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Abstract

The working paper evaluates the EU's anti-corruption framework and is divided into three parts. The first explains the EU's attempt to develop a separate anti-corruption policy. The second highlights the heights of the EU anti-corruption policy when it adopted the EU Anti-Corruption Report 2014 and the goal of developing a European-wide anti-corruption framework through reporting mechanisms. The third part discusses the demise of the EU's efforts and makes proposals on how it could improve its anti-corruption framework in the future.

Keywords: Corruption, Crime, Cooperation and Verification Mechanism, EU Anti-Corruption Report, Rule of Law

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The Politics of the EU Anti-Corruption Movements

Andi Hoxhaj¹

Introduction

The European Union has expressed on many occasions since the early 1990s its interest in fighting corruption in several areas through promoting good governance in the member- and candidate states.² The EU has addressed corruption mostly in the context of the protection of its financial interests, which is an area where it has more legal tools than elsewhere. Furthermore, the European Union's objective has been to ensure the participation of civil society in policymaking through open and transparent conduct of its institutions, bodies, offices and agencies, which are now regulated in Article 15 of the Treaty on the Functioning of the European Union (TFEU).³

This paper suggests that the EU's anti-corruption policy can be distinguished into four different phases. The first began in 1997 with the adoption of two hard law instruments: the Convention on the Protection of the European Communities' Financial Interest and the Convention on the Fight against Corruption involving Officials of the Member States of the European Union.⁴ Both instruments required criminalising active and passive bribery. As the title of the secondly mention Convention suggests, it is limited to acts of bribery involving EU and Member State officials alone. This Convention on corruption entered into force on 28 September 2005.

The European Union now has legislative powers to introduce directives in areas which potentially involve corruption practises. After the adoption of the Lisbon Treaty in December 2009, the previous intergovernmental Judicial Cooperation in Criminal Matters had become an EU policy area and was integrated in the TFEU. Corruption is mentioned in Art 83 TFEU as a possible area of 'serious crime with a cross-border dimension' which might require supranational legislation 'resulting from the nature or impact of such offences or from a special need to combat them on a common basis.' Article 325 of the TFEU provides the legal basis for the protection of the EU's financial interests against fraud and other illegal activities,

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² See: European Commission, 'Communication on A Union Policy Against Corruption' COM (97) 192 final.

³ R Rogowski, 'ALACs and the Concept of Citizen Participation in the Light of European Law' Warwick School of Law Research Paper No 2010/25 (25 October 2010).

⁴ P Csonka, 'Corruption: The European Commission's Approach' in Barry AK Rider (ed), *Corruption: The Enemy Within* (Kluwer Law International 1997) 343–353.

including corruption. Based on this article, the Commission in 2012 presented a proposal for a directive that would use a criminal-law approach to tackle fraud jeopardising the EU's financial interests. The new directive entered into force in August 2017 and the Member States had until 6 July 2019 to implement its provisions.⁵ Below, there is an overview of the different stages that this working paper characterises as the EU anti-corruption policy.

1. The first attempt of EU anti-corruption policy

The first phase of the EU anti-corruption policy started with the adoption of the 1997 Action Plan against organised crime, advocating for a comprehensive policy against corruption, primarily focussing on preventive measurements.⁶ In the same year, the European Commission proposed a range of measures on banning tax deductibility of bribes; public procurement procedures; the introduction of accounting and auditing standards; blacklisting of corrupt companies and measures in the Community's external aid and assistance scheme. These measurements were introduced by the European Commission with a goal to establish an EU policy against corruption both within and outside its borders.

In 1998, the Council identified in its Vienna Action Plan that corruption was one of those criminal behaviours in the field of organised crime where prioritised action was deemed necessary to address by adopting measurements and suggested establishing minimum rules relating to the constituent elements of this offence and penalties.⁷ Furthermore, at the 1999 Tampere European Council, the EU leaders endorsed this recommendation by identifying corruption as one of the sectors of relevance where common definitions, incriminations and sanctions should be agreed upon.

