

The Impact of the European Commission's Rule of Law Report in Monitoring the Prevention and Fight against Corruption



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Article

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ABSTRACT

This article discusses the European Commission's role in preventing and fighting corruption by means of its annual Rule of Law Report. The authors present the anti-corruption pillar of the Report, in which the EU Member States' frameworks in preventing and fighting corruption are regularly assessed, and which outlines the Commission's recommendations to all Member States in this area. In addition, the article describes broader synergies that exist in conjunction with other policy initiatives and tools, such as the new EU network against corruption, the Conditionality Regulation, and the Recovery and Resilience Plans.

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I. Introductory Remarks: The Annual Rule of Law Report

The Rule of Law Report is one of the main initiatives put forward by European Commission President *Ursula von der Leyen* when she took up office in 2019. Since its first edition in 2020, it has become a major tool for safeguarding the rule of law across the EU.¹ The Rule of Law Report is a preventive tool, identifying both positive and negative trends and key developments in this area in the EU Member States. It is part of the European Rule of Law Mechanism that advances an annual dialogue on the rule of law between the Commission, the Council, the European Parliament, EU Member States (national governments, but also national parliaments), and other stakeholders such as independent institutions, associations, civil society and academia. The report has four pillars. Next to the justice system, media pluralism, and other institutional issues related to checks and balances, it covers the anti-corruption framework. Hence, the report has been particularly useful in enhancing the Commission's anti-corruption policy.

Traditionally, anti-corruption policy at the EU level has focused on criminal law. Art. 83(1) of the Treaty on the Functioning of the European Union (TFEU) designates corruption as a "euro-crime", namely a particularly serious crime with a cross-border dimension, meaning that the EU may adopt minimum rules concerning the definition of criminal offences and sanctions in this area under certain conditions. In May 2023, based *inter alia* on this article,² the European Commission presented a new proposal to combat corruption by means of criminal law. With this proposal, the Commission aims at modernising the current EU legal framework on corruption and addressing all related offences in one legal instrument against corruption at the EU level.³

Since its inception, the Rule of Law Report immediately expanded the EU's anti-corruption toolbox. It provides a comprehensive picture of the anti-corruption policies in EU Member States. A comprehensive approach to fighting corruption requires a combination of preventive and repressive measures, including a robust legal and institutional framework, sufficient administrative and judicial capacity, effective investigations and prosecutions, and a clear political will to enforce the anti-corruption framework. Reliable and effective integrity measures to minimise the space for corruption are also needed. The Rule of Law Report analyses these issues by taking an in-depth look at three main areas that are crucial for a solid anti-corruption policy: the institutional and strategic framework, the prevention of corruption, and the repression of corruption (see II.).

The monitoring of the anti-corruption framework remains crucial. Data from the 2023 Eurobarometer surveys⁴ show that corruption remains a serious concern for citizens and businesses in the EU. Seven in 10 Europeans (70%) believe that corruption is widespread in their country, and four in 10 Europeans (45%) consider the level of corruption in their country to have increased. More than half of all citizens (60%) think that their government's efforts to combat corruption are not effective. In addition, most European companies (65%) consider the problem of corruption to be widespread in their country, and half (50%) think it unlikely that corrupt people or businesses in their country would be caught or even reported to the police or prosecutors.

II. The Anti-Corruption Pillar of the Rule of Law Report

1. Legal, institutional, and strategic framework

The importance of maintaining effective and coordinated anti-corruption policies is recognised in international law. National anti-corruption strategies can ensure that countries follow a comprehensive, coherent,

and integrated approach, allowing anti-corruption provisions to be mainstreamed in all relevant policy sectors. Most EU Member States currently have national anti-corruption strategies in place.

In specific terms, the Rule of Law Report looks at the content of these strategies: are they comprehensive and holistic? It also analyses whether they cover both the prevention and repression of corruption: are they targeting all relevant sectors and specific groups where needed? The existence of an action plan accompanied by adequate resources and enforceable measures is also a key indicator. The Commission also verifies whether the strategy and action plans are being adequately implemented on the ground.

An effective response to corruption depends on a robust legal and administrative anti-corruption framework and on strong and independent institutions to enforce the rules. As such, the analysis of institutional frameworks focuses on the existence of specialised bodies in relation to the prevention and repression of corruption; while not mandatory under the international framework, they can play a key role in combating corruption. The report analyses whether the responsible institutions have made significant changes in the reporting period and whether they have sufficient resources (both in terms of material and personal resources). It assesses whether the national authorities are cooperating effectively with other EU countries and the European Public Prosecutor's Office (EPPO) and the European Anti-Fraud Office (OLAF) on corruption cases. These are important indicators of a properly functioning institutional framework in the fight against corruption.

As far as legislation is concerned, the report analyses possible gaps in criminal legislation or the preventative framework. It also reviews ongoing legislative changes that could impact the overall fight against corruption.

