



A CRITICAL APPRAISAL OF THE EU'S ANTI-CORRUPTION LEGAL CAPACITY
Emerging stronger from the Covid-19 crisis?

Author: Mihai-Razvan CORMAN

Brussels, February 2021



© Institute of European Democrats, 2020

Rue Montoyer 25

1000 Brussels

Belgium

Web: www.iedonline.eu

This Research Paper was elaborated on the basis of independent research. The opinions expressed here are those of the Contractor and do not represent the point of view of the Institute of European Democrats.

With the financial support of the European Parliament





EXECUTIVE SUMMARY

In response to the unprecedented social and economic crisis triggered by COVID-19, on 10 November 2020, the European Parliament and the Council of the EU have agreed on a historic recovery plan for Europe worth €1.8 trillion. Given the huge amounts of money involved and the absence of an accounting-related control system, the rescue package is prone to increased risks of corruption and fraud. Against this background, a critical appraisal of the EU's anti-corruption legal capacity is more relevant than prior to COVID-19.

This research paper inquires into the EU's ability to monitor and enforce compliance of Member States with anti-corruption rules during the period 2011-2020. Examining the 2014 EU Anti-Corruption Report, the European Rule of Law Mechanism and the budgetary rule of law conditionality, this study argues that the EU's more recent focus on strengthening the rule of law (a) marks the abandonment of the previously pursued comprehensive and distinct policy against corruption, (b) operationalises anti-corruption in a fragmentary and superficial manner and (c) is ill-fitted to tackle the outstanding complex and multi-faceted corruption-specific issues across the EU in the context of COVID-19. It demonstrates that, in contrast to the EU Anti-Corruption Report, the Rule of Law Report does not provide a full picture of systemic corruption issues across the EU, leaves out crucial areas that have been affected most by the misappropriation of EU funds and suffers from severe methodological flaws. This research paper shows that the Regulation on a general regime of conditionality for the protection of the Union budget only has a limited scope of application and deals with anti-corruption in a minimalistic way.

The research paper suggests that the EU's 'rule of law track' is not able to find an answer to the question of how to proceed when Member States deliberately seek to establish corrupt autocratic regimes and are not interested in strengthening the rule of law. Therefore, the EU's most recent approach does not present a viable solution to current rule of law and corruption backsliding across the EU. It rather represents a regress in the EU's policy against corruption. This research paper recommends some policy actions that would enhance the 'rule of law track' and proposes a reconsideration of the EU's current approach towards anti-corruption.



Short bio

Mihai-Razvan Corman is Project Manager at the Moldovan-German Forum in Chisinau, PhD Researcher at Ghent University and Research Fellow at the Institut für Europäische Politik in Berlin. He worked as an Independent Consultant for the Council of Europe, European Commission and Bertelsmann Stiftung and as Research Associate for various international law firms dealing with public procurement law, including Hengeler Mueller Rechtsanwälte and KPMG Law in Berlin. Corman is an expert in both the EU's internal and external anti-corruption policy towards Member States and neighbouring non-EU countries in the areas of public procurement, policy against fraud for the protection of the Union's financial interests and political party funding. On these subjects he has published numerous articles, studies and research papers. Mihai-Razvan Corman studied law at Humboldt University in Berlin and obtained a Master's Degree at the College of Europe (Natolin).



Table of contents

Table of acronyms	6
Introduction	7
1. ‘Corruption’ vs. ‘the rule of law’ – why an anti-corruption-focused policy framework matters	9
2. The 2014 Anti-Corruption Report – towards a comprehensive anti-corruption policy	11
2.1 Genesis of a far-reaching change in EU anti-corruption policy	11
2.2 Special features of the EU Anti-Corruption Report	11
2.3 Giving up on the EU anti-corruption monitoring mechanism	12
3. ‘Strengthening the rule of law’ – abandoning the comprehensive approach towards corruption	14
3.1 The Commission blueprint for action	14
3.2 The budgetary rule of law conditionality	15
3.3 Limitations of tackling corruption via the ‘rule of law track’	17
3.3.1 2020 rule of law reports – superficial approach towards anti-corruption, methodological flaws and structural challenges	17
3.3.2 Rule of law conditionality – limited scope of application, insufficient coverage of ‘corruption’ and perpetuation of old patterns	19
Conclusions	21
Policy recommendations	22
Bibliography	24



Table of acronyms

CVM: Cooperation and Verification Mechanism

EU: European Union

GRECO: Group of States against Corruption

MFF: Multiannual financial framework

NGO: Non-governmental Organisation

OECD: Organisation for Economic Co-operation and Development

OSCE: Organization for Security and Co-operation in Europe

TEU: Treaty of the European Union

TFEU: Treaty on the Functioning of the European Union

TI: Transparency International



Introduction

“As countries face undeniable emergencies, concentration of power, derogation of rights and freedoms, and as large amounts of money are infused into the economy to alleviate the crisis corruption risks should not be underestimated” (GRECO, 2020:p.1). The warning of the Council of Europe could not be more relevant with regard to the European Union (EU) and its Member States. In response to the unprecedented social and economic crisis triggered by COVID-19, on 10 November 2020, the European Parliament and the Council of the EU have agreed on a recovery plan for Europe worth €1.8 trillion – the largest stimulus package ever adopted (EC, 2020a). The multiannual financial framework (MFF) for 2021-2027 and NextGenerationEU¹ aim at mitigating the unparalleled effects of the pandemic and rebuilding a post-COVID-19, united Europe. At the same time, these anti-crisis instruments face considerable risks. The huge amounts of money involved, the plurality of funding sources and the complex allocation criteria could favour increased corruption and fraud (Vitrey & Lumet, 2020). In a hearing before the Committee on Budgetary Control of the European Parliament from 11 January 2021, the Commission stated that it does not have statistical data regarding the impact of corruption on EU funds (EP, 2021:p.18,para.17). The absence of an accounting-related control system in the NextGenerationEU bears particular risks with regard to Member States that have evidentially misappropriated EU funds in the past. Bulgaria, for example, where hundreds of thousands of citizens have been protesting against deeply rooted and endemic corruption since early July 2020, will receive €29 billion (Europost, 21/07/2020).

Against this background, a critical appraisal of the EU's anti-corruption toolbox towards Member States is more relevant than prior to COVID-19. According to the Eurobarometer perception survey from June 2020, 71% of EU citizens think that corruption is widespread and 42% believe that the level of corruption has increased in their country (EC, 2020b:pp.20,41). Notwithstanding higher risks for corruption in the Union, an analysis of the EU's toolbox against corruption is currently missing in the scholarly debate. After the EU had pursued a comprehensive anti-corruption policy since 1997 (EC, 1997), in 2018, it adopted a near exclusive focus on strengthening the rule of law (EC, 2018; ECa, 2019; ECb, 2019). This shift was followed by the academic debate (Kochenov, 2019; Pech et al., 2019; Van Elsuwege & Gremmelpré, 2020). Emphasising the overarching character of the rule of law and its overwhelming importance for a functioning internal market and common legal space where EU law is effectively applied, the predominant view propounded by the European Commission, practitioners and scholarly contributions has been that strengthening the rule of law is a magic wand against a variety of issues, including corruption (EC, 2019b:p.1,3(Fn.15),9-10; IED, 2019:pp.1-2). Consequentially, anti-corruption-centred contributions receded into the background. This is a noteworthy observation considering recently increased risks of corruption across the EU caused by the COVID-19 crisis, which threaten to seriously diminish the effective implementation of the historic rescue plan.

Given the near absence of contemporary scholarly works that address the consequences of the EU's shift from a corruption-focused approach to tackling corruption as part of the overriding objective of strengthening the rule of law, this research paper inquires into the current state of the EU's anti-corruption legal capacity. The latter is defined in this paper as the legal instruments that enable the EU to monitor and enforce compliance with anti-corruption rules. This research paper

¹ A temporary financial instrument amounting to €750 billion that will allow the European Commission to raise funds on the capital market for a limited period of three years: https://ec.europa.eu/info/strategy/recovery-plan-europe_en.



argues that (a) with the discontinuation of the 2014 Anti-Corruption Report, the EU has ceased to pursue a comprehensive, distinct and stand-alone anti-corruption policy, (b) the EU's recent focus on strengthening the rule of law is ill-fitted to tackle the outstanding complex and multi-faceted corruption-specific issues across the EU, as evidenced by the case of Bulgaria, and (c) the EU is in dire need of a corruption-centred approach. Moreover, it claims that 'anti-corruption' and the 'rule of law' are conceptually distinct notions. Whereas the lack of the rule of law suggests the existence of a much broader set of issues, corruption is one specific type of rule of law dysfunction that needs a tailor-made response. The study demonstrates that the EU's 'rule of law track' operationalises anti-corruption in a minimalistic way and therefore represents a regress in the EU's policy against corruption.

