (Klijn and Koppenjan, 2012), and with the intended effect of creating more cohesion in the governance arrangements (Maassen and Stensaker 2011). However, governmental attempts to achieve greater cohesion of their governance raise the need for research to develop tools and perspectives that can analyze this ambition. It can therefore be argued that there is a need for research that i) compare public and private regulatory initiatives in a more integrated way and, ii) analytical concepts and perspectives that can deal with the complexities arising from the governmental ambition of aligning different governance instruments and tools.
The conceptual approach proposed in this article is to offer two concepts that go beyond the technicalities of specific policy instruments and enable us to disclose more of the policy content and the underlying governance rationale. Hence, our approach is to assess the regulatory arrangements in the region according to how they – in the individual countries but also throughout the region – stimulate what we would label as `complementary` and/or `competitive` roles for private and public higher education. We would argue that these two concepts are very relevant for uncovering the ambitions behind the new public governance initiatives, especially in a Europe where policy attempts to stimulate competition often goes hand in hand with more selective and targeted policy initiatives (complementarity) as means for driving European economic integration (Levi-Faur 1999). For our purposes the basic ideas behind these concepts can thus be laid out in the following way: if private higher education has mostly a complementary role – offering something different and not directly competitive with what the public higher education sector offers -
we would expect to see regulatory arrangements that distinguish this sector from the public providers, either through laws, or through the use of various incentives or sanctions that treat the sectors differently. Possible examples of differentiated regulatory arrangements consistent with increased complementarity are issues regarding tuition fees, student recruitment, or quality assurance arrangements. If private higher education has a more competitive role, we would, as a general rule, expect public and private providers being offered to operate under more equal regulatory frameworks, and being exposed to the same laws and regulations, incentives and sanctions. Such regulatory designs are often seen as the key ways to stimulate increased efficiency and quality, regardless of whether the service provider is public or private (Hood, 1986; Levi-Faur 1999, 2011).

The attractiveness of the competitiveness/complementary concepts is that they allow for easier comparisons concerning how different instruments in reforms are tied together, and the overall direction of the
governance initiatives taken. However, we do also acknowledge the limitations of such a simplified categorization. It must be underlined that the two regulatory modes should not be seen mutually exclusive, but rather as policy options on a policy continuum, not least given the fact that the distinction between what currently can be described as public or private is blurring (Scott, 2007). A challenge of seeing competition and complementarity as part of a policy continuum is also how we should interpret situations where competition and complementarity regulations are combined. This situation may suggest that policy-makers are unable to develop coherent policy designs, but can also be a result of political craftsmanship as competitiveness sometimes may be stimulated by establishing regulatory differentiation between the public and the private sector that can enable more competition, for example when private higher education are granted more organizational or financial autonomy which can imply competitive advantages with respect to the public sector\(^2\). To compensate for this problem, the document analysis has also

\(^2\) We are grateful to the reviewers for their insightful comments on these issues.
included content-based assessments of the underlying intentions behind the various regulatory arrangements scrutinized.

**Data and methods**

This study relies on document analysis of higher education laws and regulations in the Western Balkans for the years 1990-2015. The analysis focuses upon the national level of higher education regulations and reports. It harnessed three sources of data to map the regulatory arrangements for the PHE and to explore the competition/complementary regulatory mode. National regulations were drawn mostly from the Knowledge Base for Higher Education and Research in the Western Balkans (HERDATA) repository – a recently developed databank focusing on the region. However, regarding 1990-2002 data, mining for all countries has been extremely challenging. Thus, in few cases we collected national data (regulations) from personal communication with local
scholars and agencies (primarily in their local language). The second and the third sources of data were national reports produced by the national governments for the Bologna follow-up and Tempus projects respectively. We have also drawn upon data collected and systematized in another recent study with respect to PHE in Eastern Europe (Levy, 2014).

Our methodology for analyzing the data involved several phases. After all the data were collected, the data (regulations/laws and reports) were read and categorized by two of the authors (the primer “coders”). Our point of departure for this categorization was the complementarity/competition mode; therefore, laws and regulations were initially sorted as to how they integrated or separated between private and public higher education according to a variety of themes: how universities can be established, their governance and relation to public authorities, university autonomy, decision-making arrangements, faculty hiring and personnel policy, funding, students’ issues, and accreditation.
After this initial phase, we re-analyzed the data through a further review of the laws, regulations and reports collected. This phase can be considered as a more inductive approach which “seeks to discover and understand a phenomenon, a process or the perspectives and worldviews of the people involved” (Caelli et al., 2008: 3). Thematic analysis is a search for issues that emerge as being important to the description of the phenomenon (Daly et al., 1997). Boyatzis (1998:161) defined a theme as, “a pattern in the information that at minimum describes and organizes the possible observations and at maximum interprets aspects of the phenomenon”. The process involves the identification of themes through “careful reading and re-reading of the data”(Rice and Ezzy, 1999:258), while Fereday and Muir-Cochrane (2006:82) considered it “a form of pattern recognition within the data, where emerging themes become the categories for analysis”.