In line with the 1998 Action Plan and the Tampere Conclusions, the so-called Millennium Strategy⁸ on the Prevention and Control of Organised Crime of March 2004 reassured the need for instruments aimed at the approximation of national legislation and establishing a broader, multi-disciplinary EU policy towards corruption.⁹ Furthermore, the same document advocated that those Member States, which had not ratified the relevant EU and Council of Europe anti-corruption legal instruments, must ensure speedy ratification and implementation within a clear timeframe.

⁵ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law. *OJ L 198*, 28 July 2017, 29–41.

⁶ Council of the European Union, 'Action Plan to Combat Organized Crime' *OJ C 131* 15 August 1997.

⁷ European Commission, 'Composite Paper: Reports on Progress towards Accession by Each of the Candidate Countries' (4 November 1998) 6.

⁸ European Commission (2003) Communication on a comprehensive EU policy against corruption. Brussels, 28.5.2003 COM(2003) 317 final.

⁹ The prevention and control of organised crime – a European Union strategy for the beginning of the new millennium, adopted by the Council on 27 March 2000.

2. The Collapse of the Santer Commission

The second stage can be characterised by internal problems that the EU institutions faced. In 1999, Jacques Santer, the President of the European Commission, and his fellow commissioners, were forced to resign over serious allegations of corruption. The downfall of the Santer Commission exposed the need for effective measures for safeguarding the European Public Administration's integrity. In response to these crises caused by the Santer Commission, the Unité de Coordination de la Lutte Anti-Fraude (UCLAF), an anti-fraud unit at the time, responsible for investigating corruption in the EU institutions was then replaced by the European Anti-Fraud Office (OLAF).¹⁰ On the basis of Article 325 TFEU, which combines measures to prevent and to combat fraud detrimental to the EC budget, OLAF was established. OLAF has powers to investigate corruption and to address any misconduct of EU officials in relation to the exercise of their duties.

As a result, the EU Commission, during the second phase, began a process of developing a good governance framework, in particular, by the publication of the White Paper on European Governance in 2001.¹¹ The White Paper set out a strategy for the reform of the EU Commission, based on principles of accountability, independence and transparency.¹² The reforms included the establishment of a new internal audit service, improving public access to documents of the EU institutions and improving the fraud prevention legislation.¹³

The downfall of the Santer Commission in late 2002 and the suspension of the Commission's former chief accountant marked the start of the good governance regime and the start of an era under which the EU Commission had the capacity to translate concerns about corruption into concrete anti-corruption policy action.¹⁴

3. The EU supporting international anti-corruption efforts

Since the turn of the new millennium, the fight against corruption has gained further momentum at international level. This marks the third stage of the development of the EU anti-corruption policy. The specific characteristic of this period is that the EU understood that its anti-corruption policies as part of international efforts in fighting corruption.¹⁵ Although, it should be noted that to some extent, European policies against corruption must be understood as implementation measurements of international conventions and standards. These include the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Convention, signed on 21/11/1997; in

¹⁰ European Commission (1999), Decision of 28 April 1999 Establishing the European Anti-Fraud Office. (OLAF), OJ L 13620, 31.5.1999.

¹¹ European Commission (2001), White Paper on European Governance, COM (2001) 428 final. 7-11.

¹² European Commission (2001), White Paper on European Governance, COM (2001) 428 final. 7-11.

¹³ J Wakefield (2007), *The Right to Good Governance*. Alphen aan de Rijn: Kluwer Law International, 31-33.

¹⁴ G Thüsing and G Forst (2016), *Whistleblowing - A Comparative Study*. London: Springer, 341.

¹⁵ R Rogowski (2010), ALACs and the Concept of Citizen Participation in the Light of European Law (October 25, 2010). Warwick School of Law Research Paper No. 2010/25.

force since 15/02/1999) and the United Nations Convention against Corruption (UN General Assembly Resolution 58/4 of 31 October 2003, entered into force on 14 December 2005).