The research scope of this study encompasses the 2014 EU Anti-Corruption Report, which marked a far-reaching change in EU anti-corruption policy, and the EU's most recent instruments in this area – the European Rule of Law Mechanism and the budgetary rule of law conditionality. The period of investigation (2011 – 2020) is sub-divided into two sub-periods, allowing for a legal comparison. The first period ranges from 2011, the year the Commission announced the establishment of the Anti-Corruption Report, to 2017, when it was discontinued. The second period ranges from 2018, the year the Commission proposed the budgetary rule of law conditionality, to 2020, when it finalised the first Rule of Law Cycle within the framework of the Rule of Law Mechanism and the EU passed the Regulation on a general regime of conditionality for the protection of the Union budget. The research paper is structured as follows: the first section offers some reflections on the conceptual differences between 'corruption' and the 'rule of law' and provides some arguments in favour of a distinct and stand-alone anti-corruption policy framework. The subsequent section examines the innovative elements of the 2014 Anti-Corruption Report and outlines the circumstances that led to its discontinuation. The third section focuses on the features of the more recent 'rule of law track' and, by comparing them to the Anti-Corruption Report, explores its shortcomings as regards tackling corruption in the Member States. The research paper concludes with a synthesis of the EU's current anti-corruption legal capacity and offers some policy recommendations on what actions the EU and its Member States should undertake to improve the 'rule of law track', ensure a more effective implementation of the rescue package and prepare the Union for future crises.



1. ‘Corruption’ vs. ‘the rule of law’ – why an anti-corruption-focused policy framework matters

Drawing on two communications by the Commission in 1997 and 2003 respectively (EC 1997; EC 2003), corruption as a policy area has begun featuring prominently on the EU’s agenda since the 1990s. At that time, a growing awareness across EU institutions and Member States of the negative political, social and economic effects of corruption emerged (EP, 1996; Council, 2003; European Council, 2010). While there was a consensus on the need to tackle corruption in general, significant dissonances between the EU and Member States regarding the definition and acceptable levels of ‘corruption’ existed (Szarek-Mason, 2010:pp.10-11). The broadness and multi-facetedness of ‘corruption’ (Council of Europe, 1996:p.14), EU countries’ differing legal traditions and their perception of anti-corruption policy as belonging to the realm of national sovereignty rights (Council, 2004:pp.5-6), posed significant challenges for the EU to formulate a precise definition of corruption.

Recognising that “*there is no single uniform definition of all the constituent elements of corruption*” (EC, 1997:p.1), the Commission eventually chose to embrace two conceptualisations. For the purpose of punitive measures, which for the purpose of legal certainty require unambiguous and precise language, the EU conceived of corruption in a narrow way as ‘active’ and ‘passive’ bribery in the public and private sector (Council, 2003). For preventive measures, however, the Commission chose a broader socio-economic perspective of corruption. It adopted (EC, 2003:p.6) the most widely spread definition of corruption in the academic debate as “*the abuse of power for private gain*” (Rose-Ackerman, 1999:p.91; McCoy & Heckel 2001; Collier, 2002; Holmes, 2015:p.2, Philp, 2015), which covers practices that are legal but stand against “*concepts such as integrity, transparency, accountability and good governance*” (EC, 2006:p.6).

Scholarly contributions had derived this definition from the principle of impartiality, which was deemed breached “*when a holder of public office violates the ideally non-discriminatory principles underlining the practise of government*” (Mikkelsen, 2013:p.359). This broad conceptualisation of corruption and, in particular, the nexus between corruption and good governance, which refers to “*the state’s ability to serve the citizens*” and “*the rules, processes, and behaviour by which interests are articulated, resources are managed, and power is exercised in society*” (EP, 2016:p.19), have raised questions regarding the conceptual delineation between ‘corruption’ and ‘the rule of law’.

Most commonly defined as the capacity of the state to ensure that “*all persons and authorities [...], whether public or private*” are “*bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts*” (Bingham, 2010:p.26), the rule of law is, similarly to ‘corruption’, “*a deep and multilayered concept in the process of articulation*” (Kochenov, 2008:p.108). Notwithstanding the overarching character of the rule of law and its crucial importance for the EU legal order (Court of Justice, C-294/83, *Les Verts*, § 23), both scholars engaged in elaborating efficient anti-corruption policy instruments and those studying the modalities of enhancing the rule of law have advocated in favour of treating both endeavors separately.

Nicolescu-Waggoner (2016) argued that ‘corruption’ and the ‘rule of law’ are two conceptually and relationally distinct notions. Whereas the lack of the rule of law suggests the existence of a much broader set of issues, including discrimination, an inefficient justice and administrative



system and deficiencies in the protection of freedoms, ‘the abuse of power for private gain’ is one specific type of rule of law dysfunction (Nicolescu-Waggoner, 2016:pp.19-46).

Moreover, scholarly contributions have found that abuses of power do not necessarily imply the inability of the state to ensure the rule of law. Mungiu-Pippidi and Dadašov (2017) suggested that many countries with robust rule of law systems are even more likely to have higher corruption levels than countries with weaker legal systems. This observation is supported by empirical evidence which indicates that the causal chain runs from corruption to the rule of law (Herzfelda and Weiss, 2003). As pointed out by the Council of Europe that has been setting pan-European anti-corruption standards for decades: *“corruption has a snowball effect: it undermines the rule of law and the lack of rule of law is a fertile ground for corruption”* (Council of Europe, 2013:p.13).

Cross-country analyses have, furthermore, provided evidence of the fact that anti-corruption policy instruments are particularly effective if they are tailored to tackle corruption-specific behaviour. Corruption-focused external government monitoring (Di Tella and Schargrotsky, 2003; Olken, 2005), external audits (Bobonis, Cámara-Fuertes & Schwabe, 2016) and effective penalties (Armantier & Boly, 2011) have lowered bribe acceptance and increased rule compliance. As a result, scholars have emphasised the need for *“corruption-type specific”* policies that *“distinguish among variations in corruption”* (Jancsics, 2019:p.12) and warned against *“one-size-fits-all solutions”* (2019:p.12).

In the same vein, arguing that the *“Union has an interest in formulating a coherent strategy on corruption both within and outside its borders”* (EC, 1997:p.1b), in 2003, the Commission declared the fight against corruption an *“absolute priority”* (EC, 2003:p.13). In an unprecedented and far-reaching manner, it proposed a common approach in a variety of areas. These included public procurement, money-laundering, bribery of EU officials, the funding of political parties, codes of conduct in the public service and private sector, conflicts of interest, political appointments and the selection of civil servants, whistleblower protection, media pluralism and the set-up of specialised anti-corruption bodies to prosecute and punish corrupt acts (EC, 1997; EC, 2003). The ambitious goal was to reduce corruption *“at all levels in a coherent way within the EU institutions, in Member States and outside the EU, i.e. political corruption, corrupt activities committed by and collusively with organised crime groups, private-to-private corruption and so-called petty corruption”* (EC, 2003:p.5).

In what follows, the next sections examine the materialisation of this ambitious goal in practice: the EU’s anti-corruption legal capacity between 2011 and 2020, including the innovative elements of the 2014 Anti-Corruption Report and the EU’s shift towards strengthening the rule of law.



2. The 2014 Anti-Corruption Report – towards a comprehensive anti-corruption policy

The Commission's comprehensive and corruption-focused approach culminated in the announcement of the EU Anti-Corruption Report in 2011 (EC, 2011), the first, EU-wide, uniform, and comprehensive monitoring mechanism. This section explores the EU anti-corruption legal capacity between 2011 and 2017 and examines the (2.1) genesis, (2.2) special features and (2.3) the circumstances leading to the discontinuation of the Anti-Corruption Report.

2.1 Genesis of a far-reaching change in EU anti-corruption policy

Against the backdrop of Member States' lacking political will in the area of anti-corruption and, as a result, poor implementation and enforcement of EU and international legal instruments, a reporting instrument at Union level was increasingly perceived as an indispensable element of an overarching EU anti-corruption policy (EC, 2003:p.9; EP, 2003:p.9:15). This became particularly evident in the context of the successful monitoring mechanism of the Group of States against Corruption (GRECO), a body of the Council of Europe. Since 1999, GRECO has been regularly monitoring the capacity of its member countries to fight corruption through a dynamic process of mutual evaluation and peer pressure. It had become the most comprehensive anti-corruption monitoring mechanism in Europe, being praised by the Commission as contributing *“to ensuring minimum standards in a pan-European legal area”* (EC, 2011:p.5).

After calls from the Commission and the European Parliament for a monitoring mechanism at EU level remained unanswered, the Stockholm Programme (Council, 2009), which established key priorities for the area of freedom, security and justice (AFSJ) for 2010-2014, brought fresh wind into the debate. In an unprecedentedly clear manner, the European Council mandated the Commission to *“develop indicators ... and common criteria, to measure efforts in the fight against corruption, in particular in the areas of the acquis (public procurement, financial control, etc.) and to develop a comprehensive anti-corruption policy”* (European Council, 2010:p.23).

