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Assessing State Capture Vulnerabilities at the Sectoral Level

Integrating Innovative
Monitoring Instruments

ASSESSING STATE CAPTURE VULNERABILITIES AT THE SECTORAL LEVEL

**Integrating Innovative
Monitoring Instruments**



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DEMOCRACY

This report outlines the findings from the pilot implementation of two integrated innovative monitoring methodologies: an index-based expert assessment of state capture pressure and vulnerabilities on sectoral level and an analysis of risks for corruption-related behaviour in public procurement through original “red-flags” indicators, based on linked “big data”. The pilot covers three economic sectors - construction, wholesale of fuels and wholesale of pharmaceuticals in four EU countries – Bulgaria, Italy, Romania and Spain.

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*State Capture Estimation and Monitoring of Anti-Corruption Policies
at the Sectoral Level /SceMaps/*



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STATE CAPTURE CONCEPT

State capture is the illegitimate **monopolisation** of the governance and the economy of a country, which leads among others to inefficient public spending, regulations which are protecting and pursuing private interests, and lack of control over privileged businesses. The illegitimate interests and influences which exert pressure in order to achieve state capture are embodied in the term *captor*, i.e. an actor with privileged status enjoying undue advantages in economic and/or political terms.

State capture is a **combination of different forms of corruption** which have a single objective: to secure large-scale and long-term privileges to captors by exploiting the power of government for private benefit. In its essence, state capture is the abuse of good governance rules (which is also abuse of power) in the process of drafting, adoption and enforcement of the rules themselves in favour of a small number of captors at the expense of society and business at large.

Since state capture is a **hidden phenomenon**, most of the evidences for its presence are anecdotal and qualitative in nature (separate ad-hoc cases). Quantitative estimates are very few and focus on vulnerabilities and symptoms of state capture rather than the direct measurement. However, a key characteristic of state capture is the observable public traces it leaves behind. Because it needs to affect public policy, it is bound to leave visible effects which can be discovered by suitable pattern-finding methods.¹

The *State Capture Assessment Diagnostics* (SCAD)² approach was designed to identify and assess the public traces left from the existence of state capture practices and to recommend policy adjustments for improving the resilience of institutions to state capture pressure. SCAD measures state capture results and effects, while the processes of capture remain most often hidden, secret, and inaccessible. It includes **two major components**³:

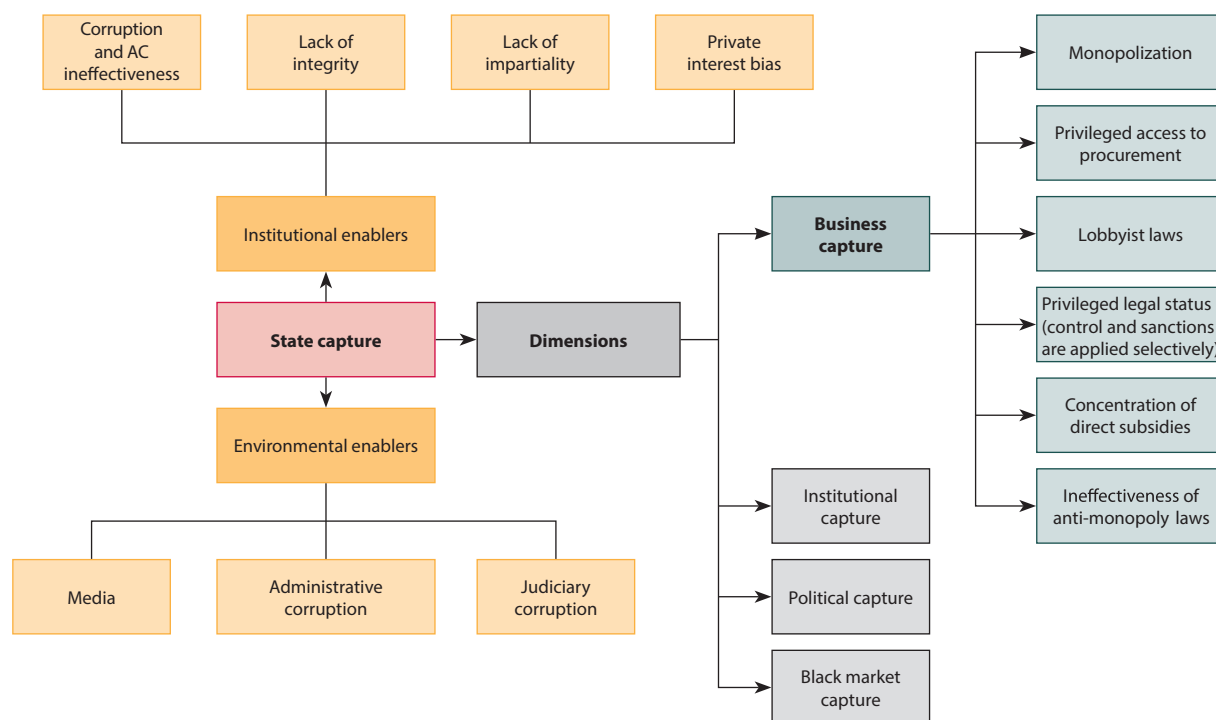
- **Business state capture pressure**, which measures different components of privileged status that captors could have, and
- **State capture enablers**, which encompasses institutional and environmental characteristics of the social domains that affect the system of governance allowing or facilitating state capture.