The EU adopted three common positions during the drafting process of the UN Convention. The Commission held the view that only those measures should be strengthened and supported at the EU level, which were not already substantively covered, or not with the same degree of mandatory character as EU instruments. This positive acceptance towards initiatives of the United Nations and the OECD was also adopted in relation to the Council of Europe Criminal Law Convention on Corruption (signed on 27/01/1999; in force since 01/07/2002).

Most importantly the third phase can be characterised by the Commission's Communication on a 'Comprehensive EU policy against corruption' of 2003, in which it outlines a range of measurements in order to achieve the objective'.

'of prevention and combating corruption, and organised crime in order to enable the creation and safeguarding of a European area of freedom, security and justice through closer judicial, police and customs cooperation, where necessary, approximation of criminal law'

as stated in the former Art. 29 of the Treaty on European Union.¹⁶

The Commission adopted ten general principles encouraging anti-corruption policies in candidate countries in the time of writing in 2003: Albania, North Macedonia, Montenegro, Serbia and Turkey; in potential candidates: Bosnia and Herzegovina, Kosovo and in other third countries including Russia, Western NIS, and the Mediterranean Partners. These "Ten Principles for Improving the Fight against Corruption in Acceding, Candidate and other Third Countries" contain useful insights into foci as well as methods the Commission thinks are effective in fighting corruption.¹⁷

Furthermore, the Commission noted that specific problems existed in Central and Eastern European countries in relation to government procurement and the judiciary. As a response, the Commission adopted specific measures during the accession process before these countries joined the EU in 2004, 2007 and 2011 to address concerns over corruption in the judiciary and the rule of law. The Commission monitored corruption as part of the implementation of the Europe Agreements¹⁸ had been prepared for these new Member States. Still, Bulgaria and Romania need further support to address outstanding reforms to address corruption. As a result, the Cooperation and Verification Mechanism (CVM) was introduced as post-accession monitoring for Bulgaria and Romania.¹⁹

¹⁶ N Boister and R J Curry, *Routledge Handbook of Transnational Criminal Law* (Routledge 2015) 79–80.

¹⁷ European Commission, 'White Paper on European Governance' COM (2001) 428 final 7–11.

¹⁸ Council Decision, 2008/852/JHA of 24 October 2008 on a contact-point network against corruption', OJ L 301, 12.11.2008, 38–39.

¹⁹ R Carp (2014) 'The Struggle for the Rule of Law in Romania as an EU Member State: The Role of the Cooperation and Verification Mechanism' *Utrecht Law Review* 10(1): 1–16.

The rationale for setting up CVM was to support these countries to remedy certain shortcomings in the fight against corruption. Cooperation and Verification Mechanism for Bulgaria and Romania was introduced by the Commission in December 2006, allowing the Commission to issue periodical reports monitoring progress in specific areas of the fight against corruption.²⁰

The CVM is still in operation and the Commission suggested in January 2017 that it would terminate it in 2018, marking ten years since it was established. The CVM formulated specific benchmarks in the areas of: judicial reform; the fight against corruption and in Bulgaria's case also the fight against organised crime. The impact of the CVM is, however, debatable. Whereas some analysts point to its role as a lever to push for reform in the two countries, there is no hard evidence that formal legislative compliance translates into a change in the actual practices. Both countries are currently at risk of backsliding over corruption and the rule of law. In January 2018, Bulgaria's president vetoed an anti-corruption bill, which is viewed as backsliding in fighting corruption. The Centre for the Study of Democracy in Sofia, in a report, described that there is an attempt to 'state capture' in Bulgaria by a combination of rampant administrative and high-level political corruption.²¹

A further development about the EU anti-corruption policy occurred when the European Council adopted on 3 March 2010 the so-called 'The Stockholm Programme – An open and secure Europe serving and protecting citizens.'²² In the Stockholm Programme, the Council paid particular attention to the link between corruption and economic crime and is concerned with 'reducing opportunities available to organised crime as a result of a globalised economy, during a crisis that is aggravating the vulnerability of the financial system'.²³ The Council invited the Commission to "develop indicators", based on existing systems and common criteria, to measure efforts in the fight against corruption, in the areas of the *acquis* such as public procurement, financial control, and to develop a comprehensive anti-corruption policy.²⁴ This development laid the foundation together with CVM for establishing the EU Anti-Corruption Report of 2014.

