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THE DESIGN OF AN EFFECTIVE COMPETITION POLICY IN SEE COUNTRIES: WHAT IS SPECIAL?

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Outline

- The issue: Does the design of an effective competition policy regime depend on the characteristics of a country? How?
- Relevant country specific characteristics
- Relevant features of the competition policy regime
- Where SEE countries stand
- Tentative conclusions

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The issue

Does the design of an effective competition policy regime depend on the characteristics of a country? How?

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Benefits of legal transplant

- Savings on rule design
- Reliance on an extensive case law for rules' interpretation
- Reduce trade barriers
- International coordination in competition law enforcement
- International pressure helps resist vested interests

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Costs of legal transplant

- External pressure: psychological effects – lack of political support
- Inadequate human and financial resources to apply sophisticated analyses: wrong and harmful decisions
- Inability to tackle the main actual obstacles to competition
- Inappropriate goals

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Relevant characteristics

Overview

- Economic characteristics
- Institutional characteristics
- Political characteristics
- Social and cultural characteristics

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Economic characteristics

- Level of economic development (income)
- Barriers resulting from inadequate infrastructures
- Economic vulnerability and inequality of income distribution
- Role of the State in the provision of goods and services

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Institutional characteristics

- Development of financial institutions
- Effectiveness and efficiency of the court system
- Protection of property rights
- Rule of law
- Red tape

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Political and Social & Cultural characteristics

- Political stability
- Corruption
- Existence of a competitive culture

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Features of the competition regime

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Overview

- Administrative model vs judicial model
- Independence of the competition authority
- Complexity of analysis: e.g. per se rule vs. rule of reason, the role of presumptions
- Level of discretion and transparency
- Scope of application (e.g. merger control regime)
- Investigative powers
- Sanction policy (type of sanction – e.g. criminal vs administrative – level of fines, adoption of leniency programs and settlement schemes)
- Setting priorities and goals
- Exemptions
- Advocacy vs enforcement

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No compromise

- Independence of the competition authority
- Transparency
- Investigative powers
- Goals: efficiency

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Adapting

- Complexity of analysis
  - Simple “per se” rule may perform better, at least in an initial stage
  - Rely on presumptions also for exemptions
- Limit discretion
- Sanction policy
  - Administrative sanctions
  - Lower fines
  - Leniency programs and settlement schemes
- Setting priorities
- Advocacy may play a more important role
- Scope of application: depending on the available resources