2.2 Special features of the EU Anti-Corruption Report

Following this political mandate by the Member States, in 2014, the Commission published the Anti-Corruption Report (EC, 2014a).² The document assessed, for the first time, all Member States' anti-corruption efforts, addressed corruption as a cross-cutting issue, shed light on problems specific to each Member State in various areas and identified corruption-related trends across the EU. While it identified frontrunners and backbenchers among Member States, the Report stated, in unequivocal terms, that corruption is a phenomenon affecting all EU countries (EC, 2014a:p.1-2). Moreover, the review mechanism stressed the importance for continued action on both national and EU level and highlighted the public procurement sector, party funding at central or regional level and the healthcare sector as the areas most vulnerable to corruption (EC, 2014a:pp.7-20). Emphasising that there are no *“standardised solutions”* to corruption (EC, 2014a:p.40), the Report issued country-specific recommendations for each EU country.

² See a sample of the anti-corruption country reports at: https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en (consulted on 05.04.2019).



The Report was flanked by three additional innovative features. An experience-sharing programme had the goal to provide a framework, in which Member States and local NGOs could identify corruption-related shortcomings, develop best-practices and engage in peer learning (EC, 2011:p.8). The national contact points established in each EU country were supposed to facilitate the information exchange on anti-corruption policy between national authorities, enhance the implementation of relevant laws and policies and strengthen the dialogue between Member States, local NGOs and other anti-corruption stakeholders. Finally, to measure changes in the perceptions of corruption among EU citizens and mirror trends at EU level (EC, 2011:p.7), the Anti-Corruption Report was accompanied by an Eurobarometer survey, which revealed that EU-wide a staggering 76% believed that corruption is widespread in their own country (EC, 2014b:p.6).

The innovative character of the 2014 Report was, moreover, evidenced against the backdrop of two other EU initiatives of significant importance – the Cooperation and Verification Mechanism (CVM) and the Commission communication on “*A new EU Framework to strengthen the Rule of Law*” (EC, 2014c). The CVM was installed in 2006, after Bulgaria and Romania had become EU members. It extended the Commission’s much broader pre-accession competences, enabling it to conduct a periodic and rigorous assessment of anti-corruption progress in the two countries. The scope of application of the CVM, however, remained restrained to Bulgaria and Romania, in spite of studies indicating a significant reduction of corruption costs if the mechanism were applied to the older Member States (EPRS, 2016:pp.103-106). The Anti-Corruption Report, thus, was a revolutionary legal instrument in so far as *all* Member States were subjected to the Commission’s anti-corruption review. Moreover, the 2014 Report represented a paradigm change in the sense that anti-corruption policy ceased to be an area that exclusively pertained to the realm of national sovereignty rights. Through the Anti-Corruption Report the policy area of anti-corruption was permeated by the supranational level of the EU.

The Anti-Corruption Report also reflected that the Commission conceptualised ‘anti-corruption’ and the ‘rule of law’ as two separate policy areas each in their own right. Shortly after the publication of the Report, on 11.03.2014, the Commission issued a communication, where it outlined the main elements of a new framework to protect the rule of law from “*a systematic threat*” (EC, 2014c:p.5) in Member States. The simultaneous publication of both policy documents demonstrated that the Commission pursued a two-track approach and viewed tackling corruption on one hand and strengthening the rule of law on the other hand as two distinct and equally important policy objectives. While the Anti-Corruption Report focused on corruption in country-specific key areas, according to the severity and impact of the corruption-related challenges and the scale of potential spillovers for a wider range of policies (EC, 2014a:p.4), the rule of law framework more broadly aimed at safeguarding the rule of law as a common value of the Union, including the separation of powers, the independence of the judiciary and the system of judicial review (EC, 2014c:p.7).

2.3 Giving up on the EU anti-corruption monitoring mechanism

The Commission initially foresaw periodic snapshots of corruption issues in EU countries every two years (EC, 2011). This regular assessment was supposed to serve as a starting ground for future policy actions aimed at approximating national criminal laws (EC, 2014a:p.5). However, the Commission’s ambition to establish a periodic monitoring mechanism with the goal to stimulate Member States’ political will in the area of anti-corruption did not materialise. After it had publicly committed to publishing the nearly completed follow-up report in the months



succeeding October 2016 (TI, 2017a), at the beginning of 2017, the Commission unexpectedly expressed doubts, whether the Anti-Corruption Report was ‘the right vehicle’ (EC, 2017a), through which to tackle corruption in EU countries. In a letter to the European Parliament, Frans Timmermans, First Vice-President of the European Commission and Commissioner for Better Regulation, Interinstitutional Relations, the Rule of Law and the Charter of Fundamental Rights, argued that EU legislative action in targeted areas and, most importantly, the European semester process were better suited to advance the work on anti-corruption (EC, 2017a).

The Commission’s decision to refrain from publishing the second anti-corruption report sparked wide criticism from the European Parliament, think tanks, academia and civil society organisations (The Greens, 2017; Heywood, Kubiciel, de Sousa & Slingerland, 2017; TI, 2017a; Ibid., 2017b). In particular, the Commission’s reference to the European Semester could not convince. Launched in 2010 as a response to the Member States’ uncoordinated actions in the aftermath of the 2007/08 financial crisis (EC, 2010:p.11), the primary goal of the European Semester is to ensure sound public finances, avoid excessive government debt, prevent excessive macroeconomic imbalances in the EU financial support and promote jobs, growth and investment. Corruption is only dealt with as an impediment to growth and competitiveness (Derruine&Tiedemann, 2011:p.37), while consequences for democratic governance and the rule of law are faded out. Moreover, the 2014 European Semester cycle only addressed corruption issues in 11 Member States. In contrast, the Anti-Corruption Report monitored corruption in all Member States as an overarching challenge cutting across various sectors. The Commission’s unsubstantiated rationale for the abandonment of the anti-corruption monitoring and Member States’ political interference during the elaboration of the 2014 Report and the discontinuation of the follow-up report, which has been observed by scholars, NGOs and political actors (Heywood, Kubiciel, de Sousa & Slingerland, 2017; Spörl, 2017; TI, 2017a; Ibid., 2017b), can be correlated to the considerable potential impact of the Anti-Corruption Report.

According to Art. 83 of the Treaty of the European Union (TFEU), the EU has the legal competence to approximate substantive criminal laws by establishing minimum rules concerning the definition of criminal offences and sanctions in areas of particularly serious crime with a cross-border dimension. As it is recognised as a ‘euro-crime’, Art. 83 also applies to corruption. The harmonisation obligation for Member States thus established can be enforced by the Court of Justice of the European Union via the infringement procedure (Art. 258-260 TFEU). However, the EU can only issue directives pursuant to Art. 83 TFEU if it is proved that the approximation of criminal laws and regulations of the Member States “*is essential to ensure the effective implementation of a Union policy in an area which already has been subject to harmonisation measures*” (Art. 83(2) TFEU). Considering that corruption continued to be endemic and widespread across the EU also after the publication of the 2014 Report (EC, 2017b:p.17), a second Anti-Corruption Report would have likely justified EU legislative action in the area of anti-corruption both in legal and political terms. According to Kubiciel (2013:pp.214-215), the Commission would have been in the position to even meet the strict requirements set up by the German Federal Constitutional Court, and demonstrably establish “*that a serious deficit as regards enforcement actually exists and that it can only be remedied by a threat of sanction*” (BVerfG, 2009:point 362). At the same time, the public attention generated by a follow-up report would have made it politically very difficult for the Member States to ignore the EU’s anti-corruption initiatives (Kubiciel, 2013:p.218-219), factually rendering the non-binding recommendations of the Commission legally binding upon the national governments. As a result of the politically sensitive implications of a second monitoring report for Member States



governments, it is indeed plausible that the Anti-Corruption Report's "*potential impact was [...] feared by some Member States*" (Heywood, Kubiciel, de Sousa & Slingerland, 2017).

3. 'Strengthening the rule of law' – abandoning the comprehensive approach towards corruption

Following the discontinuation of the Anti-Corruption Report, 2018 marks the year, when the EU switched to focusing on the politically less sensitive objective of 'strengthening the rule of law'. The Commission's more recent 'rule of law track' rests on two pillars: (3.1) the Rule of Law Cycle and (3.2) the rule of law budgetary conditionality. Comparing the rule of law track with the Anti-Corruption Report and referring to the case of corruption backsliding in Bulgaria, this section shows that both pillars only have limited instruments to tackle corruption in the Member States (3.3).

3.1 The Commission blueprint for action

Against the backdrop of the dysfunctional separation of powers, weakened constitutional courts, undermined independence of the judicial process and severe corruption backsliding in several EU countries (Council, 2018a; Ash, 2019), in April 2019, the Commission published a communication on "*further strengthening the rule of law within the Union*" (EC, 2019a). The initiative picked up on the communication from 2014 (EC, 2014c) and sought to find new ways to strengthen the rule of law, which then candidate for President of the Commission, Ursula von der Leyen, coined as "*a shared responsibility for all EU institutions and all Member States*" (Von der Leyen, 2019:p.14). Following public consultations with different stakeholders across the EU, in July 2019, the Commission issued a blueprint for action (EC, 2019b) that laid out several proposals for the short and medium term to enhance the EU's 'rule of law toolbox'.