²⁰ R Vassileva (2020) 'Threats to the Rule of Law: The Pitfalls of the Cooperation and Verification Mechanism' *European Public Law*, 26(3): 74–768.

²¹ Center for the Study of Democracy Annual Report 2021, <https://csd.bg/fileadmin/user_upload/publications_library/files/2021_12/CSD_AR/CSD_Annual_Report_2021_EN.pdf> accessed 15 September 2022.

²² C Fijnaut (2019) *The Treaty of Lisbon and the Stockholm Programme. In A Peaceful Revolution: The Development of Police and Judicial Cooperation in the European Union* (441–582). Intersentia. doi:10.1017/9781780689227.008.

²³ 'The Stockholm Programme — An Open and Secure Europe Serving and Protecting the Citizens' Adopted by the European Council on 10–11 December 2009, 17024/09, <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF>> accessed 4 April 2023.

²⁴ Szarek-Mason, P. (2010). *The EU strategy against corruption within the Member States. In The European Union's Fight Against Corruption: The Evolving Policy Towards Member States and Candidate Countries* (Cambridge Studies in European Law and Policy, 89–134). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511676086.004.

4. The EU Anti-Corruption Report

The EU's flagship monitoring project against corruption was the EU Anti-Corruption Report, which was issued in 2014.²⁵ The EU Commission's initial objective was to publish the EU Anti-Corruption Report biennially. The report draws on existing data; monitors trends and identifies policy weaknesses in all the Member States. It consists of twenty-eight country-specific reports and a summary report that offers thematic analyses in all Member States. The first edition which was published in February 2014, supported by a dedicated expert group on corruption assembled by the European Commission and a network of national correspondents bringing together NGOs and independent advisers, with the goal to minimise the need to rely exclusively on data from national agencies. The preparation of the second iteration of the EU Anti-Corruption Report was scheduled for publishing in 2016 and was in progress until the Commission's Vice-President Frans Timmermans announced in January 2017 that the Commission had decided to drop the EU Anti-Corruption Report altogether.²⁶

In a two-page internal letter that Timmermans sent to the chair of the EU parliament's civil liberty committee, stated that 'there is no need to publish any more reports. It states the first report in 2014 was good enough because it provided an overview and created a basis for further work.'²⁷ Timmermans suggested that the work of the EU Anti-Corruption Report would continue as part of the Commission's annual dialogue with the Member States on economic reforms known as the 'European Semester'.²⁸ However, this process only addressed corruption in eight Member States in 2016, in comparison to all the Member States that were scrutinised under the EU Anti-Corruption Report.

One can understand that such a shift of policy to terminate the continuation of the EU Anti-Corruption Report has an underlying message coming from the Commission, namely that fighting corruption is no longer a political priority for the EU and graft is only a serious problem in a minority of Member States. Although, one could also argue that the EU Commission is strengthening further the European Semester in other policy areas. However, to understand the EU's new approach, it is imperative to understand the development of EU governance towards anti-corruption policy.

²⁵ European Commission, 'EU Anti-Corruption Report' COM (2014) 38 final.

²⁶ Transparency.eu, Timmermans' Letter (2018) <<http://transparency.eu/wp-content/uploads/2017/02/20170130-Letter-FVP-LIBE-Chair.pdf>> accessed 15 September 2022.

²⁷ See, 'EU commission drops anti-corruption report', EU observer, 2 February 2017 <<https://euobserver.com/eu-political/136775>> accessed 2 April 2023.