Through applying the complementary/competition heuristic we argue that a more comprehensive overview of how private higher education is
regulated can be provided. It should be nevertheless underlined that we do not assert that specific regulatory packages are preferable to others. The purpose of using the heuristic is rather to offer some perspectives enhancing our understanding of how regulatory policies concerning public–private sector policy mixes currently are developing. Through our more detailed analysis of the content of the regulations provided, our analysis also allows us to identify in what policy area (institutional regulation, regulation of student recruitment, tuition fees etc.) national governments currently see as interesting and important for regulatory initiatives (see also Zumeta, 2011). [If we don’t already, then somewhere in our acknowledgment of vulnerability or limitations of our study, we should not that (if we don’t already note it), no analysis of documents and their specifics gives information on how much which stipulations are followed or enforced in actual practice. After all, the overall reg lit is clear that gaps, even large gaps, are common between what regs proclaim and actual
practice. (I might’ve be tempted to use a footnote for such a limitation but I guess we’re not using footnotes.)

Broad Findings

Mapping regulatory arrangements [I don’t think the following words are needed, but do whatever you prefer] for private higher education in the Western Balkans

This sub-section presents the regulatory arrangements for W Balk private higher education and the role the sector plays with respect to the number of institutions and share of student enrolment in the different countries.

Our mapping shows that multiple PHE institutions exist in all WB countries. As data collection and dissemination in the region are in some respects problematic, we cannot claim to have collected exact information about the public or private nature of institutions in all countries (see Table I). At minimum, however, our data seem to square with Brankovic’s (2014: 126), which reports more than 200 private HEIs “although the exact
number is not known”. Our data further suggest that the number of PHE institutions is still growing in the region, especially in Albania and Serbia.

Also despite the problematic nature of some of the data, it is nonetheless rather clear that WB follows the pattern generally found for other regions in regard to number of institutions: the private sector holds a striking number (Levy, 1992). The number is striking when contrasted to enrollment share (see just below) and often there are outright more private than public institutions (the case for all four WB countries where the sectoral numbers below are rather clear-cut (Albania, BH, FYROM, and Montenegro). Furthermore, for all the incompleteness of the data, it seems clear that institutional proliferation has been powerful in recent years (2009-2015).

<table>
<thead>
<tr>
<th>Countries</th>
<th>2015</th>
<th>2012</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Countries</td>
<td>PHE</td>
<td>Public</td>
<td>PHE</td>
</tr>
<tr>
<td>Country</td>
<td>Universities</td>
<td>Polytechnics</td>
<td>Colleges</td>
</tr>
<tr>
<td>-------------</td>
<td>--------------</td>
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</tr>
<tr>
<td>Albania</td>
<td>44</td>
<td>15</td>
<td>41</td>
</tr>
<tr>
<td>BH</td>
<td>25</td>
<td>10</td>
<td>27</td>
</tr>
<tr>
<td>Croatia</td>
<td>10 universities (83 constituents), 13 polytechnics, 26 colleges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kosovo</td>
<td>na</td>
<td>na</td>
<td>1 university +22 colleges and Higher Prof. Schools</td>
</tr>
<tr>
<td>Montenegro</td>
<td>2 universities +9 faculties</td>
<td>1 university</td>
<td>Not specified</td>
</tr>
<tr>
<td>Serbia</td>
<td>10 universities + 5HE colleges +17 HE colleges of professionals</td>
<td>8 univ+2 HE colleges+47 HE colleges of professional studies</td>
<td></td>
</tr>
</tbody>
</table>

*Note: na = not available.
Moving to the enrollment side, Table II presents total enrollment and private share from 2000 until 2010. FYROM and Montenegro have the highest private enrolment. 21.2% and 20.2% respectively, followed closely by Albania (19.1%), BH (16.7%) and Servia [in 2 places this spelling is used; in the other Serbia] (16.5%), with Kosovo (12.0%) and Croatia (6.5%) behind (see also Levy, 2014). Our data fit strikingly well with observations made generally about European PHE, especially about Central and Eastern Europe (Levy, 2012). First, -and perhaps most striking, is that the range of private enrollment share is very limited, less than 15% separating the WB high from the WB low. Second, the private shares are low compared to that of other regions and to the global average (roughly 33%). Third, the
private share is growing. This is particularly dramatic in the WB [if we use it here, why not almost always? it’d save words], as several of its countries had no PHE in 2000. The continued surge, however, is seen even from just 2005 to 2010. It appears that the PHE share goes up in six of the seven countries, usually by large jumps. The seventh country, Serbia, is an exception for seeing a private share decline; although it is only a tiny decline it could prove significant in that Serbia had been the first WB country to move into PHE as well as the first to move in heavily.