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Overview

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SEE countries

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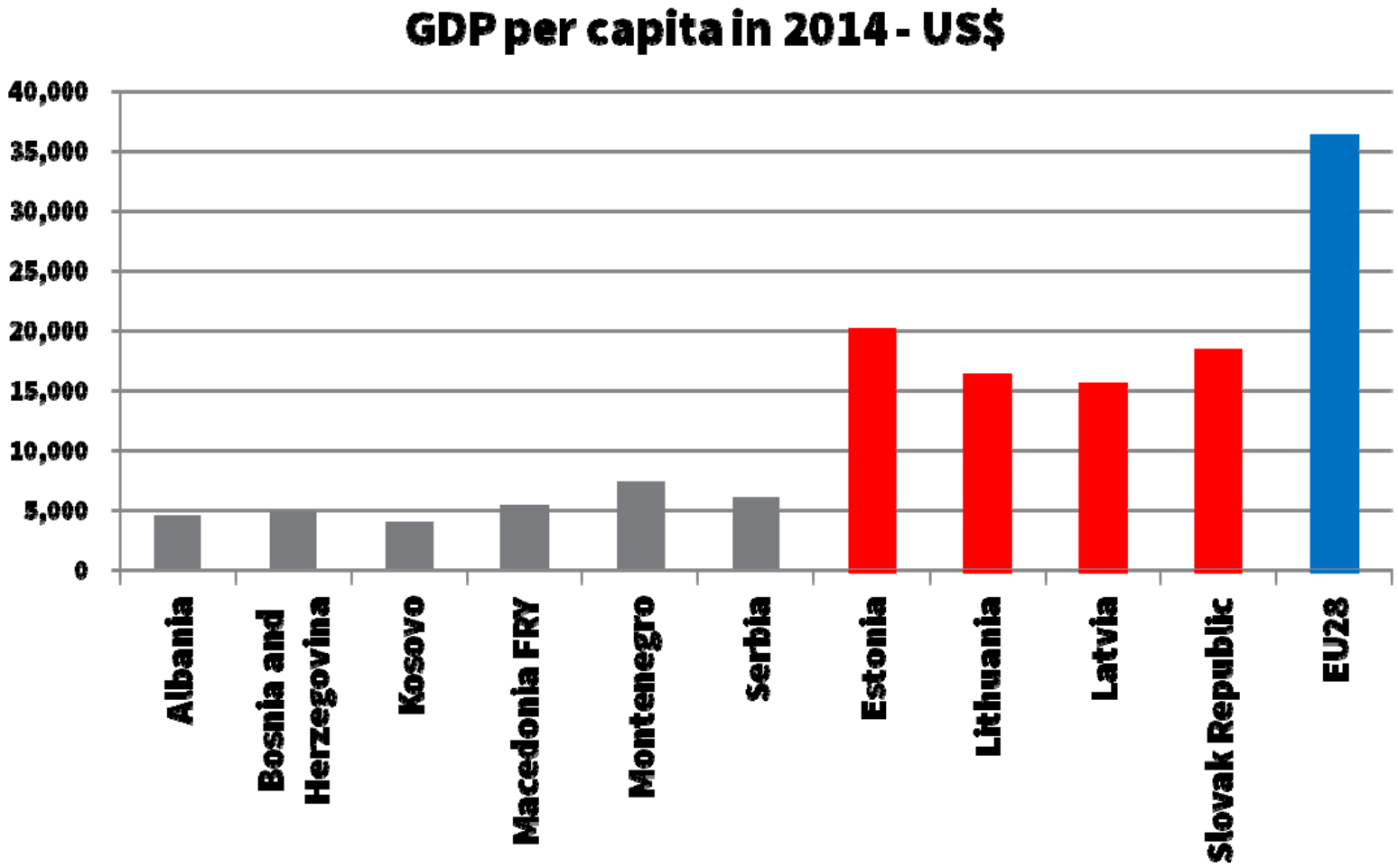
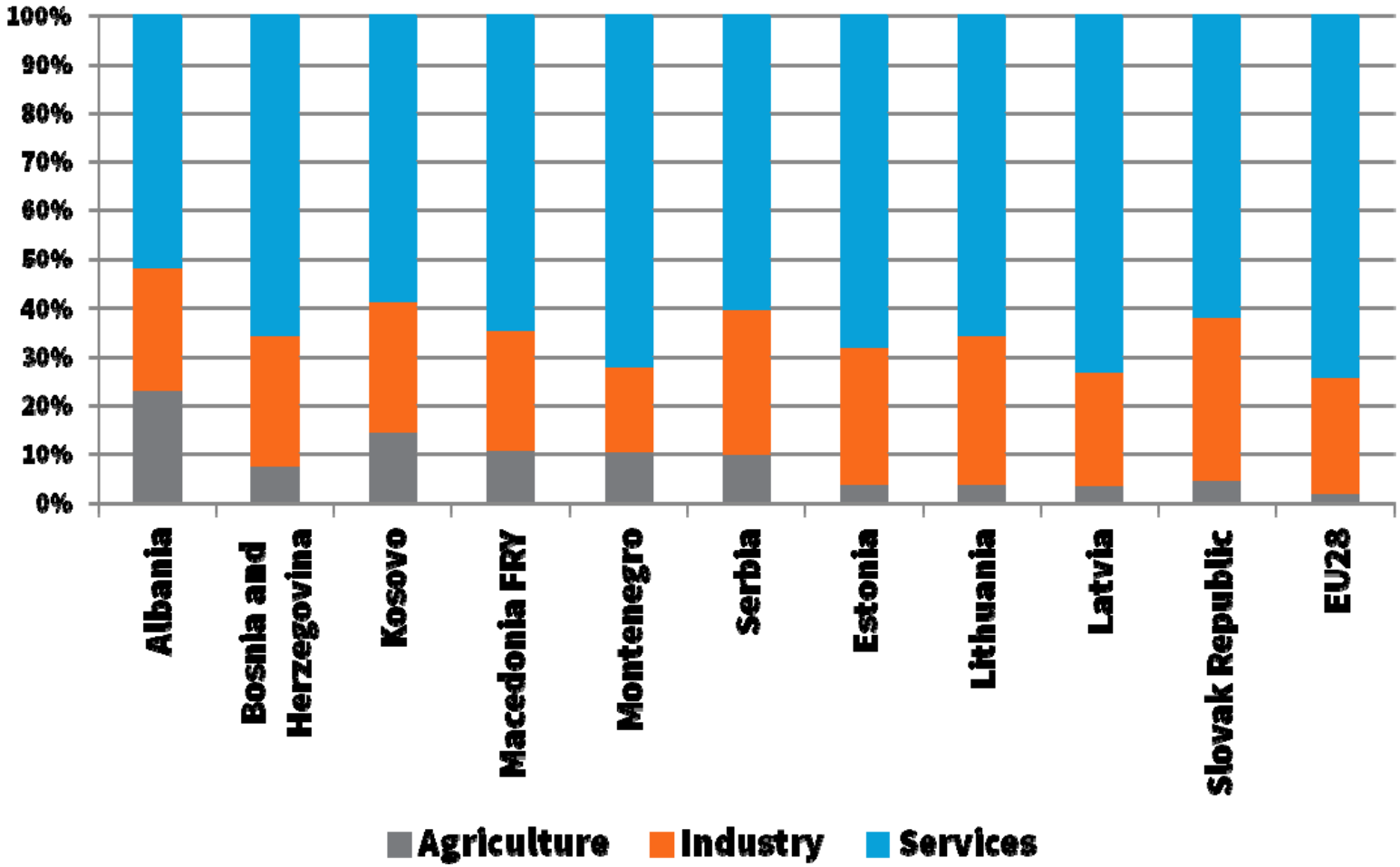
Income