²⁸ G. B. Wolff and K. Efstathiou (2017) 'Is the European Semester effective and useful?', Bruegel, Policy brief, 13 June 2018 <<https://www.bruegel.org/policy-brief/european-semester-effective-and-useful>> accessed 2 April 2023.

5. The EU Anti-Corruption policy under the European Semester

The second EU Anti-Corruption Report was expected to be published in February 2016, two years after the first. It was later suggested by the EU Commission that the Report to be postponed to Autumn of 2016. However, in late January 2017, the EU Commission decided to drop the EU Anti-Corruption Report altogether as an anti-corruption monitoring instrument and suggested that corruption was going to be monitored under the European Semester process of economic governance.

The first EU Anti-Corruption Report was published in 2014 and was designed in a way to provide the European Commission with information to monitor each Member State. Furthermore, the Report made the Member States aware of their own shortcomings in their laws and institutional settings to combat corruption more effectively.²⁹ The report, which had been initiated by the Member States and with the support of the European Parliament, was supposed to be published biannually. As it has been described in the first part of the paper, the Report provided important information on corruption cases, offered a description of the level of corruption throughout the EU and outlined the developments of anti-corruption laws and policies in all Member States. Last, the Report identified cross-cutting corruption risks which are with cross-border dimensions and offered recommendations to each individual Member State in areas which they identified as most vulnerable to corruption practices.

Therefore, the EU Anti-Corruption Report, as an instrument, was an important point of reference in the fight against corruption across the Member States. Unfortunately, the 2014 EU Anti-Corruption Report seems to be the first and last one in this format. Transparency International EU and transparency campaigners have requests for the materials that were prepared for the second EU Anti-Corruption Report to be released after the Commission's Vice-President Frans Timmermans announced through the termination³⁰ of the EU Anti-Corruption Report via freedom of information, but the European Commission has so far refused to realise them since.³¹

Timmermans suggested that the EU anti-corruption report published in 2014 served well as the basis for dialogues with the Member States and was a useful instrument for background information. Furthermore, Timmermans acknowledged that the Report opened a wider debate on the issue of corruption both at the EU level and in the individual Member States. However, the EU Commission viewed that since the Report was published, the wider policy framework at the EU level has evolved in several ways. In the Commission policy perceptive, fighting corruption was to be addressed through economic policy and therefore combating corruption became part of the European Semester process of economic governance. As such,

²⁹ European Commission, 'EU Anti-Corruption Report' COM (2014) 38 final.

³⁰ Transparency.eu, Timmermans' Letter (2018) <<http://transparency.eu/wp-content/uploads/2017/02/20170130-Letter-FVP-LIBE-Chair.pdf>> accessed 15 September 2022.

³¹ *ibid.*

for now, several country reports also include a specific analysis of corruption risks and related challenges that are associated with corruption practices.

The European Semester was first introduced in December 2011. The practice of economic policy coordination applied in the EU since the Maastricht Treaty has elevated to the EU level and the process of the European Semester is the following. By April, Member States must submit their Stability Plans and National Reform Programmes to the Commission in which they elaborate their actions to implement the objectives and how they would meet them. In June each year, the Commission and the Council deliver a set of recommendations to the Member States regarding the yearly priorities of their budgets and economic policy. The process was strengthened even further in 2013,³² with the incorporation of the supervision of the actual implementation in national budget plans of the commitments undertaken in the programmes submitted in April. By October each year Member States must lodge their draft budgetary laws for the following year, and the Commission examines their compatibility with recommendations produced in the previous year.³³ The process through the European Semester has given the EU institutions a more constructive role than ever before in guiding and scrutinising national economic, fiscal, and social policies.³⁴

Timmermans in his already mentioned letter suggested that the EU Commission's view was to continue the dialogue with the Member States on their anti-corruption reforms through the European Semester and issue country-specific recommendations under the European Semester scope.³⁵ This suggests that the EU Commission will take up anti-corruption-related policy matters in the context of economic policy dialogue between the Member States and EU institutions. The EU Commission's view through Timmermans letter implied that corruption would remain a key issue in several Member States, and its economic and social impact made it essential that it was addressed through EU action. The EU Commission now believes the annual dialogue with Member States on economic policies – the European Semester – is the best forum to also address issues related to corruption.