Table II Private share of enrolment for 2000, 2005, and 2010
Not only is the Serbian the oldest private sector in the WB (opened in 1989), until 2000 it remained still the only WB country with PHE—yet today all WB’s seven countries have allowed PHE and seen it established.

During the period following the communist collapse, most of the WB was marked by economic, political, civil wars, and military conflict; therefore, politicians had to reinvent or reconstruct the future of their national
higher education systems. This reconstruction or rebirth appeared about when the Bologna process was initiated in 1999. Croatia signed the Declaration in 2001, and the remaining five countries (expect Kosovo) signed in 2003. While the Bologna Process rests exclusively on voluntary agreements, we find that almost all WB “borrowed” the Bologna platform and used it as a basis for developing their national higher education regulations. Typically, all national higher education laws contain statements underlining that: “this law provides for the mission, main goals …. financing, management, quality assurance in the Republic of Albania in compliance with the European standards...” [maybe they had Bologna in mind but the quotation does back up the Bologna assertion we just made] (Albania HE Law, 2007), “Science and higher education present activities of special interest for the Republic of Croatia and are constituent parts of the international, particular European, scientific, artistic and educational space” (Croatia HE Law, 2003).
A further broad observation is that in most WB countries not only does the “delayed regulation” notion work but the interest in regulation of higher education keeps increasing and this tends to lead to revised or additional regulation. For example, in Serbia new laws on higher education appeared in 1998 and 2002. The 2005 law was amended in 2008, 2010, 2012, 2013 and 2014. In Albania, after the multi-party elections in 1992, and the new, main constitutional provisions that were adopted during the period 1992-1995, a new law was passed to regulate HE (the Higher Education Law -no 8461- passed on 25th of February 1999, Albania HE Law, 1999). In the Former Republic of Macedonia and until 2000, higher education was still regulated by the Socialist Federal Republic of Yugoslavia’s (SFRY) Law on Vocational Education (1985), which covered both vocational secondary and all tertiary education (the analysis of that law was not the intention of the current article). “Article 46 of the 1991 Constitution, however, already made a major change by granting autonomy to universities and by requiring that higher education be
covered by a separate law” (OECD 2003: 39). By 2003 policy-makers in Croatia, Kosovo, and Montenegro launched HE regulations for their HE systems. [another inconsistency we can easily fix: over 150 times we write out higher education but in a few cases we write HE. Shouldn’t we change the HE? In 2007 Bosnia and Herzegovina as well as Albania adopted their own framework laws on higher education. FYROM introduced new laws in 2008, 2011, and 2013. Lastly, Kosovo adopted a new higher education law in 2011. Despite the increased level of interest in PHE and the passage of an amount of PHE-related legislation, each individual country has not passed its comprehensive law establishing the rules for PHE.

The relative commonality of delayed and continuing regulation in most countries is not complemented by common terminology from the outset of WB PHE. Instead, we find an interesting diversity in terminology for early PHE in the region. The major case is of course Serbia. In the first higher education regulations (1990, 1992 for Serbian universities, and 1999 for Albanian universities) the word private (privat) not appearing in
any of those regulations. For example, the 1992 Serbian law for universities indicates that: “... if the founder is not the Republic [Serbia]...” (Serbian University law, 1992, article 10), “… [then] half the council members are chosen by professors and academics [who are non-professor academics?] and founders (ibid, article 10). Thus, Serbian regulations in effect acknowledge the presence of PHE when they refer to non-government founders. In its more recent statements, however, Serbia moves closer to private, although still stopping short—employing the terms non-state and non-public. The Serbian Tempus report (EACEA, 2012) stated: “seven public universities (85 faculties), 6 universities established by non-state founders (43 faculties) and more than 80 colleges ... are subject to compulsory national accreditation” (p. 74). Avoidance of the term private continues in the latest law (Serbian HE Law, 2014).