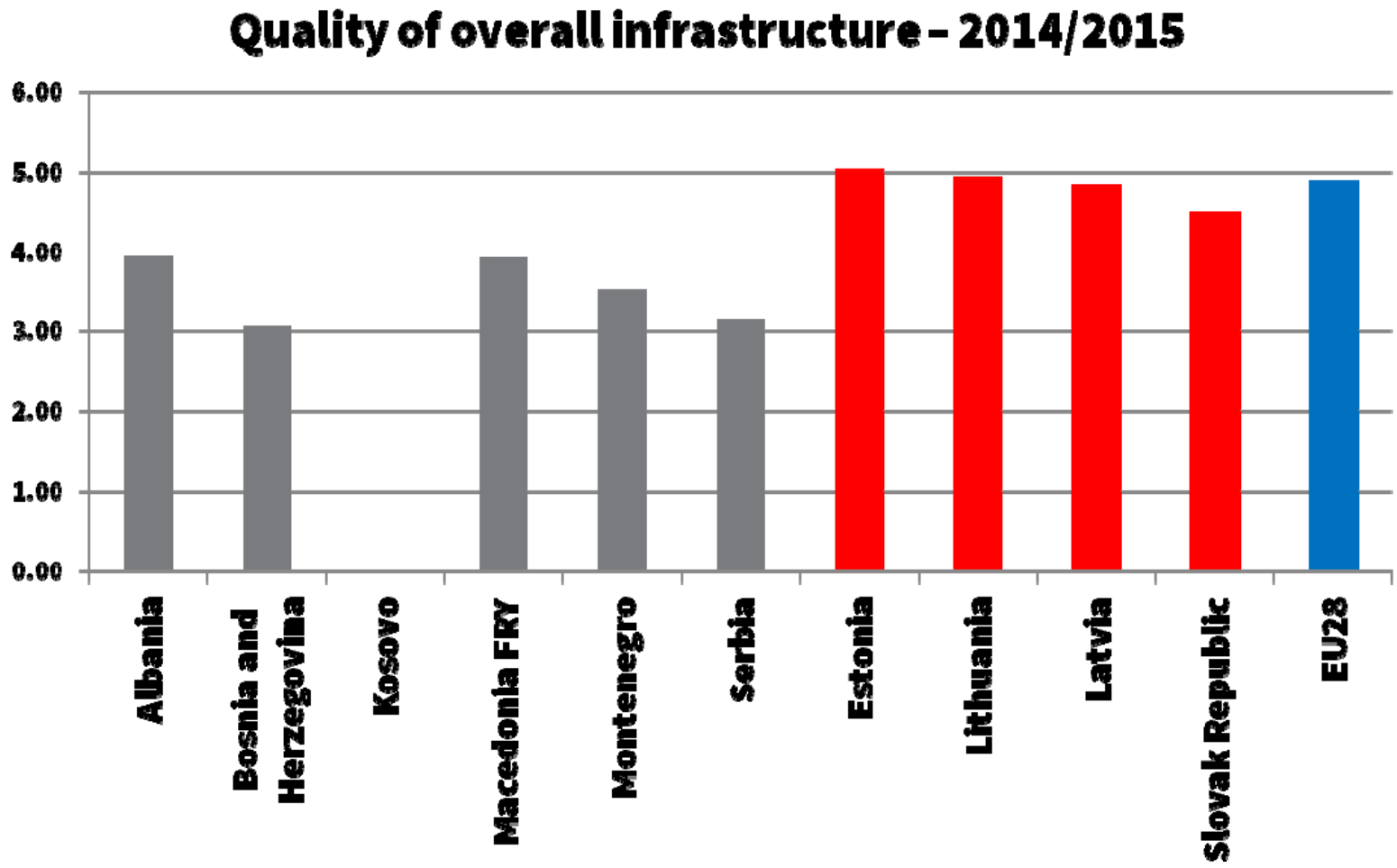
Source: World Bank

Relevance of economic sectors



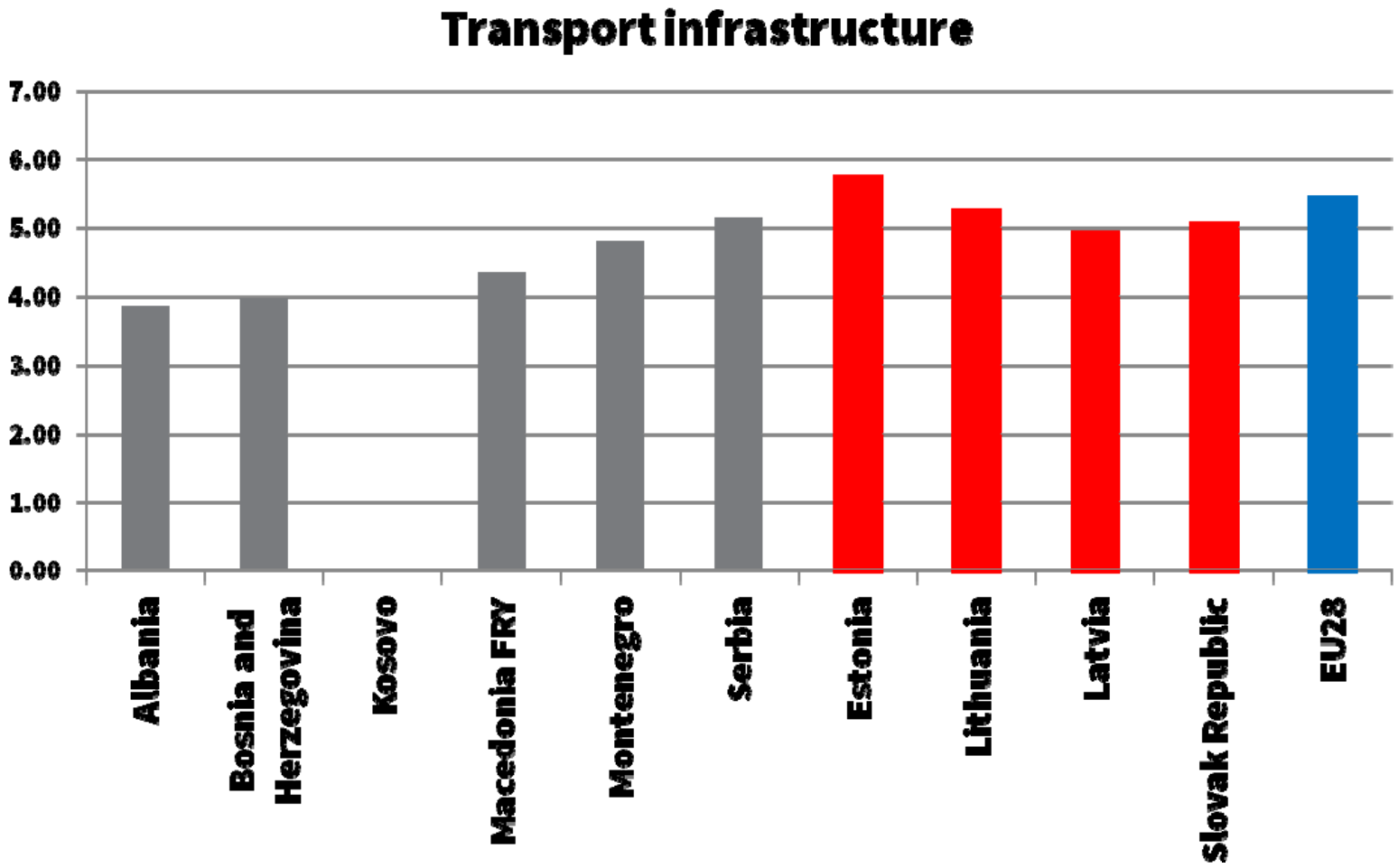
Source: World Bank

Infrastructures-1



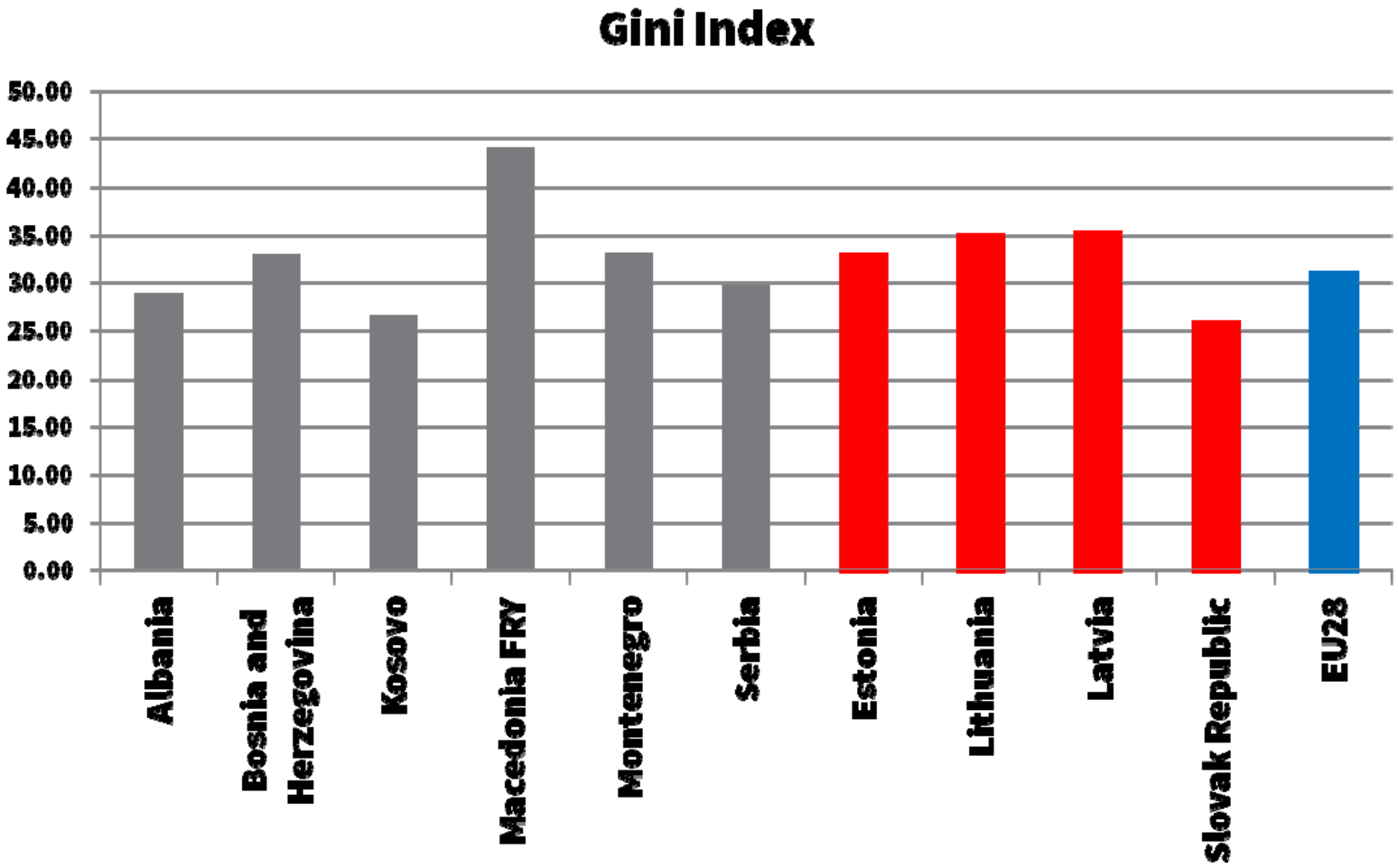