¹ Stoyanov, A., Gerganov, A., and Yalamov, T., *State Capture Assessment Diagnostics*, Sofia: Center for the Study of Democracy, 2019.

² Ibid.

³ The other dimensions in the model (institutional capture, political capture and black market capture) are not included into this analysis.

Figure 1. State capture model



Source: Stoyanov, Gerganov and Yalamov, *State Capture Assessment Diagnostics*, Center for the Study of Democracy, 2019.

SCAD provides a comprehensive model of state capture and a methodology to measure the results and effects of business capture and institutional and environmental enablers at **national level**. Thus, it is an instrument, which focuses the attention of policy-makers, researchers and practitioners on certain economic sectors where potential symptoms of state capture could be found and on institutional vulnerabilities capable of enabling captors to pursue successfully their goals. However, the application of SCAD revealed also the need for separate methodologies and tools that are able to identify and measure actual state capture pressure and vulnerabilities in particular economic sectors, public institutions and business organisations, and to assess and improve the respective institutional and sectoral policies.

As an answer to the identified needs, the *State Capture Assessment Diagnostics Sectoral Level Integrated Tool (SCAD-SLIT)* was developed and piloted in four EU countries (Bulgaria, Italy, Romania and Spain) as a practical instrument, which aims at empowering policy makers, NGOs and journalists to **detect and monitor state capture pressure at the sectoral level**. SCAD-SLIT combines three innovative mutually-complementary methodologies and their respective instruments⁴:

- *State Capture Assessment Diagnostics on Economic Sector Level (SCAD-ESL)* assesses state capture symptoms and vulnerabilities at sectoral level and guides further in-depth sectoral investigations.

⁴ For detailed description see Gerganov, A., Mineva, D., and Galev, T., *State Capture Assessment on Sectoral Level: Methodological Toolkit*, Sofia: Center for the Study of Democracy, 2021.

- Analysis of **risks of corruption-related behaviour in public procurement** through original “red flag” indicators, based on integrated data, and implemented through a specially designed and developed online interactive platform, which links public procurement data, company financial and ownership information, and a media alert system.
- ***Monitoring Anti-corruption Policy Implementation (MACPI)***⁵ evaluates the implementability, implementation, enforcement, and coverage of anti-corruption measures and policies on the level of individual public institutions, relevant to the high-risk economic sectors identified through SCAD-ESL. It is the instrument which provides concrete policy advice to public institutions’ management on improving the anti-corruption setup in their organisations.

The current report outlines the results from the implementation of the first two methodologies - SCAD-ESL and the analysis of vulnerabilities and risks of corruption-related behaviour in public procurement. The report covers **three economic sectors**⁶, evaluated as high-risk with strong vulnerabilities to state capture and corruption, according to previous SCAD results⁷:

- Wholesale of solid, liquid and gaseous fuels – a heavily regulated sector, dominated by large international corporations;
- Wholesale of pharmaceutical goods – a multinational market, characterised by large corporations, prone to strong influence and (illegal) lobbying;
- Construction – a sector, vulnerable to multiple state-capture threats, most prominently – procurement concentration.

⁵ Stoyanov A. et al., *Monitoring Anti-Corruption in Europe. Bridging Policy Evaluation and Corruption Measurement*, Sofia: Center for the Study of Democracy, 2015.

⁶ According to the Statistical classification of economic activities in the European Community, NACE rev.2. EUROSTAT 2008

⁷ Stoyanov, Gerganov and Yalamov, *State Capture Assessment Diagnostics*, Center for the Study of Democracy, 2019.

TACKLING STATE CAPTURE – THE MISSING LINK IN THE POLICES AND INSTITUTIONAL CONTEXT

The notion of state capture is used widely by the media, politicians, experts and the general public in the four countries. Yet it does not exist as a term in their legislation, unlike the term *corruption*, which is well defined. Thus, there are no specific law or by-law regulations, focused on tackling state capture in any of the four countries. However, in all of them there are specialised policies, institutional and legal frameworks focused on different issues, central for the state capture concept, e.g. corruption, anti-monopoly, conflicts of interests and integrity of public officials. The current analysis addresses these issues as integral components of a systematic approach for assessing state capture vulnerabilities and pressure on sectoral level.