But Serbia is the WB exception. Although Albania, the second country into PHE, had its 1999 Higher Education Law stating, “higher education in the
Republic of Albania is both public and non-public,” its 2007 HE law switched from non-public to private: “there are public and private institutions of higher education”. And in other WB countries the term “private” has been freely used. In the FYR Macedonia 2002 HE Law numerous explicit directives for its PHE sector are visible: “The provision of this Law, except for the ones explicitly relating to the public higher education institutions, shall apply also on the private higher education institutions” (article 4). Although, Croatia signed the Bologna Declaration in 2001, we did not find any earlier written higher education regulation for analysis. Croatia’s 2003 HE Law states that higher education institutions could be public and private. Likewise, Montenegrin 2003 HE Law states “higher education institution is founded as a public or private institution” and Kosovo’s 2004 HE Law states “Ministry is responsible regulating public and private providers of higher education and approving their Statutes” (article 6.1.2)
A reluctance to use the term private has been analyzed in the PHE literature (Levy, 2006). It has to do with the lack of tradition and legitimacy for PHE in many countries (Slantcheva and Levy, 2007), certainly in Europe. Higher education is considered basically a public good and service. China and even non-communist countries have employed non-public or other purposefully obscuring terms, such as “people-run,” or “societal.” Allowing PHE seems to have been sensitive enough, no need to push too far too quickly. But as PHE becomes a more and more obvious global phenomenon, “private” becomes less jolting a term. Our WB data seems to reinforce the notion of reluctance but also of increasing acceptance.


Whereas we have repeatedly invoked literature showing that PHE often emerges in the relative absence of regulation, our time periodization concerning enabling regulation shows an interesting juxtaposition: enabling regulation can emerge in the relative absence of PHE. Different
though they are, both phenomena probably reflect the lack of comfort and experience with PHE, political constraints, and low legitimacy for private undertakings. Regardless, we see enabling regulation dating back to 1990, while PHE does not emerge in 6 of the 7 West Balkans countries until 2000.

Serbia mostly illustrates the PHE prior to regulation sequence. Specific regulations concerning PHE were almost invisible in Serbian (1990, 1992, and 2000) and in Albanian HE Laws (1999). The Serbian 1990 university law stated, “the Parliament establishes and abolishes the university” (Article 12). In the Serbian 1992 law, and in the same article (12) we discovered this change: “universities and faculty can be establishing by the Republic, legal and physical person that can be domestic or foreigner”. The 2002 Serbian HE law states: “in the case when a university or faculty is founded by the Republic, the founding Act shall be enacted by the Government. In the procedure of founding a University of Faculty whose founder is not the Republic, the founder shall carry out a feasibility study
to justify the reasons for foundation” (Serbian University Law 2002, article 13).

In contrast to the Serbian case, the Albanian illustrates enabling regulation preceding the actual presence of PHE. The 1999 HE law states that “the permit for opening a new nonpublic higher school is issued not before 6 months after the date of the submissions of the request to the Ministry of Education and Science, and no later than one year from the date of the request submissions to this ministry” (art. 13). Also the same law stated “admissions to the public higher schools are done though competition” (art. 31); however, again no reference was made specifically with PHE institutions. One might assume that conditions expressed in higher education rules for public universities were perceived equal for both public and private higher education, but this perception unraveled following an exhaustive analysis? The FYR Macedonia HE Law (2000) states: “The Inter-University Conference shall mean a form of cooperation and a body through which common interests are harmonized and decided
upon of licensed public and private higher education institutions in the Republic of Macedonia and within which decisions are made on issues of common interest for all the higher education institutions in the State”. For the period 1990-2002 we did not find specific regulations stipulating the process through which the PHE should be operated and managed, including programs and types of studies. Furthermore, we did not find prohibitions about PHE in laws and regulations. In other words, the regulatory posture was generally more tolerant than the rather small number of private sectors might suggest but it did not lay out a reassuring blueprint either.

2003-2015

In our the next time period, both PHE and regulation have grown. Croatia’s HE Law (2003) included articles about the PHE institutions and their establishment. “Private universities, polytechnics, and colleges shall be established by the decision of the founders in the manner prescribed by the provision of this act and regulations relating to the establishment
Moreover, the 2013 HE Law clarifies this previous quotation by stating: “representatives of private higher education shall participate in the work of the Rectors’ Conference, without the right to vote”. Otherwise, both public and private universities were treated equally by the 2003 and 2013 HE laws.


Likewise, Kosovo’s 2003 HE Law had a specific chapter about the private providers of higher education (i.e. establishment, licensing and accreditation). That law included how the competencies of the ministry, in provision of higher education, is for “promoting links between public higher education providers in Kosovo, private providers of education and training industry and commerce” .... “licensing private providers of higher
education”. In a similar vein, the 2011 HE Law includes articles for PHE providers.

The 2005 Serbian HE Law states: “an independent higher education institution maybe founded by the Republic or by a legal entity or a natural person, in accordance with the law” (art. 40). While, we did not find any article exclusively focused on PHE, in a few cases the HE Law makes clear that “if the founder of the institution is the Republic, the representatives at the Council of higher education shall be nominated by the Government”, and “for a higher education institution whose founder is the Republic, the Government shall take the decision on the number of students to be enrolled in the freshman year of a study program financed from the budget” (Serbian HE Law, 2005).