2. Prevention

Prevention helps to create a culture of integrity, in which corruption and impunity are not tolerated. It mitigates the need for criminal repression and has broader benefits, e.g., in increasing public trust in institutions. Measures that ensure transparency and integrity, such as rules on asset and interest declarations, can help detect and even prevent actual corruption. Conversely, shortcomings in integrity, including undisclosed conflicts of interest, can lead to corrupt activities if left unaddressed. In all these areas, the prevailing international and European standards, as set out by the UN Convention against Corruption (UNCAC), the OECD, and the Council of Europe, are key guidelines for the Commission's analysis in the Rule of Law Report.

Concretely, effective anti-corruption approaches build on measures to enhance transparency, ethics, and integrity as well as regulating conflicts of interest, lobbying, and "revolving doors". The Rule of Law Report analyses whether a Member State has in place a system to prevent and solve conflicts of interests, i.e., situations in which a public official has a private or professional interest that could interfere with the impartial and objective performance of his/her duties. It also monitors whether government officials and Members of Parliament are subject to specific integrity rules, such as codes of conduct and rules on preventing conflicts of interest and incompatibilities with other activities.

Lobbying activities – while a legitimate form of political participation – need to be accompanied by strong requirements for transparency and integrity in order to ensure accountability and inclusiveness in decision-making, in line with international standards. Rules on "revolving doors" or the movement of (top-level) officials between the public and the private sectors, can help further solidify the preventative anti-corruption framework.

Asset and interest declarations by public officials foster public sector transparency and accountability and are important tools to promote integrity and prevent corruption (they are also looked at in the Report). Rules are in place in most Member States to ensure that public sector officials are subject to asset and interest disclosure obligations. There are wide variations in the scope, transparency, and accessibility of disclosed information, however, as well as in the level and effectiveness of verification and enforcement measures.

Lastly, areas at high risk of corruption are the subject of particular attention. Vulnerable sectors are, for instance, healthcare, construction and/or urban planning. Governments, in particular in course of public investments need to take account of these high-risk areas. Areas that are pressure points for organised crime groups, e.g., ports, also require constant monitoring. Other areas of risk relate for example to political party financing as well as investor citizenship and residence schemes.

3. Repression

In terms of repression of corruption, the capacity of law enforcement services, prosecution authorities, and the judiciary to enforce anti-corruption criminal law provisions is essential in order to effectively combat corruption. It is a focal point of the Rule Law Report, as is the specialisation of law enforcement or prosecution.

The report also looks at key procedural issues: are there any obstacles to effective criminal investigations and prosecutions of corruption, such as excessively cumbersome or unclear provisions on lifting immunities or statutes of limitations that are too short?

Lastly, the existence of a solid track record of investigations and prosecutions leading to dissuasive sanctions by means of final convictions, in particular for high-level corruption cases, is essential for determining whether a criminal justice system is effective in the fight against corruption.

III. The Recommendations on Corruption in the Rule of Law Report

The qualitative assessment of the Commission in the Rule of Law Report focuses on significant developments. Since 2022, the Rule of Law Reports include recommendations made to each EU Member State.⁵ These recommendations aim to support Member States in their efforts to take ongoing or planned reforms forward, encourage positive developments, and help identify where improvements or follow-ups on recent changes or reforms may be needed. As regards anti-corruption, the recommendations align with the three areas of the report described above (see I.).

In terms of the legal, institutional, and strategic framework, for example, the recommendation was made to Finland (2022) that it focuses on implementing its anti-corruption strategy, while Slovenia was urged to adopt a new anti-corruption strategy (2023).

Concerning the prevention of corruption, the Rule of Law Reports contain a wide-ranging number of recommendations. The priority issues for each Member State are represented, from establishing lobbying regulation in Latvia and Italy, to improving the asset declaration system in Belgium or Cyprus, and to establishing codes of conduct for Members of Parliament in Czechia.

In some Member States, the aforementioned track record in high-level corruption cases needs to be established or seriously improved, e.g., in Bulgaria and Hungary. In others, like Malta, Croatia, and Romania, the recommended way forward is to take more action or build on initial good results.

The Commission also closely follows up and checks the implementation of its recommendations, which took place for the first time in the 2023 Rule of Law Report. Across all pillars of the Rule of Law Report, 65% of the 2022 recommendations had been fully or partially addressed. This shows that important efforts are underway in Member States to follow up on the previous year's recommendations. The recommendations are to be fine-tuned each year – some may have been fulfilled, new issues might have come to the foreground, and, upon review of the recommendations, some Member States' efforts may need to be repeated if not enough has been done.

IV. Synergies with other Measures and Instruments

The Rule of Law Report constitutes an important preventive tool in its own right; it helps to safeguard the rule of law across the EU and to improve policies in the fight against corruption. However, there are also clear links to other measures or instruments.