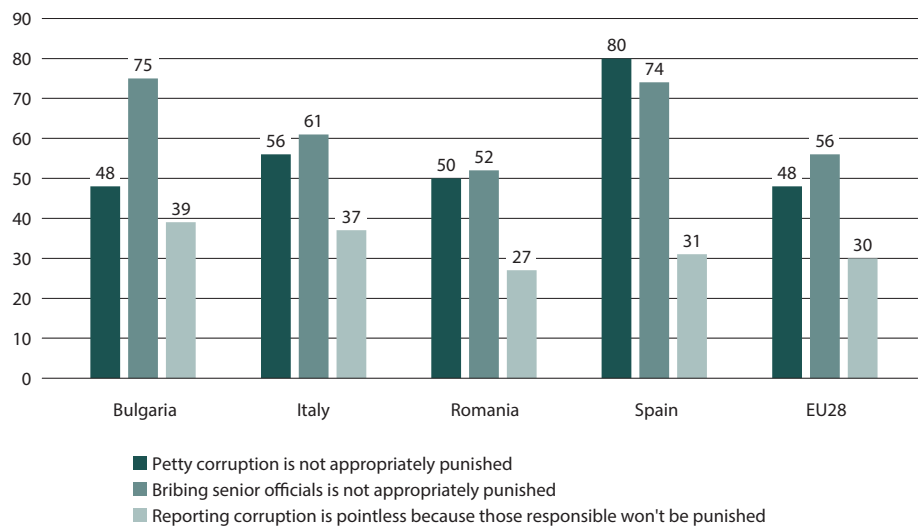
While **the existence of corruption is highlighted as a serious problem in each of the four countries, neither related framework policy documents⁸, nor international comparative analyses of corruption⁹, raise the issue of state capture.** However, many of the findings and the corresponding conclusions of such international comparative analyses refer to different state capture risks and vulnerabilities with diverse intensity and presence. These include specific corruption risks and governance deficits in public procurement, the lack of or inefficient implementation of regulations regarding conflicts of interests and lobbying, as well as the regulatory and administrative burdens on free competition, which create favourable conditions for high market concentration in specific sectors.

Three **major state-capture issues should be outlined, in particular, that shape the public perception** in the countries and represent key vulnerability areas in the design and implementation of regulatory and institutional frameworks: (i) ineffective application of anti-corruption regulations, controls and sanctions, (ii) low integrity of public officials, and (iii) corruption in public procurement. Bulgaria and Spain have generally worse results regarding these issues than Italy and Romania according to the latest Eurobarometer population and business surveys. However, all four countries have also some positive developments in each of the three areas, that rank them below the respective EU average.

⁸ Country Specific Recommendations and the corresponding Country reports of the European Semester, Rule of Law initiative and its national reports

⁹ European Commission, *Business attitudes towards corruption in the EU*, Flash Eurobarometer 482, December 2019; European Commission, *Corruption*, Special Eurobarometer 502, June 2020.

Figure 2. Ineffective implementation of anti-corruption regulations, control and sanctions (%)



Source: *Corruption, Special Eurobarometer 502, June 2020.*

Bulgaria is the country most vulnerable to corruption and regulatory and policy instability, including due to the lack of transparency and predictability of the legislative process, in combination with low efficiency of the judiciary and the specialised anti-corruption bodies.¹⁰ A warning sign of state capture is also the political interference in the work of the public administration, which leads to frequent legislative changes.¹¹ However, some progress has been achieved by the country during the last five years. Bulgaria has made a comprehensive reform of its legal and institutional anti-corruption frameworks in 2017 and 2018 but results have remained modest, with many outstanding challenges.¹² Particularly, the country still lacks “solid track record of concrete results in the investigation and prosecution of high-level corruption” and there is a “need to continue improving the anti-corruption framework, and engaging with stakeholders on the implementation of the anti-corruption strategy and the definition of future priorities”.¹³ The interference or even control of the judiciary by powerful political and economic lobbies has been a strong obstacle for both business environment and public sector reforms. Ultimately, the most serious issue though remains the lack of accountability of the Prosecutor General and position’s exceptional power over the work of the entire prosecution service, as well as influence on the governing body of the judiciary – the Supreme Judicial Council.¹⁴

Public procurement in Bulgaria has remained a focal point of corruption risks and governance deficits, according to all recent official assessments, and has “suffered from structural weaknesses, including systematic irregularities in procurement procedures, lack of administrative capacity and deficient control

¹⁰ European Commission, *2020 Rule of Law Report: Country Chapter on the rule of law situation in Bulgaria*, 2020, p. 12.; European Commission, *European Semester Country Report Bulgaria 2020*, p. 7.

¹¹ European Commission, *European Semester Country Report Bulgaria 2019*, p. 56.