The communications of April and July 2019 reflect the Commission's prioritisation of the rule of law track. Both initiatives stress the overarching character of the rule of law as an EU value. Moreover, they emphasise the overwhelming importance of the rule of law for democracy and human rights, solidarity, cohesion, the functioning of the internal market and the area of freedom, security and justice, where EU law is effectively applied and the necessary trust for mutual recognition of national decisions ensured. The documents also show that, after the discontinuation of the Anti-Corruption Report, the Commission conceptualised strengthening the rule of law as a silver bullet for a whole range of other issues in the EU. This becomes particularly evident with regard to corruption. Whereas the Anti-Corruption Report defined anti-corruption as a policy area in its own right, the communication of July 2019 redefined tackling corruption as an implicit objective of protecting the rule of law. The blueprint for action contains multiple references to the correlation between a weak rule of law framework on one hand, and the occurrence of corruption on the other hand (EC, 2019b:pp.2,8). Most importantly, contrary to the communication of 2014 (EC, 2014c:p.4), which does not mention 'corruption' even once, the Commission included "*penalties for corruption*" among the "*key principles of the rule of law*" (EC, 2019b:p.3Fn.15).

The Commission blueprint for action of July 2019 contains three elements: 'promotion', 'prevention' and 'response'. After having advocated for an "*anti-corruption culture*" in 2003 (EC, 2003:p. 5), the Commission's new approach foresees promoting a "*rule of law culture*" (EC, 2019b:p.5). In reaction to the Eurobarometer survey, which revealed that over half of EU citizens do not feel sufficiently informed about the rule of law (EC, 2019c:p.10), the Commission aims to



overcome the lack of information at professional levels and within the general public at large. To this end, the Commission wants to intensify the dialogue with the civil society and academia, empower actors interested to promote the rule of law and enhance the cooperation with the Council of Europe, the OSCE and the OECD (EC, 2019b:pp.5-9).

The centrepiece of the Commission blueprint is the Rule of Law Review Cycle – a new EU monitoring mechanism that is supposed to provide annual assessments of rule of law developments in Member States³. The country-specific reports of the Rule of Law Review Cycle have a broad scope covering a whole range of issues. These include potentially negative national developments regarding law-making, effective judicial protection, independence of the courts, separation of powers, Member States' anti-corruption framework, media pluralism and freedom and elections (EC, 2019b:pp.9-10). Similar to the 2014 Report, the new monitoring foresees a mutual exchange of information between Member States. This dialogue on rule of law related topics, including the fight against corruption, is supposed to be enhanced through a network of national contact points (EC, 2019b:pp.10-11). The Commission accomplished the first review cycle, consisting of 27 Rule of Law Reports in September 2020. In a synthesising communication on the *“rule of law situation in the European Union”*, it concluded that while *“Member States’ constitutional, legal and political systems generally reflect high rule of law standards [...] there are also serious challenges, cases where the resilience of rule of law safeguards is being tested and where shortcomings become more evident”* (EC, 2020c:p.7).

The third element of the Commission blueprint for action is an effective, common mechanism that is able to respond to rule of law breaches at EU level and is triggered only once national mechanisms fail (EC, 2019b:pp.13-16). However, the Commission does not bring any new response instruments to the fore. It rather wants to make use of the existing repertoire of primary and secondary law instruments, including the infringement procedure (Art. 258-260 TFEU), the last-resort ‘nuclear option’ of Art. 7 TEU, the EU Justice Scoreboard, the CVM towards Romania and the Rule of Law Framework and the Rule of Law Dialogue (EC, 2014c). At the same time, the Commission aims to initiate infringement proceedings more strategically and introduce clearer timelines in Art. 7 TEU to enable EU institutions to adopt a more coherent and concerted approach (EC, 2019b:p.14).

3.2 The budgetary rule of law conditionality

The budgetary rule of law conditionality – the second pillar of the EU rule of law track – is the most innovative legal instrument of the Commission ‘rule of law track’. So far, ‘conditionality’, defined as ‘the use [...] of political, diplomatic and economic instruments and policies in order to influence the internal and external policies of a third state’ (Lannon, Inglis & Haenebalcke, 2001:p.97), has been one of the EU’s main mechanisms to ensure that third countries’ development converges with EU values. Tying EU funds to the protection of the rule of law and applying the ‘carrots and sticks’ approach in the internal EU context is unprecedented.

Rooted in a Commission proposal from 2018, the budgetary rule of law conditionality was conceptualised as part of the overriding EU policy against fraud for the protection of the Union financial interests. Its main objective is to ensure sound financial management and effective EU funding (EC, 2018a:p.1). In the context of rising nationalist populism and autocratic regimes in the EU, this means, first and foremost, preventing that EU money is used to finance national

³ See: https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters_en.



autocrats (Balkan Insight, 21/06/2019) and corruption, particularly in Member States that heavily benefit from it (New York Times, 03/11/2019). For this purpose, the mechanism essentially foresees that EU funds can be withheld from Member States that do not respect the rule of law. An agreement on the concrete design of the mechanism was inextricably tied to negotiations on the MFF for 2021-2027 (EC, 2018b). Consequentially, it has been fiercely debated at EU level for years (Council, 2018b; EP, 2019; Council 2020; Dimitrovs & Droste, 2020; Euractiv News Report⁴).

After countless rounds of negotiations, on 16 December 2020, the Council and the European Parliament have adopted Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget (EP&Council, 2020) (hereinafter ‘Regulation’) that applies as of 1 January 2021. Its primary aim is to protect the EU financial interests through the protection of the rule of law (Art. 5(3)). Pursuant to the Regulation, the Commission has the competence to identify breaches of the principles of the rule of law in Member States following a qualitative assessment (Art. 6(3),(6)). Indicative elements of such breaches are specified under Art. 3 and include endangering the independence of judiciary; failing to prevent, correct and sanction arbitrary or unlawful decisions by public authorities, withholding financial and human resources affecting their proper functioning or failing to ensure the absence of conflicts of interests; limiting the availability and effectiveness of legal remedies or limiting the effective investigation, prosecution or sanctioning of breaches of law. To enter the scope of application of the Regulation, the Commission must establish “*that breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the EU budget or the protection of the financial interests of the Union in a sufficiently direct way*” (Art. 4(1)). Rule of law breaches must cause, *inter alia*, the prevention, sanctioning, investigation and public prosecution of fraud, corruption and other breaches of Union law relating to the implementation of the Union budget or the protection of the financial interests of the Union; the proper functioning of Member States authorities implementing the Union budget or carrying out financial control, monitoring and audit; the effective and timely cooperation with the European Anti-fraud Office and the European Public Prosecutor’s Office. If, after hearing the Member State concerned (Art. 6(5) and (7)), the Commission establishes that the conditions of Art. 4 are fulfilled and that remedial measures do not adequately address the breaches of the principles of the rule of law, it shall submit to the Council a proposal on appropriate measures (Art. 6(9)), which may include the full or partial suspension of EU financial assistance (Art. 5). The Council, then, has up to three months to decide on the Commission proposal (Art. 6(10)), which is adopted if the Council acts by a qualified majority (Art. 6(11)). Significantly, the Regulation foresees in recital 26 that in exceptional cases where the Member State concerned considers that there are serious breaches of the principles of objectivity, non-discrimination and equal treatment, it can request an ‘emergency break’, under which the Commission proposal will be discussed at a European Council summit. Moreover, the Regulation foresees that after maximum one year after the adoption of measures by the Council, the Commission shall reassess the situation in the Member State concerned and if the conditions of Art. 4 are no longer fulfilled, submit to the Council a proposal for a decision lifting the adopted measures (Art. 7(2)).

Another document of outstanding significance at the time of writing are the European Council conclusions on the draft Regulation of 11 December 2020 (European Council, 2020). Ending the deadlock in the negotiations on the historic MFF and COVID-19 rescue package (SPIEGEL,

⁴ See the archive of Euractiv on the topic of ‘the rule of law’: <https://www.euractiv.com/topics/rule-of-law-mechanism/>.



10/12/2020), the German Presidency has brokered a compromise that is likely to influence the material and temporal scope of application and the reading of the Regulation, given that the European Council provides political guidelines for the EU's agenda. Three points that go beyond the text of the draft Regulation deserve mentioning. According to point 2 lit. k) of the Council conclusions, the Regulation will apply only in relation to budgetary commitments starting under the new MFF for 2021-2027 and the rescue package. Thus, future project payments under the current MFF are exempted from the material scope of application of the Regulation. Second, point 2 lit. c) of the Council conclusions states that the Commission will not propose measures under the Regulation until the European Court of Justice decides on an action for annulment (Art. 263 TFEU). As Hungary and Poland have announced to submit such action for annulment (Reuters, 11/12/2020), the practical application of the Regulation could be significantly delayed. Even if the Commission announced that it will follow up all cases retrospectively (Frankfurter Allgemeine, 11/12/2020), a judgement by the European Court of Justice could take months, if not years (Pohjankoski, 2021). Finally, point 2 lit. j) emphasises that in cases where a Member State makes use of the 'emergency break', the *"European Council will strive to formulate a common position on the matter"*. Considering the unanimity voting in the European Council, which is composed by Heads of Member States, the Council conclusions considerably increase the weight of the 'emergency break' by giving the procedure operationality.