The 2007 BH’s [if we’re comfortable using BH, why not then use WB? wb arises much more often]HE law stated: “for the purpose of reform of HE, this Law established basic principles and standards of acquiring higher education in BiH ... and the Council of Europe Committee of Ministers
Recommendations on the Recognitions and Quality Assessment of Private Institutions of Higher Education...”. We did not identify any specific articles related to PHE in the BHs HE law with the exception of one brief comment stating: “The statute of any public higher education institutions and the basic documents of any private higher education institution shall, as a condition of their accreditation ...” (BH HE Law, 2007, article 7).

Comparability was a regulatory concern in Albania that was expressed in terms of a particular reference. In the 2007 HE law for example, we found one chapter devoted to PHE (i.e. establishment, licensing, opening, closing and reorganization of education program, and organization of studies). The quality assurance and accreditation regulations equally treated both public and PHE. Full-time academic personnel who are employed at a public or PHE are entitled to be involved as a quest part-time academic personnel at another public or PHE, in the country and abroad, upon the approval of the head of the main academic unit (HEP 2007, article 50).
Table III presents the variation concerning articles about private HE within
the public higher education policies for the period 2003-present.

Table III: Articles addressing the governance of PHE [are the
following words superfluous? in the legal frameworks]

<table>
<thead>
<tr>
<th>Countries</th>
<th>HE Laws</th>
<th>Articles for PHE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2003</td>
<td>2005</td>
</tr>
<tr>
<td>AL</td>
<td>2007, 2008</td>
<td>X</td>
</tr>
<tr>
<td>BH</td>
<td>2007</td>
<td>*</td>
</tr>
<tr>
<td>CR</td>
<td>2003, 2013</td>
<td>X</td>
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<tr>
<td>MO</td>
<td>2003, 2013</td>
<td>X</td>
</tr>
<tr>
<td>KO</td>
<td>2003, 2011</td>
<td>X</td>
</tr>
<tr>
<td>SE</td>
<td>2005, 2013</td>
<td>*</td>
</tr>
</tbody>
</table>

Specific articles about PHE = (X), No articles specific for PHE,
although some mentioning = (*)

Current regulatory arrangements framing the roles and the relationships
between public and private higher education in the Western Balkans

In this section our analysis emphases in the current regulatory
arrangements framing the roles and the relationships between public and
PHE, that we label as “complementary” and/or “competitive” roles. For
In this analysis, we are dealing with several areas, i.e., on how higher education can be established, their governance and relations to public authorities, their autonomy, decision-making arrangements, faculty hiring and personnel policies (if any), funding, students’ issues, and accreditation. Table IV summarizes by approximation the governance patterns of public and PHE in the region. In the table, “Complementarity” appears with + and “Competition” with -. An asterisk * is used when data has been difficult to interpret (inconclusive data). To illustrate the data analysis, we organize this section by chosen areas and we include examples of the interpretation of complementarity/competition respectively.

|--------|--------------|---------|--------------|-------------|-----------------|-------------|------------|

Table IV: Complementary and competitive patterns in the governance of public and private higher education.
<table>
<thead>
<tr>
<th>Establishment</th>
<th>+</th>
<th>-</th>
<th>+</th>
<th>+</th>
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<td>Decision-Making</td>
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Complementarity = (+), Competition = (-), inconclusive data = (*)

**Establishment**

Our analysis reveals that the majority of the HE laws in the WB established their PHE for complementarity (+), BH an? the?