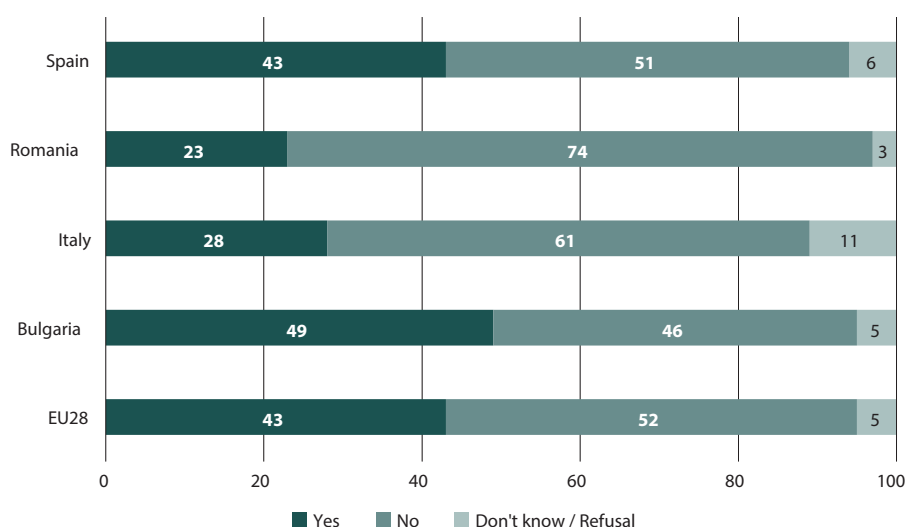
¹² European Commission, *2020 Rule of Law Report: Country Chapter on the rule of law situation in Bulgaria*, 2020, p. 11.

¹³ European Commission, *European Semester Country Report Bulgaria 2020*, p. 58.

¹⁴ European Commission, *2020 Rule of Law Report: Country Chapter on the rule of law situation in Bulgaria*, 2020, pp. 4-5.

mechanisms”.¹⁵ The changes in the Public Procurement Act from 2018 aiming at increasing transparency and limiting corruption risks, and the introduction and the mandatory use of the e-procurement system since the early 2020, “have not yet brought tangible results”.¹⁶ At the same time, the limited results in the fight against corruption – and particularly against top-level political corruption, are reflected in public perceptions, which rank Bulgaria as one of the most corrupt countries in Europe.¹⁷ Thus, the regulatory and control institutions and law enforcement organisations have also been suspected of being captured by private (political or economic) interests rather than being instrumental for tackling state capture.

Figure 3. Corruption in public procurement (%)



Source: *Business attitudes towards corruption in the EU*, Flash Eurobarometer 482, December 2019.

Italy has also made continuous progress in its anti-corruption policies for the last five years. In 2016 corruption has been highlighted as a critical issue in the country, including linked to organised crime and public procurement and affecting the private sector and large public works¹⁸. In 2019 and 2020 the new anti-corruption law and stronger prevention measures ensured by the National Anti-corruption Authority have considerably strengthened the country’s anti-corruption framework.¹⁹ Particularly, “the capacity to detect, investigate and prosecute corruption is very effective and benefits from the expertise of the law enforcement authorities in the fight against organised crime”.²⁰ At the same time, the country still fails to address critical vulnerabilities to state capture such as over-regulation and restrictions of competition in important sectors including retail, business services, local public services, concessions and transport²¹, the fragmented regime of addressing conflicts of

¹⁵ European Council, *Council Recommendation on the 2016 National Reform Programme of Bulgaria and delivering a Council opinion on the 2016 Convergence Programme of Bulgaria*, 2016, p. 3.

¹⁶ European Commission, *European Semester Country Report Bulgaria 2020*, p. 58.

¹⁷ *Ibid*, p. 58.

¹⁸ European Commission, *European Semester Country Report Italy 2016*, p. 68.

¹⁹ European Commission, *European Semester Country Report Italy 2019*, p. 6.

²⁰ European Commission, *2020 Rule of Law Report: Country Chapter on the rule of law situation in Italy*, 2020, p. 1.

²¹ European Commission, *Recommendation for a Council Recommendation on the 2019 National Reform Programme of Italy and delivering a Council opinion on the 2019 Stability Programme of Italy*, 2019, p. 12.

interest, and lobbying and “revolving doors”²², which create favourable conditions for monopolisation, inefficiency of public spending and deteriorating governance.