3.3 Limitations of tackling corruption via the 'rule of law track'

In contrast to the 2014 Anti-Corruption Report, the Rule of Law Cycle and the budgetary rule of law conditionality reveal significant limitations as regards tackling corruption. As a result, the EU 'rule of law track' marks a regress in anti-corruption policy and the Commission's abandonment of a comprehensive approach towards corruption.

3.3.1 2020 rule of law reports – superficial approach towards anti-corruption, methodological flaws and structural challenges

Whereas the 2014 Anti-Corruption exclusively dealt with corruption, the 2020 reports of the Rule of Law Cycle monitor a much broader range of issues. This extensive scope takes the focus off of the intricacies of the multi-faceted corruption issues. Consequentially, crucial subjects that had been included in 2014 were either dealt with in a superficial manner or completely left untouched by the Commission's most recent monitoring. Whereas the Anti-Corruption Report on Bulgaria, for example, assessed the situation with regard to illegal party funding (EC, 2014d:pp.4-5), which poses serious challenges for public trust, the legitimacy of the electoral outcome and the functioning of democracy in the country (Euractiv, 05/09/2019), the 2020 country report ignored this issue. Another subject of significant importance left out by the more recent report, but well documented in the 2014 Report (EC, 2014d:pp.10-12), is public procurement – a sector that Union-wide has been affected most by the misappropriation of EU funds (European Court of Auditors, 2019). In particular, the Commission report overlooked frequent conflicts of interest, kickbacks, bribery, favouritism and diversion of public funds in Bulgaria throughout the procurement cycle (GAN, 2020). This is all the more astonishing since the EU disposes of precise data in this area.



Since July 2019, the European Single Market scoreboard⁵ has been providing so-called red flag procurement indicators that trace corruption in the EU in real time.

Most importantly, the Commission failed to adequately address the pressing issue regarding the accountability and integrity of elected officials. Since 9 July 2020, hundreds of thousands of Bulgarians have been protesting against widespread, high-level corruption, collusion between the mafia and the state and ‘state capture’ (New York Times, 19/07/2020). These anti-corruption mass protests are directed, first and foremost against Boyko Borissov’s government and the Public Prosecutor’s Office. Following its long silence over the events in Bulgaria, the Commission even failed to spotlight the major corruption scandals, which evidence that the current regime is a “*mafia dictatorship*” (Le Monde, 13/10/2020) that has captured the Bulgarian state (Politico, 09/09/2020). These include, among others, the raid against the Presidency of Bulgaria that triggered the protests in the first place, money laundering investigations, protection rackets and leaked recordings indicating political interference in the judicial process (Vassileva, 2020a). Finally, whereas the 2014 report concluded with a set of “*future steps*”, whose fulfilment was supposed to be monitored in a follow-up report, the 2020 report missed the opportunity to provide much-needed country-specific policy solutions and set the ground for future comparability.

Besides adopting a superficial approach towards anti-corruption, the 2020 rule of law reports also reveal methodological flaws. Contrary to the Anti-Corruption Report, which placed a particular focus on non-perception-based corruption indicators (EC, 2014a:pp.39-41), presented country facts pointing at actual corruption problems and demonstrated Member States’ lack of compliance with EU and international anti-corruption rules, the rule of law monitoring fails to provide the full picture of systematic breaches of the rule of law and anti-corruption rules. Instead, the reports merely analyse national legal and institutional frameworks and frequently refer to public opinion polls on corruption, such as the Corruption Perception Index of Transparency International and the Eurobarometer surveys. The mere existence of legal or institutional frameworks, however, is devoid of substantive significance regarding the actual prevalence and extent of corruption. Also, while perception-based indicators allow to identify general trends, they provide unreliable data on corruption levels across longer periods of time (Treisman, 2007; Mungiu-Pippidi, 2020).

Question marks have been raised, furthermore, over the Commission’s selection of sources of information for the reports. It is striking, for instance, that in the 2020 report on Bulgaria, the Commission assessed the notoriously corrupt Public Prosecutor’s Office to be a trusted source and believed its statement that failing anti-corruption efforts are the result of lacking financial resources rather than its own chronic reluctance to tackle corruption (Vassileva, 2020b). The Commission’s *naïveté* reflected in the latter example directly leads to a fundamental problem that the EU is faced with. To what extent can increased dialogue and enhanced cooperation – the basic features of the Rule of Law Cycle – counteract national authorities “*deliberately seeking to undermine the rule of law with the aim of deceitfully establishing electoral autocracies*” (Pech, Kochenov and Grabowska-Moroz, 2019), which in some Member States has already resulted in the “*progressive solidification of factually one-party states*” (Pech and Kochenov, 2019)? In other words, how effective can installing a house alarm system be when the house has already been robbed?

⁵ https://ec.europa.eu/internal_market/scoreboard/.



3.3.2 Rule of law conditionality – limited scope of application, insufficient coverage of ‘corruption’ and perpetuation of old patterns

The most obvious limitation of the rule of law budgetary conditionality as regards tackling corruption is that its scope of application is narrow. Only rule of law breaches that cause (*conditio sine qua non*) negative effects for the sound financial management of the EU budget and the financial interests of the Union fall under Regulation 2020/2092. The Regulation, thus, foresees a high burden of proof for the Commission. Moreover, not all effects are covered by the Regulation, but merely the ones that are stipulated in the definitive list of Art. 4(2). This means, in turn, that severe breaches of the rule of law that do not affect or risk affecting the Union’s financial interests or that have internal implications in the Member States concerned cannot be tied to the suspension of EU funds. These may include rigged national procurement procedures, laundering of money originating from outside the EU (Balkan Insight, 21/06/2019), the destruction of all institutional checks and balances and ‘state capture’ (Pech and Kochenov, 2019).

Moreover, while the list of rule of law breaches in Art. 3 of the Regulation is indicative and rather general, it refers to cases that, even if given a broad interpretation, do not cover the broad definition of corruption as “*the abuse of power for private gain*”. Although the budgetary rule of law conditionality has been conceived as a preventive instrument, it adopts the narrow and bribery-focused criminal law understanding of ‘corruption’ of other EU laws⁶. Accordingly, ‘active corruption’ is defined as “*the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties*”. ‘Passive corruption’ is understood as “*the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties*”.

In addition, the rule of law breaches foreseen in Art. 3, including endangering the independence of the judiciary, unlawful decisions by public authorities, limiting the availability and effectiveness of legal remedies, lack of the implementation of judgements and the effective investigation, prosecution or sanctioning of breaches of law, only reflect a small part of the pressing issues the EU is faced with (Council of Europe, 2018; Transparency International, 2019). The challenges that risk aggravating the already devastating effects of COVID-19 – public procurement corruption in the health care sector, bribery in medical-related services, preferential treatment in delivery of health care services and cronyism, nepotism and favouritism in the recruitment and management of the health care workforce (GRECO, 2020) – are not mentioned in the Regulation.

The EU’s minimalistic conceptualisation of corruption is aggravated by the methodological flaws of the EU’s new conditionality mechanism. The Regulation conceptualises ‘corruption’ as a consequence of rule of law breaches (Art. 4(2) lit. c) and e)), which is questionable for two reasons. First, it is precisely the crux of the matter that corrupt behaviour is not always illegal. Second, if the Regulation claims to have a preventive character then it should have also covered perfectly legal but nonetheless reprehensible acts of corruption. Another evidence for the inaccuracies in the methodology are the misconceptions about causes and effects of corruption. The independence of

⁶ EU Anti-Corruption Convention (Art. 2(1) and 3(1)), Directive 2017/1371 against fraud to the Union's financial interests (Art. 4(2)) and the Regulation 2018/1046 on financial rules (Art. 136(1) lit. d (ii)).



the judiciary is not seen as a desirable outcome of lower levels of corruption, but the other way around (Art. 3 lit. a)).

Finally, the budgetary conditionality perpetuates old patterns in EU anti-corruption policy. Already the discontinuation of the 2014 EU Anti-Corruption Report revealed the low degree of consistency between EU and Member States policies – a consequence of the latter's perception of anti-corruption as an area of innate state sovereignty rights where EU interference is hardly tolerated. The 'emergency break' foreseen in the Regulation widely opens the door for these vertical policy coherence issues. By granting Member States the means to challenge the objectivity of the Commission's assessment of rule of law breaches, which as "*guardian of the EU treaties*" (Art. 17 TEU) is already bound to impartiality, the Regulation is setting the fox to guard the henhouse. The deficient architecture of EU anti-corruption policy, thus, remains unaltered.



Conclusions

This research paper examined the EU's anti-corruption legal capacity during the period 2011-2020. By exploring the EU's policy against corruption across two sub-periods, it shed light on the legal instruments that enable the EU to monitor and enforce Member States' compliance with anti-corruption rules and offered a critical appraisal of the EU's change of course from pursuing a corruption-centred approach to focusing on the politically less sensitive objective of 'strengthening the rule of law' following vertical coherence issues. This study provided concrete evidence that substantiates the argument that there is a gap between the EU's broad conceptualization of 'corruption' and the narrow operationalisation of anti-corruption in its internal policy.