Therefore, the EU expresses reluctance in the letter, claiming that the format adopted for the 2014 EU Anti-Corruption Report is not a suitable tool. In their view, future anti-corruption reporting should be done through the European Semester process rather than the EU Anti-Corruption Report format. Clearly from Timmermans letter, one could understand that the Commission acknowledges the complexity and threatening nature of corruption, but is

³² A Maatsch, 'Effectiveness of the European Semester: Explaining Domestic Consent and Contestation' *Max Planck Institute for the Study of Societies Cologne MPIfG Discussion Paper 17/6* (2017): 1–2.

³³ J D Savage and D Howarth, (2018) 'Enforcing the European Semester: the Politics of Asymmetric Information in the Excessive Deficit and Macroeconomic Imbalance Procedures', *Journal of European Public Policy*, 25(2): 212–230.

³⁴ A Verdun and A Tovias, *Mapping European Economic Integration* (Palgrave Macmillan UK 2013).

³⁵ Transparency.eu, Timmermans' Letter (2018) <<http://transparency.eu/wp-content/uploads/2017/02/20170130-Letter-FVP-LIBE-Chair.pdf>> accessed 15 September 2022.

³⁵ *ibid*.

convinced that addressing it more efficiently in the Member States should be done through the European Semester.

The decision of the EU Commission to terminate the EU Anti-Corruption Report and instated address corruption-related policy issues through the European Semester has been unwelcomed by European scholars and civil society organisations working on corruption in the EU. Local research correspondents and experts that had worked in the preparation of the 2014 EU Anti-Corruption Report called in a joint letter that the European Commission should continue the EU Anti-Corruption Report.³⁶ They argued that the EU Anti-Corruption Report potential impact was feared by some Member States because of its nature of assessing on a regular basis and putting pressure in order to adopt measurements. According to academics, the EU Anti-Corruption Report was far from being a perfect tool and had several limitations. Nevertheless, it was the first attempt to take the issue of corruption seriously from a policy perspective and to outline common standards for all Member States and not just for candidate countries.³⁷

Furthermore, the European Commission's decision to terminate EU Anti-Corruption Report as a mechanism is viewed as a major blow to the fulfilment of Articles 67 (3) and 83 of the TFEU, according to which the EU is expected to take measures to prevent and combat crime, including by setting minimum penal standards and the objectives on fighting economic crime and corruption as prescribed by the Stockholm Programme.³⁸

In the view of Transparency International EU, the termination of the EU Anti-Corruption Report is a clear message that the Commission considers fighting corruption no longer a political priority.³⁹ Therefore, corruption is a serious problem again in some Member States. This is quite a contradiction when evaluating the scale of the problem in the many Member States, which remains formidable with the ongoing challenges to good governance, rule of law and anti-corruption reforms. Seven EU Member States, including Bulgaria, Croatia, Greece, Hungary, Italy, Romania, and Slovakia still only score about 51 points or less on the latest Transparency International Corruption Perceptions Index (CPI).⁴⁰ Furthermore, governance indicators paint a picture of stagnation or worse in a few Member States.

For example, in Hungary, the current development is going towards state capture, where the government is exploiting its power for private gains by laundering the Central Bank; redirecting European and state funds into the benefits of friends and family and systematically attacking and prosecuting anyone that might speak out against this. This

³⁶ See, 'EU commission drops anti-corruption report', EU observer, 2 February 2017 <<https://euobserver.com/eu-political/136775>> accessed 2 April 2023.

³⁷ A Hoxhaj 'The EU Anti-Corruption Report: A Reflexive Governance Approach' (Routledge 2020), 181-223.