Romania is being pointed out as an example of a country that went through a phase of widespread political corruption in the period after joining the EU, but in 2017 the country already made “substantial progress on much of the reform of the judicial system and the investigation of high-level corruption”.²³ However, only a year later in 2018 “the progress in the fight against corruption has suffered significant setbacks”²⁴ due to the government’s pressure on key anti-corruption institutions. The government’s actions have targeted particularly the National Anti-Corruption Directorate, trying to influence its work and to limit its independence.²⁵ In addition, numerous amendments to anti-corruption and other laws have undermined the independence of judges and prosecutors and the public confidence in the judiciary.²⁶ Thus, the latest assessments highlighted that “corruption continues to be a major problem for the business environment in Romania”.²⁷ While the government currently supports the fight against corruption, Romania is still facing important challenges to restore the progress since the period before 2017 due to the damages done through legislative amendments and continued pressure on judicial institutions, which deteriorates its capacity to investigate high-level corruption.²⁸ In this situation, state capture could still pose a serious threat to the country, despite the renewed commitment of the current government to make progress on the preventative side through the comprehensive National Anti-Corruption Strategy.

Spain has strengthened its anti-corruption institutional and regulatory framework in recent years, including establishing respective agencies in some autonomous regions and separate municipalities.²⁹ However, the country failed to develop a national corruption prevention strategy, even though this is one of the persisting recommendations by both the European Commission and the Council.³⁰ While in recent years there has been a surge in corruption investigations involving cases at the local and regional levels, the government made slower progress towards improving the regulatory and institutional framework on the central level and ensuring harmonisation across government levels, which has created wide regional variations in the quality of governance. Similarly, issues presenting serious risks for state capture have been improved but without consistency across various levels of government and categories of officials, and divided between several law enforcement authorities. This refers mainly to the improved legal framework for integrity in the public sector, which was put in place, strengthening the integrity mechanisms in parliament, as well as reinforcing the regime of asset disclosure, conflict of interest and incompatibilities of high-ranking officials in the central state ad-

²² European Commission, *2020 Rule of Law Report: Country Chapter on the rule of law situation in Italy*, 2020, p. 11.

²³ European Commission, *European Semester Country Report Romania 2017*, p. 11.

²⁴ European Commission, *European Semester Country Report Romania 2019*, p. 6.

²⁵ European Commission, *European Semester Country Report Romania 2019*, p. 56.

²⁶ Ibid.

²⁷ European Commission, *European Semester Country Report Romania 2020*, p. 7.

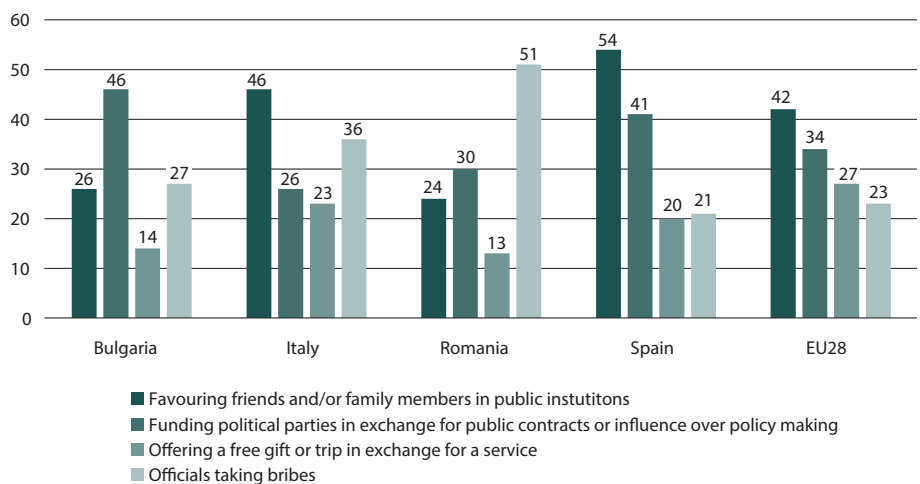
²⁸ European Commission, *2020 Rule of Law Report: Country Chapter on the rule of law situation in Romania*, 2020, p. 10.

²⁹ European Commission, *European Semester Country Report Spain 2019*, p. 73.

³⁰ European Commission, *European Semester Country Report Spain 2019*, p. 73.

ministration.³¹ In addition, there is no national level legislation to regulate lobbying so high-ranking government officials are not required to be transparent and accountable for their relations with interest groups or private companies. The Transparency Act³², which regulates what information state authorities are required to make publicly available, also does not refer to lobbying, and the accountability of (senior) public officials is left to the discretion of the respective authority or person.

Figure 4. Integrity of public officials (%)



Source: *Corruption, Special Eurobarometer 502, June 2020.*

As already noted, despite the widespread and highlighted views about the existence of different forms and trends of corruption in the four countries, they **do not have strong integral policy against state capture**, and the institutional and regulatory frameworks suffer from different degrees of fragmentation and inefficiency. Accordingly, the identified risks and vulnerabilities, that point out to possibilities for existing state capture mechanisms, are not addressed systematically and in long-term manner. One of the main reasons could be the **lack of comprehensive analytical framework and respective policy tools** for assessing the current state and for monitoring the development of state capture processes, unlike the issue of corruption, which has been widely studied and embodied in the political discourse.