In contrast to the EU Anti-Corruption Report, the Commission's 'rule of law track' marks a regression in EU anti-corruption policy. Whereas between 2011 and 2017 the EU adopted a comprehensive and distinct policy against corruption in its own right, in the subsequent period 2018-2020, the way the EU conceived of anti-corruption was superficial, fragmentary and distorted. The Regulation on a general regime of conditionality for the protection of the Union budget only applies to rule of law breaches that affect the EU's financial interests. Although it has been conceived as a preventive instrument, the Regulation adopts a narrow and bribery-focused criminal law understanding of 'corruption'. The breaches covered by the Regulation, moreover, merely reflect a small part of the pressing issues the EU is faced with as a consequence of the COVID-19 crisis. The first Rule of Law Cycle that was supposed to provide an overview of systematic rule of law breaches across the EU has either merely touched upon or entirely ignored crucial areas, such as public procurement – the area most affected by the misappropriation of EU funds – and the anti-corruption mass-protests in Bulgaria.

Both of the more recent rule of law instruments – the Rule of Law Cycle and the budgetary rule of law conditionality – suffer from severe methodological flaws. Instead of spotlighting objective country facts, the rule of law reports focused on Member States' legal and institutional frameworks and perception-based corruption indicators, which, however, fail to provide compelling information on the prevalence and extent of corruption on the ground. Moreover, the Regulation on a general regime of conditionality for the protection of the Union budget reflects the EU's misconception about causes and effects of corruption. Contrary to the Regulation, corrupt behaviour does not always lead to rule of law breaches and lower levels of corruption contribute to the independence of the judiciary, not the other way around.

Most importantly, the 'rule of law track' has not been able to find an answer to the question of how to proceed when Member States deliberately seek to establish corrupt autocratic regimes and are not interested in strengthening the rule of law. After people have been marching against high-level corruption all over Bulgaria for almost half a year now, the government in Sofia has presented an empty action plan that merely pays lip service to the Commission rule of law report (Vassileva, 2020b). If history repeats itself, the Commission will accept this charade as proof of Bulgaria's compliance with EU requirements just like it did in the framework of the CVM (Vassileva, 2019). The rule of law reports and the budgetary conditionality, thus, consolidate the deficient architecture of EU anti-corruption policy. Member States that wish to sabotage the Union's anti-corruption initiatives or misuse intensified dialogue and cooperation – the key features of the rule of law toolbox – as a smokescreen to continue undermining the rule of law or misappropriating EU funds will not be hindered in the future.



Policy recommendations

As the EU steels itself against the COVID-19 crisis with an unprecedented stimulus package, whose effects risk to be threatened by corruption and fraud, the EU ‘rule of law track’ needs to be strengthened. Therefore, this paper recommends the following policy actions:

- The EU should adopt a more **corruption-focused** and **crosscutting** approach towards anti-corruption. The scope of the Rule of Law Cycle must cover the broad, multi-faceted and complex issues of corruption. The Commission should, therefore, monitor **country-specific key issues**, according to the severity and impact of the corruption-related challenges and the scale of potential spillovers for a wider range of policies. The reports should, first and foremost, cover corruption in **public procurement**;
- The Commission should base its reports on a varied **mix of sources of information**. In particular, it must not take information provided Member States governments at face value;
- Including unequivocal and fact-based **country analysis** in the Rule of Law Reports that state clearly which country suffers from what rule of law backsliding and corruption issues;
- In order to provide a full picture of rule of law breaches and corruption issues, the Commission should develop new and include already available **corruption indicators/statistics** in the reports that demonstrate Member States’ lack of compliance with EU and international anti-corruption rules. References to legal and institutional frameworks, perception indicators and barometer surveys are insufficient;
- In this sense, the Commission should include the **European Single Market scoreboard**, which provides reliable red flag procurement indicators, and **ARACHNE**, a data mining tool that allows identifying fraud, conflicts of interest and other irregularities in projects that apply for EU funds, into the Rule of Law Reports. The findings therein could then be used by the Commission for its assessment under the budgetary rule of law conditionality;
- The next Rule of Law Cycle should issue **recommendations** for follow-up whose compliance by Member States can be measured against concrete benchmarks and assessed in the third Rule of Law Cycle. This approach, modelled after the GRECO monitoring cycles, would allow for **regular comparability** and enable an assessment of anti-corruption progress over longer periods of time.

Going beyond the ‘rule of law track’, the EU needs to revise its approach towards anti-corruption. This refers to the following aspects:

- The EU should **fully exhaust its legal competences** and adopt a **more comprehensive approach towards anti-corruption**. This means, first and foremost, departing from a strictly criminal law and bribery-focused perspective on corruption. The EU should aim at adopting preventive measures which cover corrupt acts that are not necessarily illegal as it has done, for example, in the area of the internal market with the Directives on public procurement. This includes aspects of transparency, accountability, integrity and non-discrimination;



- The European Parliament and the Council should make the use of **data-mining and risk-scoring tools** (such as ARACHNE), which help to detect corruption, fraud and other irregularities with regard to EU-funded projects, beneficiaries, contracts and contractors, **mandatory for all Member States** (EP, 2021:pp-14-15);
- The Commission should develop a tool that provides **statistical certified data** on the **impact of corruption on EU funds** for each Member State. It is striking that such a tool does not exist;
- The Commission should strive **against political interference** by the Member States and put an end to the outdated conception that anti-corruption policy is an area of innate state sovereignty rights;
- The **EU needs to see things as they are**: Member States governments **deliberately** breach the rule of law and commit acts of fraud and corruption and they misuse existing fora at EU level to **wilfully deceit** about their intentions. Therefore, increased dialogue and enhanced cooperation – the basic features of the Rule of Law Cycle – will not bring lasting solutions in the long run. While the Rule of Law Cycle and budgetary conditionality are important pillars, the EU needs to promote an **‘anti-corruption culture’ among EU citizens**.



Bibliography

- Alemanno, A. & Chamon, M. (2020) To Save the Rule of Law you Must Apparently Break It. *Verfassungsblog*. Available from: <https://verfassungsblog.de/to-save-the-rule-of-law-you-must-apparently-break-it/> [Accessed 26th January 2021].
- Armantier, O. & Boly, A. (2011) A Controlled Field Experiment on Corruption. *European Economic Review*. 55(8), 1072–82.
- Ash, T.G. (2019) *Time for a New Liberation? Central Europe had its revolution in 1989. What it needs now is a great reform*. Available from: <https://www.nybooks.com/articles/2019/10/24/time-for-new-liberation/> [Accessed 26th January 2021].
- Bárd, P. (2020) Diagnostic Autopsy: The Commission's 2020 Annual Rule of Law Report. *RECONNECT*. Available from: <https://reconnect-europe.eu/blog/diagnostic-autopsy-the-commissions-2020-annual-rule-of-law-report/> [Accessed 26th January 2021].
- Bingham, T. (2010) *The Rule of Law*. Penguin Books, London.
- Bobonis, G. J., Cámara-Fuertes, L.R. & Schwabe, R. (2016) Monitoring Corruptible Politicians. *American Economic Review*. 106(8), 2371–2405.
- Bundesverfassungsgericht (BVerfG, 2009) 2 BvE 2/08, 'Lisbon' decision, E 123. Available in English from: https://www.cvce.eu/en/obj/decision_by_the_german_constitutional_court_on_the_treaty_of_lisbon_30_june_2009-en-8facbcac-b236-47c8-9db3-e2199d825cfb.html [Accessed 18th January 2021].
- Collier, M.W. (2002) Explaining Corruption: An Institutional Choice Approach. *Crime, Law and Social Change*. 38 (1), 1-32.
- Council of Europe (2018) *Council of Europe warns against reversal of progress in fight against corruption*. Ref. DC 066(2018). Available from: https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=09000016807c117d [Accessed 18th January 2021].
- Council of Europe (2013) *Corruption as a threat to the Rule of Law*. AS/Jur(2013) 19. Available at: <http://assembly.coe.int/CommitteeDocs/2013/NYFfinalpressfjdoc1e.pdf> [Accessed 18th January 2021].
- Council of Europe (1996) *Programme of Action Against Corruption. Multidisciplinary Group on Corruption*.
- Council of the European Union (Council, 2020) *Multiannual Financial Framework (MFF) 2021-2027 and Recovery Package - Regulation of the European Parliament and of the Council on a general regime of conditionality for the protection of the Union budget*. 2018/0136(COD) Available from: <https://www.consilium.europa.eu/media/45842/regulation-of-the-european-parliament-and-of-the-council-on-a-general-regime-of-conditionality-for-the-protection-of-the-union-budget.pdf> [Accessed 18th January 2021].
- Council of the European Union (Council, 2018a) *Rule of Law in Poland / Article 7 (1) TEU reasoned proposal - European Commission contribution for the hearing of Poland on 11 December 2018*. Doc-Nr. 15197/18. Available from:



<https://data.consilium.europa.eu/doc/document/ST-15197-2018-INIT/en/pdf> [Accessed 18th January 2021].