exception(complementarity -). For example, in Albanian 2007 HE law there are a number of specific articles about PHE, such as that a PHE can
start its activity “only after being granted the license”, this is an indication of PHE that treated differently. Croatia’s 2013 latest Law on Science and HE, states that HEIs “may be public and private”. The public HE established by the Republic of Croatia (par. 2), while the PHE “shall be established by the decision of the founders”. Moreover, article 51 that stipulates areas about license for the performance of the activity of HEIs and their registration, where almost all paragraphs refer to HEIs, par. 9 clarifies “private higher education institutions shall be obliged to ensure before the commencement of their work, in a manner determined by the Ministry, guarantees for the continuation and completion of the study in the case of termination of the work of the higher education institution or the termination of the conduct of particular study.” In Kosovo the current 2011 HE law differentiates the public and the PHE. Article 12 stipulates the establishment of private providers, while article 14 stipulates issues relating to licensing of HE, and there is a clarification specifically for additional requirement for PHE. In Montenegro, the current law on HE
was adopted in October 2003, in the same year that Montenegro officially became a Bologna signatory country. The law was subsequently amended in 2008, 2010, 2011, and 2013. The law includes chapters and articles for both sectors, and there are clear signs that regulatory arrangements about establishment and licensing are meant to treat the PHE sector differently. Article 44, about financial guarantees of PHEIs, states that when a private institution submits “a request for a license, apart from the fulfilled conditions of Article 25 of this law, it is obligated to submit a work plan as well, including a guarantee of the founder on its financial standing for a minimum three-year period.” In Serbia, as noted earlier, the 2005 HE Law was amended in 2008, 2010, 2012, 2013 and 2014 regulates the PHE. As noted earlier, the law does not use the word private. For example, article 40 states that “an independent higher education institution may be founded by the Republic or by a legal entity or a natural person, in accordance with the law. Where the Republic is the founder of a higher education institution, the Government shall take the decision on the
foundation”. Hence, although not mentioning PHE explicitly, the law still differentiates between the public institutions and “the others”. Hence, concerning establishment of PHE the sectors are not treated equally. The FYR Macedonia’s latest 2013 HE law regulates the conditions and procedures for establishment and termination of HEIs in the country. The law stipulates that HEIs can be public, private-public nonprofit institutions and private (profit or nonprofit) institutions (art. 16), and the law makes clear distinctions as to what rights and privileges the PHE are granted. For example, the law states that bankruptcy cannot be initiated against a public HEI, while PHE “may terminate by a bankruptcy in accordance with the Law on Bankruptcy” (art. 43). Finally, the BH 2007 HE law uses the word private only 3 times without specific articles exclusively for the PHE establishment (competition-). The law requires that both sectors need to be licensed institutions and Tempus report also states that “The Law on Higher Education treats private and public higher education institutions equally” (EACEA, 2012:25).
Institutional Governance

Regarding institutional governance also, our analysis discovers that the majority of the HE laws in Albania, BH, Croatia, Kosovo, Montenegro and in the FYROM treat PHE differently (complimentarily +), Serbia being a the exception (competition-). For example, in Croatia in the 2013 HE law there is a clarification that “Rectors' Conference shall consist of all the rectors of public universities in the Republic of Croatia. The representative of the Council of Polytechnics and Colleges and the representative of the private universities shall participate in the work of the Rector’s without the right to vote”. In Kosovo, the 2011 HE law par. 7 clarifies the governance in PHE. It states: “A private provider of higher education enjoys freedom in its status or other founding documents to approve any model of governance and management, on condition that this model clearly separates the role and competences of the owners from decisions about academic matters and that it allows for the participation of teaching staff and students in decisions relating to academic matters”. In Serbia,
however, the law treats equally institutional governance (competition -).

*Autonomy*

Regarding institutional autonomy there is no differentiation between the sectors across all countries within the region (competition-). For example, the Montenegrin HE law article 5 states “an institution is autonomous in performing its activities” and its treats both sectors equally. In a similar vein, the FYR Macedonia 2013 HE law treats also equally and its makes clear to the PHE funders i.e. “The organ of the founder cannot have rights and obligations that limit and violate the autonomy of the higher education institution …” (art. 60).

*Decision-Making*

Regarding decision-making in the majority of the systems (Albania, Kosovo, Montenegro and the FYR Macedonia) there are indications differential treatment (complementarity +). Whereas in BH, Croatia, and Serbia HE law treats the PHE sector equally (competitive-), in Albanian HE
law article 13 stipulates the management, administration and decision-taking in public HE. While article 43 states “The founding legal person is responsible for all the activity, administration and the funding of the institution established at such request” (complementarity+). In Kosovo, the 2011 HE law declares: “A private provider of higher education enjoys freedom in its status or other founding documents to approve any model of governance and management, on condition that this model clearly separates the role and competences of the owners from decisions about academic matters and that it allows for the participation of teaching staff and students in decisions relating to academic matters” (article 12 par. 7) (complementarity+). The Croatian HE law does not differentiate issues about decision-making (competition -).

Faculty and Personnel

The majority of the HE laws in the region (Albania, BH, Croatia, Montenegro, and Serbia) regulate recruitment criteria for academics and they treat personnel equally in both sectors (competition-), expect in
Kosovo and in the FYR Macedonia (complementarity +). For example, article 50 in the Albanian 2007 HE law states “The full-time academic personnel employed at a public or private higher education institution shall, upon the approval of the head of the main unit and higher education institution, be entitled to be involved as a guest part-time academic personnel at another public or private high education institution, in the country or abroad”. In Montenegro, regarding academic staff and academic titles the law covers several articles however without any particular reference to public or PHE. Article 57 states “academic staff …. are appointed by the Senate on the basis of the public competition”, however, is not clear if those regulations refer to public or/and PHE sectors. The 2003 HE Law and specifically its article 77 stated that the procedures for appointed were regulated by the public institution statute. However, in the current 2013 article 77 the word public is not visible. In our analysis we take those incentives that treats faculty and staff issues similarly (competition -). On the other hand, HE law in Kosovo and in the
FYR Macedonia provide specific requirements. A more restrictive attitude can be found with respect to faculty and personnel issues, where duration of employment and working conditions are different (complementarity +).