With the adoption of its anti-corruption package on 3 May 2023, the Commission established a new EU network against corruption.⁶ This network aims to foster collaboration, identify trends, and maximise the impact and coherence of European efforts to prevent and fight corruption in order to create more effective anti-corruption policies. The network strongly relies on the analysis performed in the Rule of Law Report and provides avenues to discuss and resolve some of the key issues identified in the areas of prevention, repression, and legal, institutional, and strategic frameworks. It enables exchanges between the Commission, the EU Member States, and various other stakeholders, such as representatives from civil society and academia as well as key international organisations.

The proposed Directive on combating corruption (see I.) is based on multiple "lessons learned" from the Rule of Law Report and takes into account, for example, the gaps in and limited enforcement of existing legislation, the need for cooperation and capacities to prosecute cross-border cases, and the need for a stronger coordination and definition of common standards across the EU. Likewise, the Rule of Law Reports raise awareness that operational shortcomings can obstruct the investigation and prosecution of corruption cases and undermine the effectiveness of the fight against corruption. Examples include excessively cumbersome or unclear provisions on lifting immunities and short statutes of limitations, which can prevent the conclusion of complex cases, particularly in combination with other factors contributing to lengthy proceedings.

Furthermore, information captured in the context of the Rule of Law Report and, in particular, also in that of its anti-corruption pillar feeds into the Commission's analysis under the Conditionality Regulation.⁷ The Conditionality Regulation links the rule of law with the use of EU funds, allowing the EU to suspend, reduce, or restrict access to EU funding should breaches occur. Measures under the Conditionality Regulation can only be proposed if the Commission discovers that breaches of the rule-of-law principles directly affect or seriously risk affecting the sound financial management of the Union budget or of the financial interests of the Union in a sufficiently direct way. The mechanism was triggered for the first time in April 2022 against Hungary.⁸

The Recovery and Resilience Plans (RRPs), the mechanism in each EU Member State to access funds from the Recovery and Resilience Facility, contain several milestones related to anti-corruption.⁹ These milestones can often be linked to shortcomings or deficiencies identified in the Rule of Law Report, and an important interplay exists between both tools. In particular, the RRPs were negotiated with the Member States themselves but set clear conditions for the fulfilment of milestones (and linked payments). Milestones – ranging from the introduction of lobbying legislation, to the reform of an Anti-Corruption Commission, or to the

commitment of additional resources to certain institutions – help develop the anti-corruption framework via clear dialogue and cooperation with the Member States.

V. Conclusion

The European Commission's anti-corruption policy is expanding, and it is clear that the annual Rule of Law Report provides an important basis for this. The anti-corruption pillar of the report is a key monitoring instrument for the Commission in the prevention of and fight against corruption. Above all, the recommendations made may encourage the Member States to undertake crucial reforms as the efforts that are underway in Member States to follow up on its recommendations have already shown.

The report may also prove helpful for other processes, like the Recovery and Resilience Plans and the Conditionality Regulation. This has also recently been analysed by the European Court of Auditors.¹⁰

In sum, the Rule of Law Report is part of the overall efforts of the European Commission to protect the rule of law and has become an indispensable tool for the Commission to improve anti-corruption efforts across the EU.

1. See also the European Commission website "The rule of law mechanism", <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en>. All hyperlinks in this article were last accessed on 19 March 2024. ↵
2. The proposal is based on Art. 82(1) point (d) and Art. 83(1) and (2) TFEU. ↵
3. Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council, COM (2023) 234 final. See F. Clementucci and A. Miekina, "The Commission Proposal for a Directive on Combating Corruption" (2023) *eucrim*, 276; L. Zoli, "The Amendment of the PIF Directive by the New Proposal for a Directive on Combating Corruption" (2023) *eucrim*, 279. ↵
4. Special *Eurobarometer 534* on Corruption (2023) and Flash *Eurobarometer 524* on Businesses' attitudes towards corruption in the EU (2023). The previous data sets are the Special Eurobarometer 523 (2022) and the Flash Eurobarometer 507 (2022). ↵
5. For a full overview of all recommendations, see COM(2023) 800 final Annex, available at: <https://commission.europa.eu/document/download/2b63674d-bdb3-47b7-bda4-e13d6a085033_en?filename=4_1_52673_comm_recomm_en.pdf>. ↵
6. Cf. <https://home-affairs.ec.europa.eu/networks/eu-network-against-corruption_en>. See also T. Wahl, "First Meeting of EU Network against Corruption" (2023) *eucrim*, 141. ↵
7. For the rule-of-law conditionality regulation, see <https://commission.europa.eu/strategy-and-policy/eu-budget/protection-eu-budget/rule-law-conditionality-regulation_en>. ↵
8. See the article by L. Kuhl, "New Instruments in Cohesion Policy – Implementation Practice by EU Institutions", *eucrim* online 4.4.2024. ↵
9. For the Recovery and Resilience Facility, see <https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility_en>. ↵
10. ECA Review 02/2024 on the Commission's rule of law reporting, <<https://www.eca.europa.eu/en/publications/RV-2024-02>>. ↵

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