Council of the European Union (Council, 2018b) *Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States*. Opinion of the Legal Service, 2018/0136(COD).

Council of the European Union (Council, 2009) *The Stockholm Programme – An open and secure Europe serving and protecting the citizens*. Doc-Nr. 17024/09. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/the_stockholm_programme_-_an_open_and_secure_europe_en_0.pdf [Accessed 18th January 2021].

Council of the European Union (Council, 2004) *The Hague Programme: strengthening freedom, security and justice in the European Union*. Doc. 16054/04, JAI 559. Available at: <https://data.consilium.europa.eu/doc/document/ST-16054-2004-INIT/en/pdf> [Accessed 18th January 2021].

Council of the European Union (Council, 2003) *Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector*. OJ, L 192. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003F0568&from=en> [Accessed 18th January 2021].

Court of Justice (1986) *Les Verts*. C-294/83. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61983CJ0294&from=EN> [Accessed 18th January 2021].

Derruine, O. & Tiedemann, A. (2011) *The first European Semester and its contribution to the EU2020 Strategy*, Green New Deal. Available from: <http://www.jeanlambertmep.org.uk/wp-content/uploads/2014/04/EUROPEAN-SEMESTER-STUDY-oct2010.pdf> [Accessed 26th January 2021].

Di Tella, R. & Schargrodsky E. (2003) The Role of Wages and Auditing during a Crackdown on Corruption in the City of Buenos Aires. *Journal of Law and Economics*. 46(1)269–92.

Dimitrovs, A. (2020) Rule of law-conditionality as interpreted by EU leaders. *EU Law Live*. Available from: <https://eulawlive.com/op-ed-rule-of-law-conditionality-as-interpreted-by-eu-leaders-by-aleksejs-dimitrovs/> [Accessed 26th January 2021].

Dimitrovs, A. & Droste, H. (2020) Conditionality Mechanism: What's In It? *Verfassungsblog*. Available from: <https://verfassungsblog.de/conditionality-mechanism-whats-in-it/> [Accessed 26th January 2021].

European Commission (EC, 2020a) *Recovery Plan for Europe*. Available from: https://ec.europa.eu/info/strategy/recovery-plan-europe_en [Accessed 18th January 2021].

European Commission (EC, 2020b) *Special Eurobarometer 502 'Corruption'*. Available at: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2247> [Accessed 18th January 2021].

European Commission (EC, 2020c) *2020 Rule of Law Report. The rule of law situation in the European Union*. COM(2020) 580 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0580&from=EN> [Accessed 18th January 2021].

European Commission (EC, 2019a) *Further strengthening the Rule of Law within the Union. State of play and possible next steps*. COM(2019) 163 final. Available at:



https://ec.europa.eu/info/sites/info/files/rule_of_law_communication_en.pdf [Accessed 18th January 2021].

European Commission (EC, 2019b) *Strengthening the rule of law within the Union. A blueprint for action*. COM(2019) 343 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0343&from=EN> [Accessed 18th January 2021].

European Commission (EC, 2019c) *Special Eurobarometer 489. Rule of Law in the European Union*. Available from: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instrument/s/special/surveyky/2235> [Accessed 18th January 2021].

European Commission (EC, 2018a) *Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States*. COM(2018) 324 final. Available from: <https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-324-F1-EN-MAIN-PART-1.PDF> [Accessed 18th January 2021].

European Commission (EC, 2018b) *A new, modern Multiannual Financial Framework for a European Union that delivers efficiently on its priorities post-2020. The European Commission's contribution to the Informal Leaders' meeting on 23 February 2018*. COM(2018) 98 final. Available from: https://ec.europa.eu/commission/sites/beta-political/files/communication-new-modern-multiannual-financial-framework_en.pdf [Accessed 18th January 2021].

European Commission (EC, 2017a) *Letter from the European Commission to the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament*. ARES (2017)455202. Available at: <http://transparency.eu/wp-content/uploads/2017/02/20170130-Letter-FVP-LIBE-Chair.pdf> [Accessed 18th January 2021].

European Commission (EC, 2017b) *Special Eurobarometer 470. Corruption*. Available at: http://data.europa.eu/euodp/data/dataset/S2176_88_2_470_ENG [Accessed 18th January 2021].

European Commission (EC, 2016) *Memo of the Commission's meeting on anti-corruption policies of 16.12.2016*. Ref. Ares(2017)1569514-23/03/2017. Available from: <https://www.asktheeu.org/en/request/4055/response/13131/attach/html/3/Document%201%20Ares%202017%201569514%20report%20meeting%20december.Redacted.pdf.html> [Accessed 18th January 2021].

European Commission (EC, 2014a) *Report from the Commission to the Council and the European Parliament. EU Anti-Corruption Report*. COM(2014) 38 final. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf [Accessed 18th January 2021].

European Commission (EC, 2014b) *Special Eurobarometer 397. Corruption*. Available at: https://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_397_en.pdf [Accessed 18th January 2021].

European Commission (EC, 2014c) *A new EU framework to strengthen the rule of law*. COM/2014/0158 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0158&from=EN> [Accessed 18th January 2021].

European Commission (EC, 2014d) *ANNEX BULGARIA to the EU Anti-Corruption Report*. COM(2014) 38 final. Available at: <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what->



[we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_bulgaria_chapter_en.pdf](#) [Accessed 18th January 2021].

European Commission (EC, 2011) *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee. Fighting Corruption in the EU*. COM(2011) 308 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0308&from=EN> [Accessed 18th January 2021].

European Commission (EC, 2010) *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions. Enhancing economic policy coordination for stability, growth and jobs – Tools for stronger EU economic governance*. COM(2010) 367 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0367&qid=1540983745817&from=EN> [Accessed 18th January 2021].

European Commission (EC, 2003) *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy Against Corruption*. COM(2003) 317 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003DC0317&from=EN> [Accessed 18th January 2021].

European Commission (EC, 1997) *Communication from the Commission to the Council and the European Parliament on a Union Policy Against Corruption*. COM (97) 192 final. Available from: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1997:0192:FIN:EN:PDF> [Accessed 18th January 2021].

European Council (2020) *European Council meeting (10 and 11 December 2020) – Conclusions*. EUCO 22/20. Available at: <https://data.consilium.europa.eu/doc/document/ST-22-2020-INIT/en/pdf> [Accessed 18th January 2021].

European Council (2010) *The Stockholm Programme — An open and secure Europe serving and protecting citizens*. OJ, C 115/01. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XG0504\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XG0504(01)&from=EN) [Accessed 18th January 2021].

European Court of Auditors (2019) *Fighting fraud in EU spending: action needed*. Special Report, No. 1, 2019. Available from: https://www.eca.europa.eu/Lists/ECADocuments/SR19_01/SR_FRAUD_RISKS_EN.pdf [Accessed 18th January 2021].

European Parliament, Committee on Budgetary Control (EP, 2021) *Discharge to the Commission. Written questions to Commissioner Hahn. Hearing on 11 January 2021*. Available from: https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/CONT/DV/2021/01-11/DischargeQuestionnaire_Hahn_Commission_EN.pdf [Accessed 18th January 2021].

European Parliament (EP, 2019) *Position of the European Parliament adopted at first reading on 4 April 2019 with a view to the adoption of Regulation (EU) .../... of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States*. EP-PE_TC1-COD(2018)0136. Available at: https://www.europarl.europa.eu/doceo/document/TC1-COD-2018-0136_EN.pdf [Accessed 18th January 2021].



- European Parliament (EP, 2016) *Good Governance in EU External Relations: What role for development policy in a changing international context?* Available from: <http://statewatch.org/news/2016/sep/ep-study-eu-external.pdf> [Accessed 18th January 2021].
- European Parliament (EP, 2003) *Report on the Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee – On a Comprehensive EU Policy Against Corruption (COM(2003) 317– 2003/2154(INI)), A5–0367/2003, PE 329.915.* Available from: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A5-2003-0367+0+DOC+PDF+V0//EN> [Accessed 18th January 2021].
- European Parliament (EP, 1996) *Resolution on Combating Corruption in Europe.* OJ, C 017, P. 0443, Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:51995IP0314&from=EN> [Accessed 18th January 2021].
- European Parliament and Council of the European Union (EP&Council, 2020) *Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.* OJ, L 433 I/1. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R2092&qid=1609948122543&from=EN> [Accessed 18th January 2021].
- European Parliamentary Research Service (EPRS, 2016) *The cost of Non-Europe in the area of organized crime and corruption. Annex II – Corruption.* Available from: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579319/EPRS_STU\(2016\)579319_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/579319/EPRS_STU(2016)579319_EN.pdf) [Accessed 18th January 2021].
- GAN Risk and Compliance Portal (GAN 2020) *Bulgaria Corruption Report.* Available at: <https://www.ganintegrity.com/portal/country-profiles/bulgaria/> [Accessed 18th January 2021].
- Gateva, E. (2013) Post-accession conditionality – translating benchmarks into political pressure? *East European Politics.* 29 (4), 420-442.
- Group of States against Corruption (GRECO, 2020) *Corruption Risks and Useful Legal References in the context of COVID-19.* Available from: <http://statewatch.org/news/2016/sep/ep-study-eu-external.pdf> [Accessed 18th January 2021].
- Herzfelda, T. & Weiss, C. (2003) Corruption and Legal (In) effectiveness: An Empirical Investigation. *European Journal of Political Economy.* 19(3), 621–32.
- Heywood, P., Kubiciel, M., de Sousa, L. & Slingerland, W. (2017) *European scholars call the European Commission to continue the Anti- Corruption Report.* Available from: <http://www.corruptie.org/scholars-call-eu-ec-to-continue-anti-corruption-report/> [Accessed 18th January 2021].
- Holmes, L. (2015) *Corruption. A Very Short Introduction.* Oxford University Press, Oxford.
- Institute of European Democrats (IED, 2019) *Conclusions of the Conference “The rule of law: a shared value for citizens in Europe”.* Available from: <https://www.iedonline.eu/download/2019/IED-Bratislava-Conclusions-Shared-Value-for-Citizens-in-Europe.pdf> [Accessed 18th January 2021].
- Jancsics, D. (2019) Corruption as Resource Transfer: An Interdisciplinary Synthesis. *Public Administration Review.* 1-15.