³⁸ *ibid.*

³⁹ Transparency.eu, Timmermans' Letter (2018) <<http://transparency.eu/wp-content/uploads/2017/02/20170130-Letter-FVP-LIBE-Chair.pdf>> accessed 15 September 2022.

⁴⁰ Transparency.org, 'The 2021 Corruption Perceptions Index' (2021) <<https://www.transparency.org/en/cpi/2021>> accessed 15 September 2022.

concerns the opposition; the media; civil society and even academics if one recalls the case of the Central European University. There are strong indications from Member States such as Romania, Poland and Hungary to name a few, that citizens are looking towards the EU to rein in such problems since their government might no longer be capable or willing to sort out, which also includes touches upon corruption.

Therefore, the European Semester process might not be the most adequate replacement for the EU Anti-Corruption Report. To begin with, corruption has only been explicitly raised with a small number of countries in the last few European Semester reports. The usual suspects are Eastern and Southern Europe countries, rather than all the Member States that were examined in the 2014 EU Anti-Corruption Report. Furthermore, so far, corruption has only been addressed in respect of growth and competitiveness. Thus, they left aside any issues that have an impact on governance or on the rule of law, such as illegal political party financing.

One could say that the future process of addressing corruption through the European Semester format gives the impression that the issue is somewhat a bureaucratic exercise, to be conducted largely behind closed doors between the Commission and the Member States, rather than a deeply political exercise with the involvement of civil society, academia and other interested parties which might apply a more visible and vocal presence.

6. The EU Rule of Law Report as the new corruption monitoring mechanism

The European Commission, released for the first time its Rule of Law Report⁴¹ in 2020. It was highly expected to provide a basis for sanctioning the rule of law backsliding in some Member States such as Hungary⁴² and Poland⁴³ and others who do not adhere to the EU's shared democratic principles. The report covers four areas: the justice system; the anti-corruption framework; media freedom and other institutional checks and balances. Under this framework, there is a separate country report, specified for each Member State. Though, the report has no binding force and can serve only to name and shame. The country chapters are based upon contributions from the Member States and a variety of already available, mostly European sources. It is worth to note that these chapters are similarly structured as they were in the EU Anti-Corruption Report of 2014.

However, the part of the Report that is dedicated to the anti-corruption framework is similar to the European Semester and as such, it is a duplication of monitoring mechanisms, rather than an innovation. For example, the Rule of Law Report only offers a snapshot of the given

⁴¹ European Commission, '2020 Rule of Law Report: The rule of law situation in the European Union' COM (2020) 580 final.

⁴² European Commission, '2020 Rule of Law Report: Country Chapter on the rule of law situation in Hungary' SWD (2020) 316 final.

⁴³ European Commission, '2020 Rule of Law Report: Country Chapter on the rule of law situation in Poland' SWD (2020) 320 final.

country's corruption problems in areas related to the judicial system and does not offer much in terms of the regulation on anti-corruption policy or how a Member State might work toward reducing corruption.⁴⁴ Furthermore, the Rule of Law Report relies on the existence of national anti-corruption strategies as progress, instead of checking real developments. Such an approach was done under the EU Anti-Corruption Report of 2014 and the European Semester, as well as actively pioneered in the accession and EU enlargement and neighbourhood countries.

Therefore, the Rule of Law Report is not an added value to the overall EU anti-corruption policy, but rather a duplication of a former and existing mechanism. Furthermore, there is no reflection as to if more regulation on corruption is required, as most successful anti-corruption frameworks are not the most regulated ones. Thus, the EU must learn from its past mistakes. For example, Hungary⁴⁵ has far more extensive public accountability mechanisms than Sweden and Finland. Though, it is Sweden and Finland that are better at managing corruption.⁴⁶ Furthermore, the Rule of Law Report, when it comes to corruption, does not clearly underscore the EU's severe cross-border problems with forms of corruption, such as money laundering. Although, it is not solely the role of the EU institutions to address this issue, as the EU Anti-Corruption Report of 2014 showed. Thus, the Rule of Law Report also fails in this respect to tackle some of the cross-border issues concerning corruption.