Source: World Economic Forum

Infrastructures-2



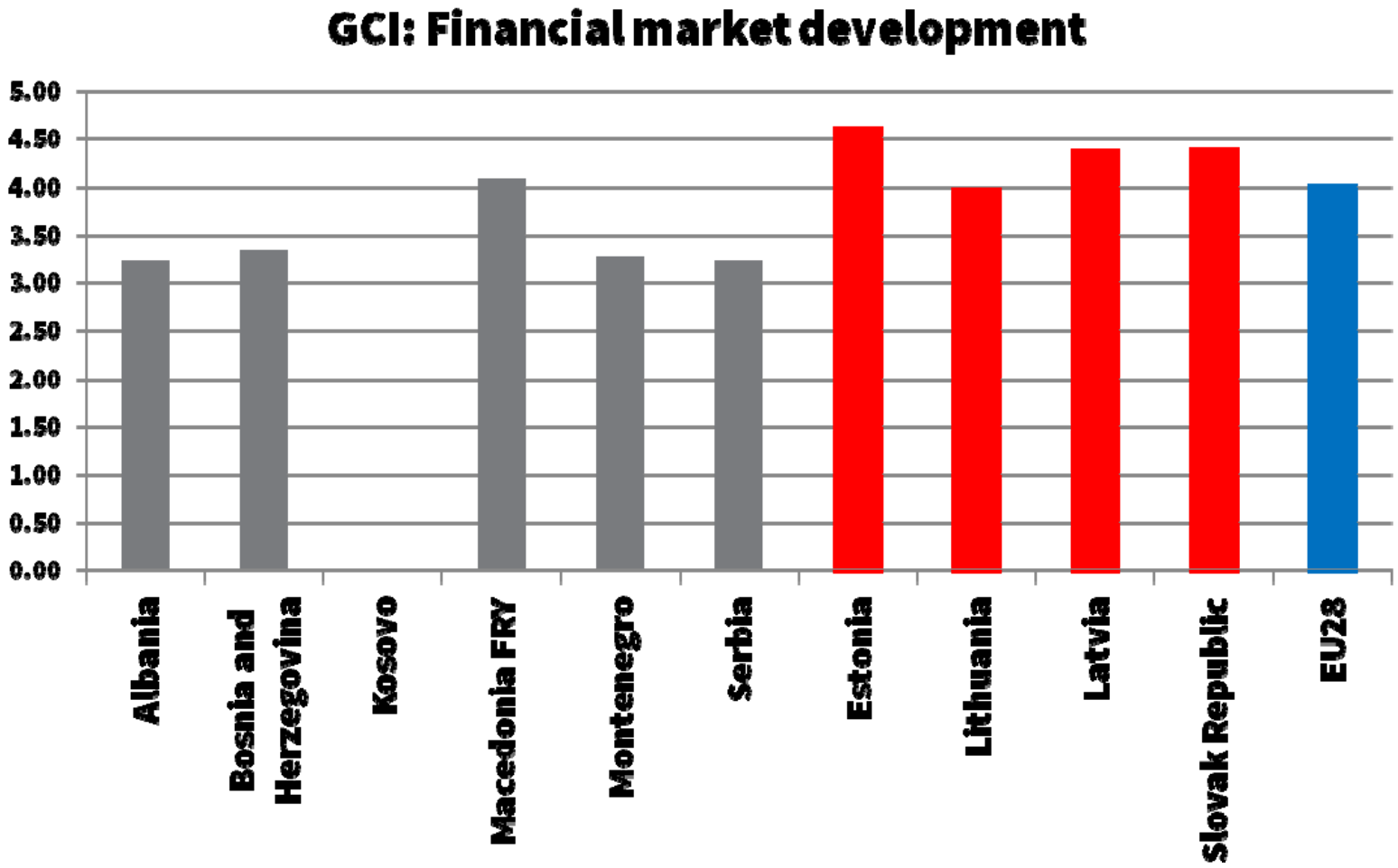
Source: World Economic Forum

Income distribution inequality



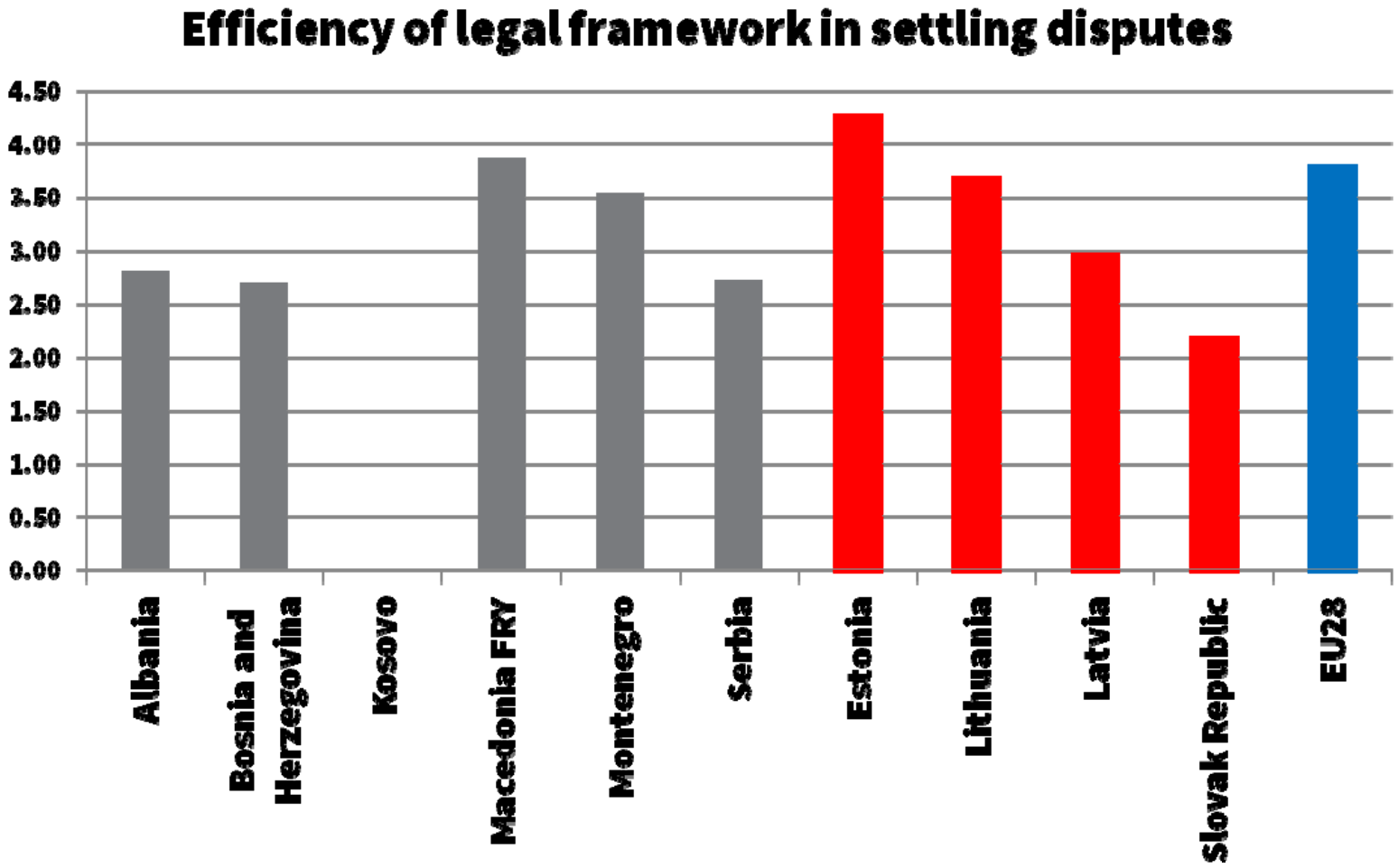
Source: World Bank

Institutions-1