Funding

Regarding funding issues our analysis reveals that HE law in Albania and Serbia differentiates the sectors (complementarity +). In Albanian 2007 HE Law in its article 63 refers to the responsibilities of the Ministry of Education and in Chapter XIII it is made clear that only public institutions are eligible for public funding (complementarity +). In Serbia, the 2005 HE Law only mention the financing of HEIs founded by the Republic, without additional articles for the PHE (complementarity +). In contrast, the Croatian law states “it is possible that private higher education institutions may also be funded from the State budget”, a high number of conditions are stipulated making it less likely that this will happen, therefore we label as inconclusive data (*). In BH 2007 HE law article 19 concludes such as: “all funds received from the budget, own, revenue,
fees collected and funds from other resources shall belong to the higher education institutions and shall be expected in accordance with the law the stature, and the adopted financial plan” (inconclusive data *). In Kosovo, the law states “The Ministry may provide public funds to licensed and accredited private providers of higher education in support of the Ministry’s objectives. Any private provider which accepts public funds shall be subject to the same accountability and audit requirements as public providers, as set out in Articles 21, 22, 23, 24 of this Law” (article 20, par. 4). In our analysis we consider this arrangement as inconclusive data (*). In Montenegro, several articles explain the principles of funding a public institution, while others i.e. article 9 states that the Government of the Republic of Montenegro “it can participate in co-financing of private institutions and students enrolled in those institutions”. Article 70 states “The Government may prescribe particular conditions for the use of resources allocated to private institutions; for teaching and research purposes, as well as ask from a private institution to submit the budget
proposed for performing its activity for the following fiscal year”. These types of statement make up what we label as inconclusive data (*). In the FYR Macedonia, also when it comes to funding, the sectors are seemingly treated equally as article 83 states “The Council shall give a proposal for participation in the financing of private higher education institutions with funds from the Budget of the Republic of Macedonia if the Republic of Macedonia has an interest in meeting certain needs through their educational programs” (inconclusive data *). In the discussion section we will provide additional interpretation about this type of flexibility that currently we label as inconclusive data (*).

**Student issues**

With respect to student issues our analysis reveals that no differentiation is? made which suggests [I fear this is a difficult sentence; I’d try to rewrite it but my reading doesn’t leave me confident about how to express whatever point we wish to convey] that PHE along this area should undertake a more competitive (-) role in the majority of the WB (Albania,
BH, Croatia and in the FYR Macedonia), except in Kosovo and Serbia (complementarity +); while in Montenegro some parts of the law are more difficult to interpret, not least with respect to students and the financial support for students, for example that “the Government may provide adequate financial support to students for paying tuition fees and other fees in institution, if this serves the public interest”. These types of statements make up what we label as inconclusive data (*). Examples regarding competitive role are that in Albania students in both sectors pay fees. In the FYR Macedonia the law clarifies the conditions and manner of enrolling in studies and it seems that the law treats equally both sectors (art. 108) (competition -). This competitive approach does not seem to apply to student issues in Kosovo, where specific requirements are made for PHE (complementary +). In Serbia, there are no specific articles only for the two sectors, but article 84 states “For a higher education institution whose founder is the Republic, the Government shall take the decision on the number of students to be enrolled in the freshman year of
a study program financed from the budget” (complementary +).

Accreditation

Our analysis also reveals that the majority of the HE law in the WB (Albania, BH, Croatia, Serbia, and FYR Macedonia) concerning accreditation issues treat both sectors equally (competition -), except in Kosovo and Montenegro (complementarity +). In Albania the article 62 of the 2007 HE law stipulates that “The quality assurance and accreditation procedures, standards, criteria and requirements are the same for the public and private institutions”. In BH Article 2 highlights that the 2007 HE law establishes basic principles and standards of acquiring HE in BH as well as “Recommendations on the Recognition and Quality Assessment of Private Institutions of Higher Education”. In particular, article 61 clarifies: “with the date of this Law coming into force, existing private higher education institutions shall receive provisional accreditation from the relevant institution…. Accreditation of higher education institutions shall be contacted in the period of no more than two years from the date of
this Law coming into force”. The law requires that both sectors’
institutions need to be licensed (competition -). In Croatia, concerning
accreditation, no specific articles on PHE were found; rather the law
underlined that a “higher education program of study shall be evaluated
at least every five years” (competition -). In Kosovo the law differentiates
the private and public sectors in several articles. Article 12 stipulates the
accreditation and licensing of private providers. Article 14 stipulates issues
relating to licensing of higher education, and there is clarification
especially for additional requirement for PHE (complementarily +). In
Montenegro articles about accreditation and licensing seem to distinguish
the sectors, i.e. Article 43 clarifies the examination of the foreign
accreditation for the PHE (complementarity +).