The current report aims at filling at least partially this gap by offering an integrated and comprehensive methodology that measures the results and effects of two key elements of state capture - business capture and institutional enablers. The findings from its pilot implementation, presented in the chapters below, confirm many of the policy assessments and conclusions as reviewed above, as well as produce evidence for future fact-based policy making.

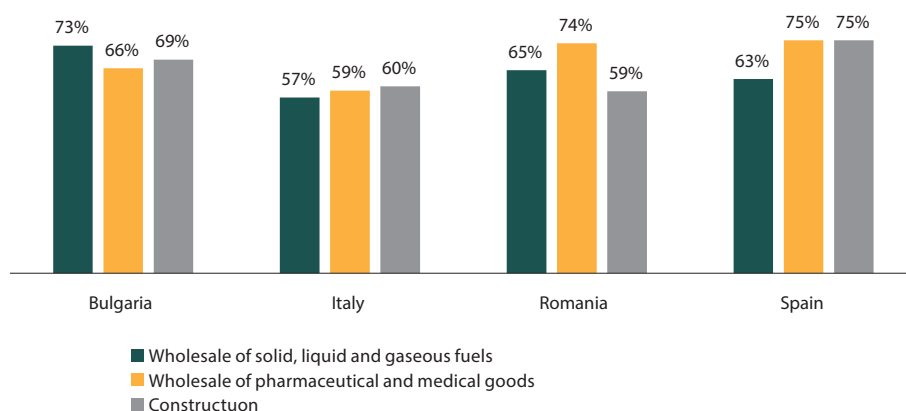
³¹ European Commission, 2020 *Rule of Law Report: Country Chapter on the rule of law situation in Spain*, 2020, p. 7.

³² *Law 19/2013, of December 9, on transparency, access to public information and good governance*. Official State Gazette, no. 295, of December 10, 2013.

BUSINESS STATE CAPTURE

The **businesses state capture pressure index (BSCP)** indicates the existence of systematic problems of well-established and long-term forms of state capture.³³ Although the index values for all countries are very high (above 57%), the differences are significant and thus underline the need for specific preventive policies and measures in each of the countries and the respective sectors. Despite the favourable position, which Spain has according to the policy assessments, it is ranked on the first place with highest scores of BSCP index in two sectors (construction and wholesale of pharmaceuticals), followed by a bit lower scores of Romania and Bulgaria within a single sector each (respectively wholesale of pharmaceuticals and wholesale of fuels), while Italy remains last with lowest index value.

Figure 5. Business state capture pressure (scores, 0-100%)



Source: SCAD ESL 2020.

General monopolisation pressure as a BSCP sub-component³⁴, ranks **Bulgaria on the first place with the highest index values** in all sectors³⁵ among the four countries:

- **Civil engineering (as sub-sector of construction)** is the most vulnerable sector (index 93%) both in Bulgaria and among the four countries. The result for Bulgaria is likely the result of the existence of multi-billion publicly funded programmes for large infrastructure projects implemented

³³ The underpinning methodology, incl. explanation of the index' components and indicators, and the computing of the indexes' and sub-indexes' values is described in details in Appendix 5 below.

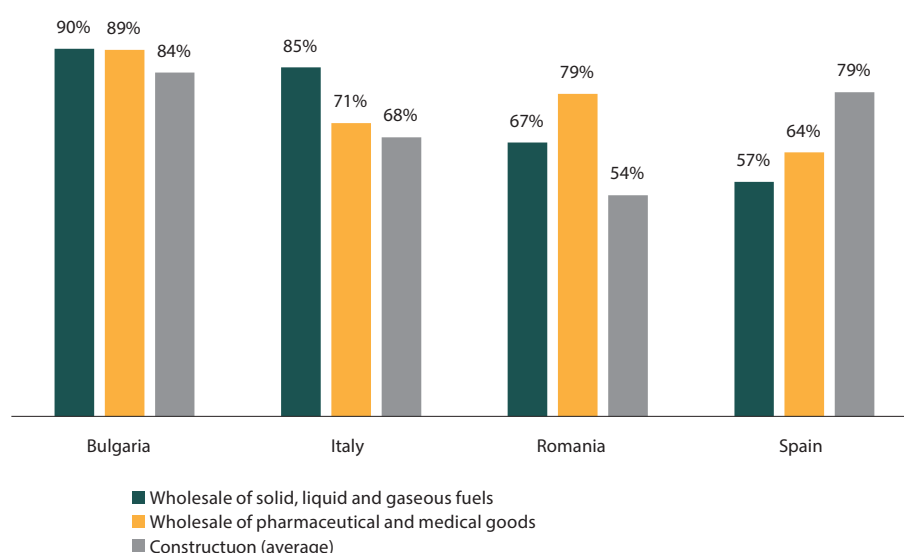
³⁴ The BSCP index is composed of three sub-components that measure different elements of business capture - *General monopolisation pressure*, which reflects the existence of different forms of market concentration (monopoly, oligopoly or cartel), *Ineffectiveness of antimonopoly laws*, which is a stand-alone indicator, and *Specific monopolisation pressure*, which refers to a set of illegitimate and illegal practices resulting in undue advantages (public procurement concentration, lobbyist laws, selective control and sanctions and selective public support measures).