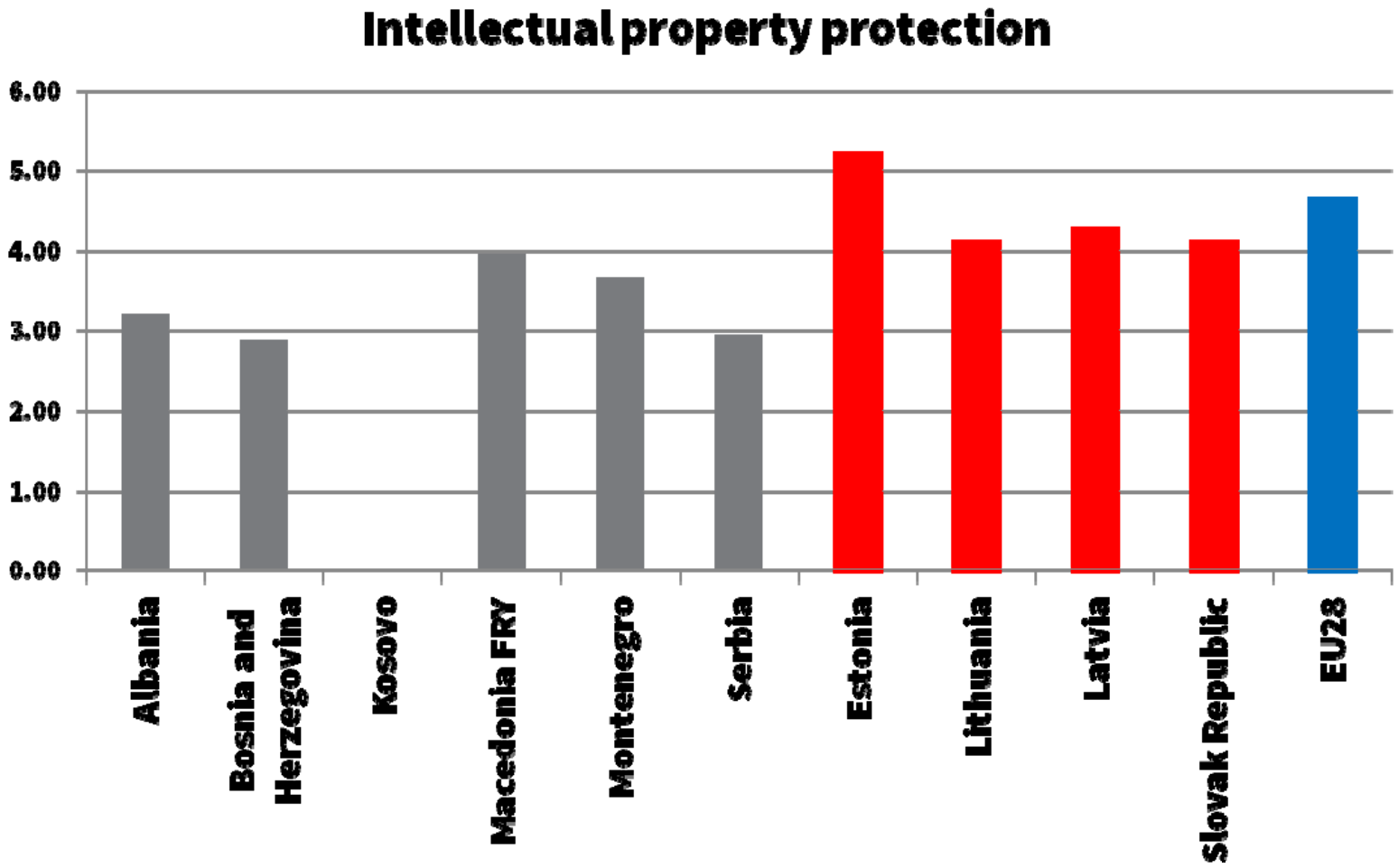
Source: World Economic Forum

Institutions-2



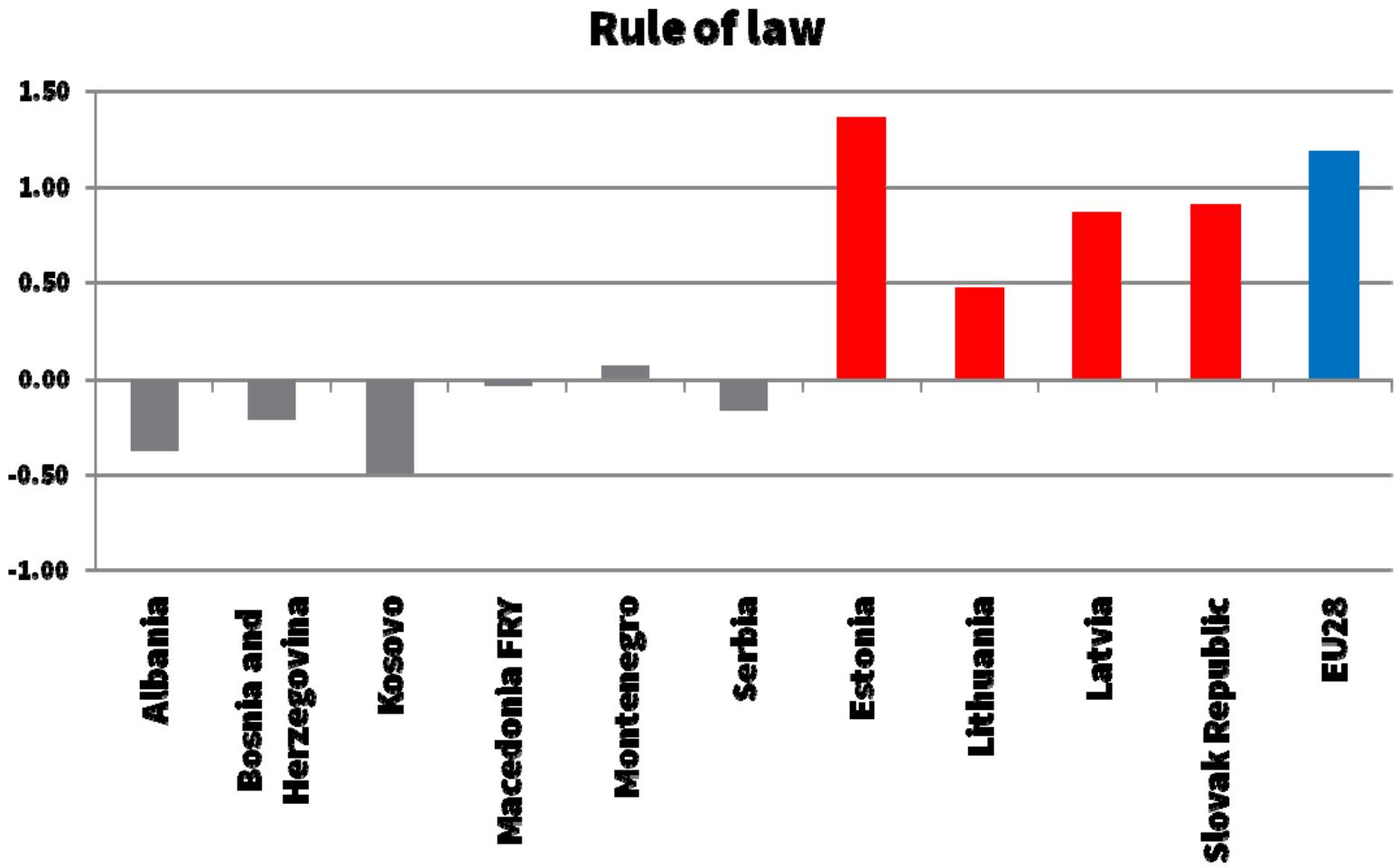
Source: World Economic Forum

Institutions-3



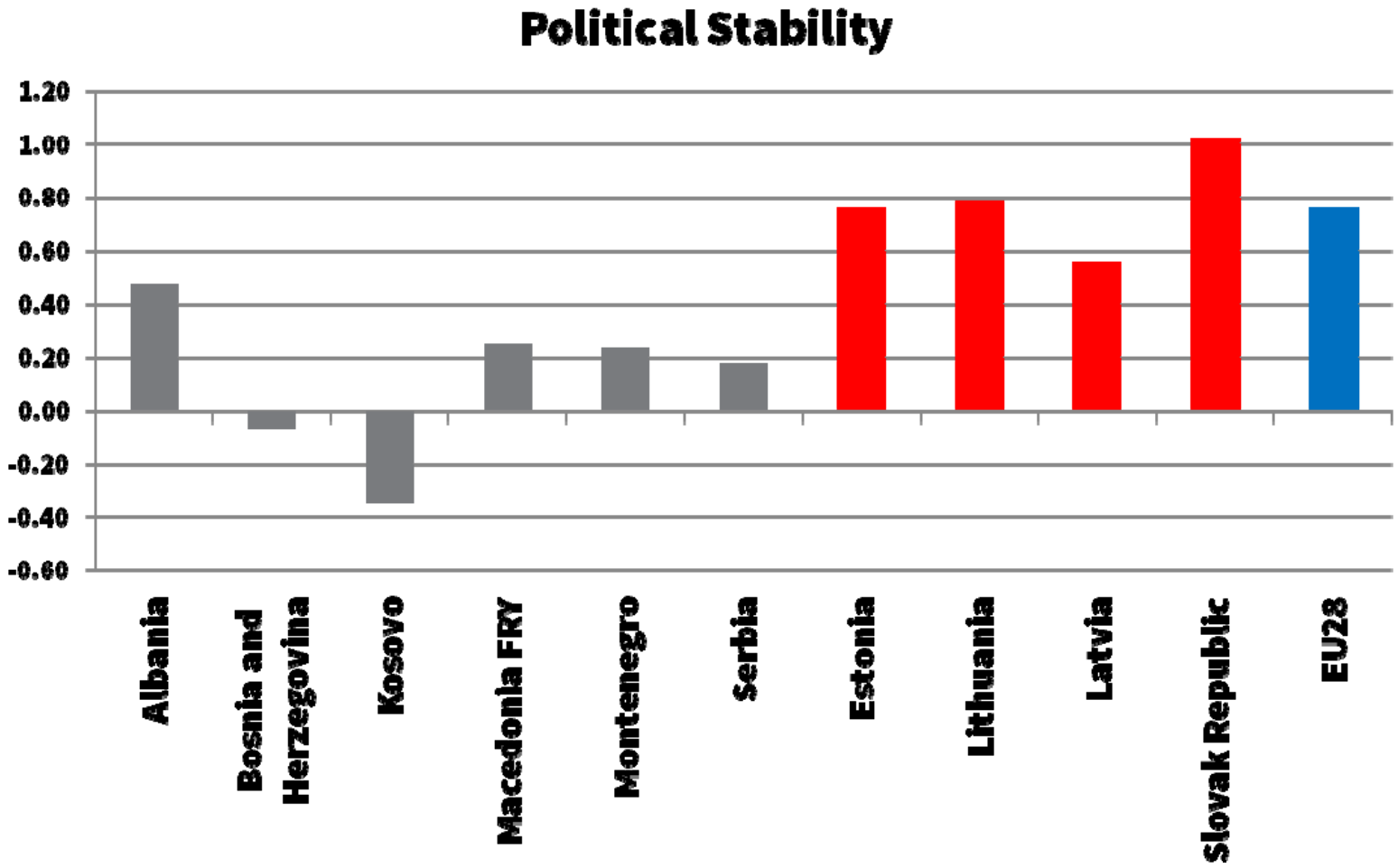
Source: World Economic Forum