This paper suggests that the EU should learn from the few successful countries – such as Estonia – about how the anti-corruption reforms worked, before introducing a new mechanism. Furthermore, the Rule of Law Report and European Semester are limited in scope as they both monitor corruption only in a few policy areas and this working paper suggests that the EU must consider bringing back the EU Anti-Corruption Report, as it was far more comprehensive and included a number of policy areas, from political party finances to public procurement and whistleblower protection, offering a more insightful overview of the anti-corruption shortcomings in all Member States.⁴⁷

Conclusion

The EU Member States are unlikely to accept the same definition of corruption and treat the issue similarly from a policy and legal perspective as this working paper observes. However, the European Union understands that corruption harms and undermines the values and the

⁴⁴ A Mungiu-Pippidi, (2020) 'Unresolved Questions on the EU Rule of Law Report', Carnegie Europe, available at: <<https://carnegieeurope.eu/2020/10/20/unresolved-questions-on-eu-rule-of-law-report-pub-82999>> accessed 15 September 2022.

⁴⁵ A Pirro and D Della Porta (2021) 'On Corruption and State Capture: The Struggle of Anti-Corruption Activism in Hungary', *Europe-Asia Studies*, 73:3, 433-450.

⁴⁶ B Rothstein, *Controlling Corruption: Education and the Social Contract Approach* (Oxford University Press 2021).

⁴⁷ V Abazi, (2020) 'The European Union Whistleblower Directive: A 'Game Changer' for Whistleblowing Protection?', *Industrial Law Journal*, 49(4): 640–656.

functioning of the Union, and thus it has taken several measures to address the many forms of corruption that take place both at the EU level and in Member States. Throughout the different phases that we have distinguished in this working paper, the EU anti-corruption policy has developed in response to initiatives both by international organisations or the Member States and thereby impacting the way of how the EU anti-corruption policy has developed so far. This paper views that the height of the EU anti-corruption policy ambition was in 2014 when it adopted the EU anti-corruption policy report, as it offered an insightful overview of corruption-related issues in all the Member States. By far, it has been the most inclusive EU anti-corruption monitoring mechanism to date.

The EU dropped of the EU Anti-Corruption Report in 2017, for reasons unknown, and it was a major setback to the anti-corruption policy at the EU level. This paper finds that this decision was a political one mostly pressured to avoid calling out the Member States on corruption-related issues and scandals in a biennial report. This notion is believed to have some truth as the European Commission transferred the work of the Report to the European Semester process, with a view to strengthening the economic governance policy in 2018 and later in 2020 to the EU Rule of Law Report. This decision, viewed from a policy and legal perspective, would indicate that the EU now focuses on safeguarding the EU's internal market and the judicial system, engaging with the Member States only as far as corruption affects the function of the single market. The EU Anti-Corruption Report, on the other hand, dealt with corruption-related issues that went far beyond the single market and that dimension now is lost.

In closing, this working paper views that the EU under the EU Anti-Corruption Report attempted to develop a comprehensive policy against corruption in all Member States. working jointly with them in order to achieve higher common anti-corruption standards. However, this component is missing under the European Semester and the Rule of Law Report. The paper suggests that any future progress in developing an anti-corruption policy, needs a more political commitment and second, corruption must not only be viewed as a negative side effect of the proper function of the internal market but also the impact that it has on human rights, rule of law, environmental, and democracy. Ideally, the EU would consider bringing back the EU Anti-Corruption Report as a separate anti-corruption monitoring instrument and include civil society participation, rather than relying on solely the Member States. The inclusion of the civil society would make the EU understand better the corruption trends in the Member States and thus develop more inclusive policies. Therefore, what was well begun in the EU Anti-Corruption Report should not have been abandoned.

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