³⁵ The Construction sector is assessed with its three sub-sectors – Civil engineering, Construction of buildings of all types and Specialized construction activities.

since the country's entry into the EU in 2007, that have been regularly accompanied by numerous journalistic and expert investigations of alleged cases of high-level corruption and state capture but remain unprosecuted by the law enforcement authorities.

- The monopolisation pressure in the **wholesale of fuels** in Bulgaria (index 90%) is based predominantly on the suspected cartelisation in the sector, which has gone largely unnoticed by the country's antimonopoly body, the state Commission for Protection of Competition³⁶. In Italy, which has the second highest index value (85%) the pressure is assessed to be the result of a combination of suspected cartel and oligopolistic trends.
- In the **wholesale of pharmaceuticals**, the monopolisation pressure is assessed to be based on suspected cartel and oligopolistic trends in three of the countries - Romania, Italy and Spain. In Bulgaria, which has the highest index (89%), the assessments also assign a significant role of the trend towards monopoly in the market. The result for Bulgaria could be attributed to both monopolisation trends and the small size of the market as compared to the other countries, where larger markets are seen as less vulnerable to monopolisation.

Figure 6. General monopolisation pressure (scores, 0-100%)



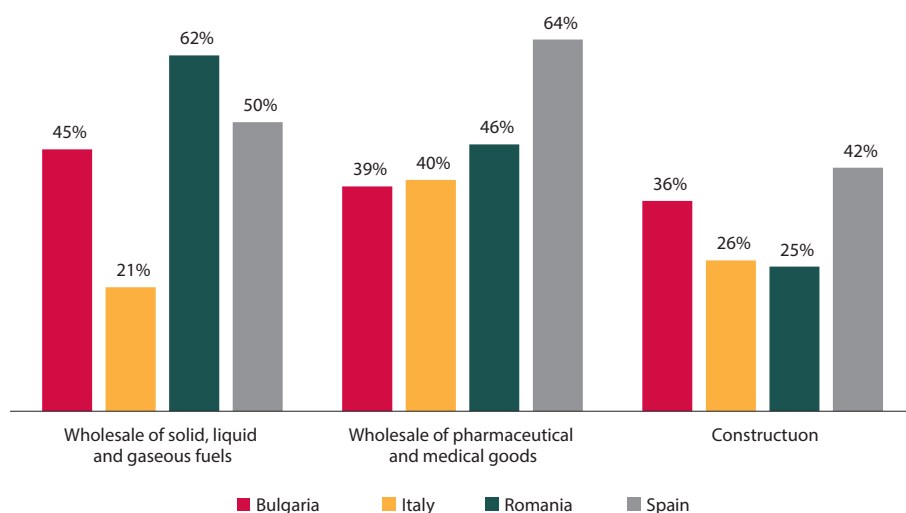
Source: ScelMaps, SCAD ESL 2020.

The value of the **ineffectiveness of antimonopoly laws** indicator is highest in Spain (wholesale of pharmaceuticals 64% and wholesale of fuels 50%) and in Romania (wholesale of fuels 62%), while in the other sectors and countries it remains much lower. Wholesale of fuels and wholesale of pharmaceuticals are sectors, often more vulnerable to market concentration, incl. monopoly or oligopoly, established legitimately as a result of the activities of large international companies or national incumbents. Thus, the **higher scores of all countries particularly in the two sectors, more vulnerable to natural monopoly**, raises the importance of designing and implementing sector-specific policies

³⁶ Investor.bg, „КЗК: Няма картел на пазара на горива, а обмен на търговска информация“ [CPC – there is no cartel in the fuels market but only exchange of commercial information], March 31, 2017; Mediapool.bg, „КЗК отново не вижда картел и монопол при горивата“ [CPC again does not see a cartel and monopoly in the fuels market], March 12, 2019.

to foster the effectiveness of anti-monopoly laws and to tackle possible state capture vulnerabilities in legislation, regulatory and control institutions.