Institutions-4



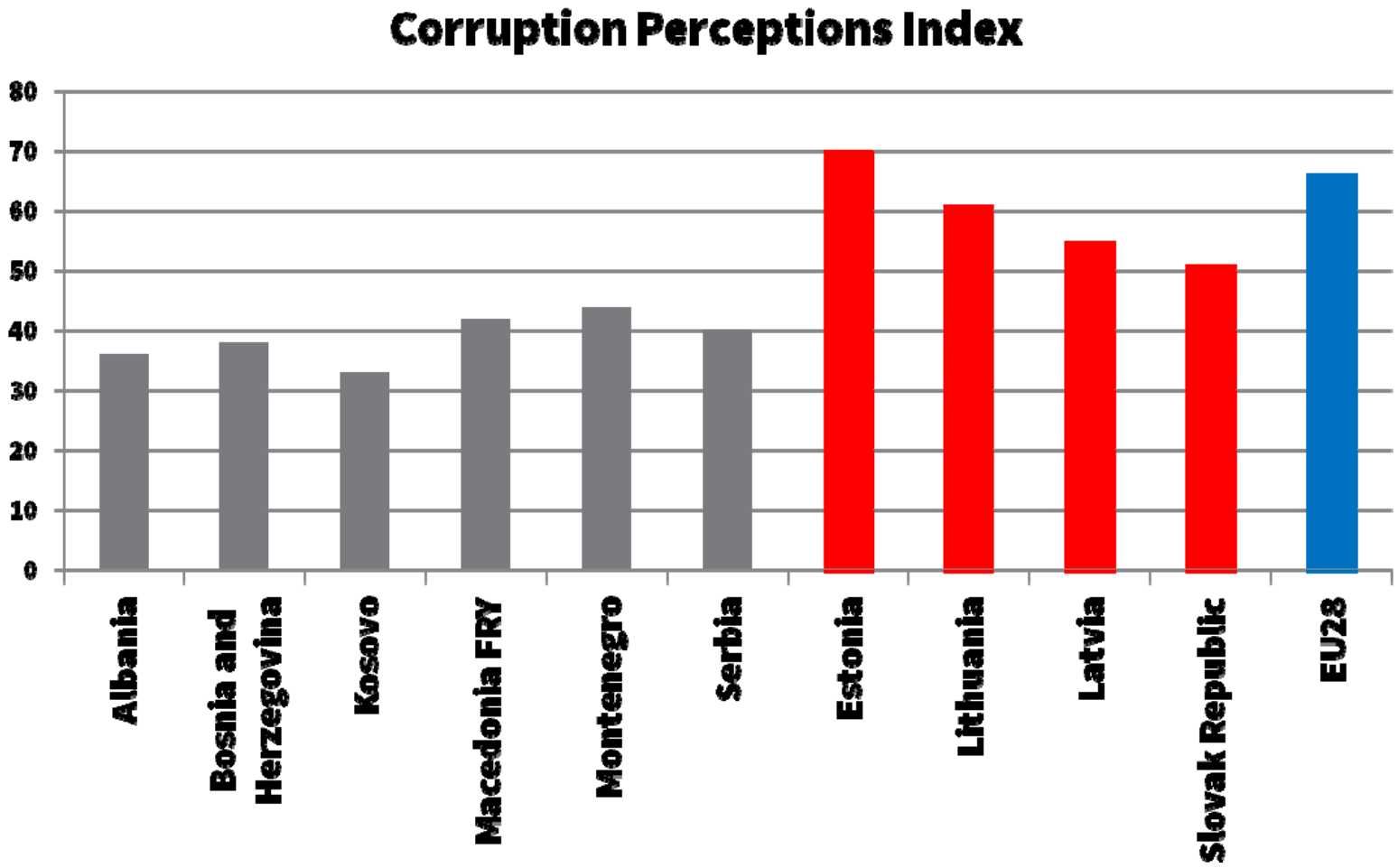
Source: World Bank

Political factors-1



Source: World Bank

Political factors-2



Source: World Economic Forum

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Conclusions…

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…to be checked

- The EU competition policy regime looks attractive
  - Geographical proximity
  - Political reasons
- Need to be adapted
  - Simplify rules: use of presumptions
  - Relevance of advocacy initiatives
  - No compromise on fundamental features
- Building capacity to move to a more nuanced competition policy regime

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