Further reflections on the current regulatory designs
Our study both confirms and advances our understanding of the current public-private dynamics of higher education. By studying the historical development of regulations addressing the public–private dimension in the Western Balkans, we have shown how “delayed regulation” (Levy, 2006) indeed emerges and expands in this region.

Through qualitative analysis of the regulatory frameworks, we have found that PHE in the latter period [2003-2015] seems to more acceptable to political authorities than before 1990-2002, at least judged by how these institutions are written about officially. Although legitimacy issues concerning PHE remain a concern in the region (Brankovic, 2014), the traditional reluctance even to mention PHE (Levy, 2006) has faded, and the regulatory vacuum often facing this sector seems to be increasingly filled – at least in the majority of the countries. The new regulatory frameworks offered also seem to lean heavily on European policy processes, particularly the Bologna Process. However, while Bologna is mostly silent on PHE, the WB countries - apparently very influenced by the
Bologna process and of the ambition of returning to Europe (Papadimitriou et al., 2015; Rupnik, 1992) - have seen a rapid growth of PHE indicating new roles and relationships between the public and the private higher education sector in the region.

A clear regulatory pattern of what roles and what relationship the two sectors are supposed to develop are more difficult to identify. Cross-national comparisons show that the approaches they apply to regulate PHE are very diverse. As shown in Table IV, the countries differ significantly on a number of regulatory issues affecting PHE, and concerning institutional decision-making, funding issues, tuition fees, student admission, and accreditation; some countries have more of a complementary regulatory approach (e.g., Kosovo and Montenegro), while others have a more competitive approach (e.g., Bosnia-Herzegovina). The clearest regulatory patterns are seen in the areas of establishment and governance of PHE where our analysis suggests that most countries see the PHE sector as having a complementary role.
However, with respect to institutional autonomy, our analysis indicates that competition is the preferred regulatory mode. This is interesting when taking into account that many of the countries have special accreditation requirements for PHE. Since accreditation is one of the most powerful regulatory instruments heavily influencing the operation of private providers, one could question the consistency in how PHE is regulated in several WB countries as the institutional autonomy seemingly granted to PHE seems to be counter-acted by other regulatory instruments. As the rise of accreditation in Europe is closely related to the Bologna process, it is possible to argue that this is an illustrative example of the complexities involved when aligning the Bologna process and national policy-making. Hence, although we indeed can detect “delayed regulation” emerging during the latter decade, it is difficult to identify any clear visions for the development of the higher education systems in the countries analyzed, including the public parts of the system. Perhaps a better description of the current situation is that of “patchwork
regulation”. As demonstrated in the empirical sections, some governments (e.g., FYR Macedonia and Montenegro) have developed regulation providing the government with considerable leeway in what measures can be taken in any given situation. For example, regulations stating that financial support to students in PHE is possible “if it serves the public interest” provide the government with possibilities for making pragmatic and even opportunistic decisions regarding what role and what relationship the public and the private sector should establish. While this might increase the flexibility of the regulators, it should also be underlined that this lack of predictability increases the level of uncertainty for those being regulated.

If we return to our conceptual framework and the idea of seeing competition and complementarity as ideal-types of design options in a policy continuum, we can argue that the underlying ambition in many European countries of developing more coherent public governance arrangements (Klijn & Koppenjan 2012) are far from being realized in the
region. However, given the fact that the WB region are facing numerous challenges with respect to academic quality and efficiency (Brankovic et al., 2014; Levy, 2014; Zgaga et al., 2013), it is perhaps not surprising that “patchwork regulation” might be a preferred option by governments. In situations characterized by economic austerity, there might be a growing realization that private providers could play an important role in the further development of higher education in the region – both by taking on a complementary role through providing alternative offerings and niches, and by taking on a more competitive role in which both sector quality and efficiency might be improved.

The fact that some institutions in the region increasingly are difficult to put under the label of either public or private may also illustrate what Scott (2007: 306) has labelled as the rise of “post-public” higher education - a consequence of an emerging sector where developing (competitive) institutional autonomy is seen as an important point-of-departure and where the private dimension of public institutions increases and vice
versa, but where national authorities still want to secure their political influence. Hence, with some exceptions, it seems that the role PHE is intended to play in the Western Balkans is quite ambiguous, at least when we look at the formal regulatory requirements. Whether the situation is different in practice is a question for further research. In this respect, the Western Balkans may well turn into an interesting laboratory for others to study as the region contains an interesting mixture of public and private providers rarely found elsewhere in Europe.

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