- Kochenov, D. (2019) Elephants in the Room: The European Commission's 2019 Communication on the Rule of Law. *Hague Journal of the Rule of Law*. 11 (2-3), 423-438.
- Kochenov, D. (2008) *EU enlargement and the failure of conditionality: Pre-accession Conditionality in the Fields of Democracy and the Rule of Law*. Kluwer Law International, The Hague.
- Kubiciel, M. (2013) Der EU-Anti-Corruption Report: Ein neuer Weg zu einer kohärenten Präventionspolitik. *Onlinezeitschrift für Höchststrichterliche Rechtsprechung zum Strafrecht (HRRS)*. 6 (2), 213-219.
- Lannon, E., Inglis, K.M. & Haenebalcke, T. (2001) *The many faces of EU conditionality in Pan-Euro-Mediterranean relations*, in: M. Maresceau & E. Lannon (ed.), *The EU's Enlargement and Mediterranean Strategies: a Comparative Analysis*. Palgrave & Basingstoke, New York, 97-138.
- McCoy J.L. & Heckel, H. (2001) The Emergence of a Global Anti-Corruption Norm. *International Politics*. 38 (1), 65-90.
- Mikkelsen, K.S. (2013) In murky waters: a disentangling of corruption and related concepts. *Crime Law and Social Change*. 60(4), 357-374.
- Mungiu-Pippidi, A. (2020) The EU Rule of Law Report: Unresolved Questions and a Proposal, in: European Research Centre for Anti-Corruption and state-building. Available from: <https://www.againstcorruption.eu/articles/the-eu-rule-of-law-report-unresolved-questions-and-a-proposal/> [Accessed 26th January 2021].
- Mungiu-Pippidi, A. & Dadašov, R. (2017) When Do Anticorruption Laws Matter? The Evidence on Public Integrity Enabling Contexts. *Crime Law and Social Change*, 68(4), 387–402.
- Nicolescu-Waggoner, C. (2016) *No Rule of Law, No Democracy: Conflicts of Interest, Corruption, and Elections as Democratic Deficits*, State University of New York Press, Albany.
- Olken, B. (2005) Monitoring Corruption: Evidence from a Field Experiment in Indonesia. *National Bureau of Economic Research*. Working Paper 11753. Available from: <https://www.nber.org/papers/w11753> [Accessed 26th January 2021].
- Pech, L. & Kochenov, D. (2019) Strengthening the Rule of Law Within the European Union: Diagnoses, Recommendations, and What to Avoid *RECONNECT — Reconciling Europe with its Citizens through Democracy and Rule of Law*. Available from: <https://reconnect-europe.eu/wp-content/uploads/2019/06/RECONNECT-policy-brief-Pech-Kochenov-2019June-publish.pdf> [Accessed 18th January 2021].
- Pech, L., Kochenov, D., Grabowska-Moroz, B. & Grogan, J. (2019) The Commission's Rule of Law Blueprint for Action: A Missed Opportunity to Fully Confront Legal Hooliganism. *Verfassungsblog*. Available from: <https://verfassungsblog.de/the-commissions-rule-of-law-blueprint-for-action-a-missed-opportunity-to-fully-confront-legal-hooliganism/> [Accessed 14th November 2020].
- Philp, M. (2015) *The Definition of Political Corruption*, in: P.M. Heywood (ed.), *Routledge Handbook of Political Corruption*. Routledge, London, 2015, 17-29.
- Pohjankoski, P. (2021) New Year's Predictions on Rule of Law Litigation. The Conditionality Regulation at the Court of Justice of the European Union. *Verfassungsblog*. Available from: <https://verfassungsblog.de/new-years-predictions-on-rule-of-law-litigation/> [Accessed 14th January 2021].



- Rose-Ackerman, S. (1999) *Corruption and Government: Causes, Consequences and Reform*. Cambridge University Press, Cambridge.
- Scheppele, K.L., Pech, L. & Platon, S. (2020) Compromising the Rule of Law while Compromising on the Rule of Law. *Verfassungsblog*. Available from: <https://verfassungsblog.de/compromising-the-rule-of-law-while-compromising-on-the-rule-of-law/> [Accessed 26th January 2021].
- Spörl, C. (2017) Heimlich begraben. *Legal Tribune Online*. Available from: <https://www.lto.de/recht/hintergruende/h/eu-kommission-schafft-anti-korruptionsbericht-ab-heimlich-begraben/2/> [Accessed 26th January 2021].
- Szarek-Mason, P. (2010) *The European Union's Fight Against Corruption. The Evolving Policy Towards Member States and Candidate Countries*. Cambridge University Press, Cambridge.
- The Greens, European Free Alliance in the European Parliament (The Greens, 2017) *Commission's decision to withdraw Anti-Corruption Report Widely Criticised*. Available at: <https://www.greens-efa.eu/en/article/news/commissions-decision-to-withdraw-anti-corruption-report-widely-criticised/> [Accessed 18th January 2021].
- Transparency International (TI, 2019) *Western Europe and EU: stagnating anti-corruption efforts and weakening democratic institutions*. Available from: <https://www.transparency.org/news/feature/cpi2018-western-europe-eu-regional-analysis> [Accessed 18th January 2021].
- Transparency International (TI, 2017a) *Commission quietly shelves anti-corruption commitments while 100,000s protest corruption in Romania*. Available from: <https://transparency.eu/ac-report-shelved/> [Accessed 26th January 2021].
- Transparency International (TI, 2017b) *Letter to Frans Timmermans signed by 56 civil society organisations*. Available from: http://transparency.eu/wp-content/uploads/2017/03/2017-03-21-Final-Timmermans_60anniversary-FINAL1.pdf [Accessed 18th January 2021].
- Treisman, D. (2007) What Have We Learned About the Causes of Corruption from Ten Years of Cross-National Empirical Research? *Annual Review of Political Science*. 10, 211-244.
- Van Elsuwege, P. & Gremmelprez, F. (2020) Protecting the Rule of Law in the EU Legal Order: A Constitutional Role for the Court of Justice. *European Constitutional Law Review*. 16 (1), 8-32.
- Vassileva, R. (2020a) Bulgaria: will Borissov's government survive this summer? Available from: <https://neweasterneurope.eu/2020/07/13/bulgaria-will-borissovs-government-survive-this-summer/> [Accessed 14th January 2021].
- Vassileva, R. (2020b) Borissov's Latest Plan to Avoid True Reforms. On Bad Habits, the CVM, and the New Rule of Law Mechanism. *Verfassungsblog*. Available from: <https://verfassungsblog.de/borissovs-latest-plan-to-avoid-true-reforms/> [Accessed 18th January 2021].
- Vassileva, R. (2019) So Why Don't We Just Call the Whole Rule of Law Thing Off, Then? On Tomatoes, Tomahtoes, and Bulgaria's Cooperation and Verification Mechanism. *Verfassungsblog*. Available from: <https://verfassungsblog.de/so-why-dont-we-just-call-the-whole-rule-of-law-thing-off-then/> [Accessed 18th January 2021].



Venice Commission (2016) *Rule of Law Checklist*. Study-No. 711/2013. Available from: https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf [Accessed 18th January 2021].

Vitrey, A., & Lumet, S. (2020) Multi-annual financial framework and Next Generation EU, Review of an unprecedented, tumultuous European budgetary chapter. *Fondation Robert Schuman*. Available from: <https://www.robert-schuman.eu/en/european-issues/0575-multi-annual-financial-framework-and-next-generation-eu-review-of-an-unprecedented-tumultuous> [Accessed 26th January 2021].

Von der Leyen, U. (2019) A Union that strives for more. My agenda for Europe. Political Guidelines for the next European Commission 2019-2024. Available from: https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf [Accessed 26th January 2021].