Figure 7. The antimonopoly laws rather help the formation of monopolistic, oligopolistic or cartel structures than hinder them (% of respondents)



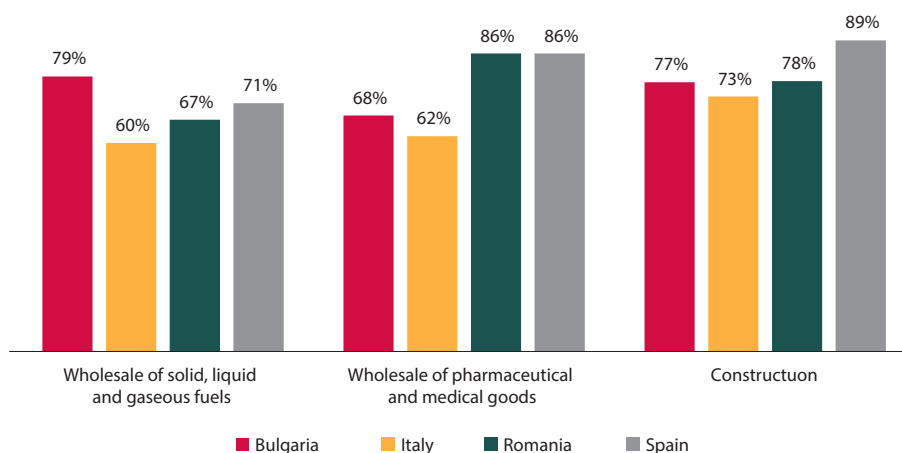
Source: SCAD ESL 2020.

The **specific monopolisation pressure index** focuses only on non-market mechanisms, which provide illegitimate competitive advantage and when occurring systemically, are a strong symptom of state capture in a sector. As a sub-component of BSCP, this indicator reveals the presence of four specific problems strongly linked to illegitimate and illegal practices: (1) privileged access to procurement, (2) laws providing illegitimate competitive advantage to certain businesses, (3) selective application of control and/or sanctions, and (4) concentration of public grants and subsidies to selected companies in the sector. The results reveal **very high scores (above 60%) for all sectors and countries**, which suggests the widespread presence of illegitimate and illegal practices regarding all of the above problems.

Despite the high scores of all sectors, the specific monopolisation pressure index ranks **construction** as the only one with **scores above 70% for all four countries**. The same trend is not observed regarding the other two BSCP sub-components (general monopolisation pressure and ineffectiveness of anti-monopoly laws). These results reveal that the sector is more vulnerable to illegitimate and illegal practices than the other two. At the same time, as already noted – there are no substantive trends towards monopolisation, even in small-size markets such as Bulgaria, and the anti-monopoly legislation is not an important factor for tackling state capture.

Bulgaria is the most vulnerable to corruption and state capture regarding the three analysed sectors. The index value for Spain is also high enough to be in contradiction with its favourable position according to the official political assessments. The construction sector and particularly its sub-sector of **civil engineering, which concentrates the largest portion of public spending, naturally appears as the most vulnerable sector** irrespective of the country, especially in terms of specific monopolisation pressure, which reflects the

Figure 8. Specific monopolisation pressure (scores, 0-100%)



Source: SceMaps, SCAD ESL 2020.

presence of four illegal practices for gaining non-market advantages. Last but not least, despite the differences among the sectors, BSCP reveals the existence of well-established forms of corruption in all of them. Due to the systematic nature of these forms, they are clear signs for the presence of state capture.

BSCP also confirms the importance of the **privileged access to public procurement** as a key element of business capture. Moreover, the state capture process, which makes such privileged access possible, often covers also other mechanisms, such as selective control and sanctions, lobbyist laws and concentration of public subsidies or grants. Assessed as one of the most risky economic areas, public procurement is highly vulnerable to corruption and conflicts of interests, together with taxation, customs activities and regulatory functions.³⁷ Moreover, in procurement, corruption is seen as common in all its forms – from petty or administrative corruption to political corruption and state capture.³⁸ In procurement, the “captors” are private business enterprises or oligarchs, controlling large groups of companies, which use different forms of corruption to influence the implementation of legislation, rules and institutional procedures, in order to acquire non-competitive advantages over their market competitors. The captured institutions include all kinds of legal entities that spend public funds through public procurement procedures, e.g. national, regional and local public administrations, educational, health and social service institutions, as well as state owned enterprises obliged to comply with the respective national public procurement regulations.³⁹

³⁷ Organisation for Economic Cooperation and Development, *Anti-corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges 2016-2019*, 2020.

³⁸ See Deyong, M. et al., *Corruption and public procurement*, In: Ferguson G. (ed.) *Global corruption: law, theory and practice*, 3-rd edition, University of Victoria, 2018; Hellman, J., Jones, G. and Kaufmann, D., *Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition*, Policy Research Working Paper No. 2444. World Bank, Washington, DC., 2000.

³⁹ Beyond these institutions, the captors target also regulatory and control institutions, related to the implementation of public procurement and more general competition rules, as well as the justice system, in order to guarantee a successful outcome in the case of a possible follow-on control inspection or objection against the results. These processes are assessed by other components in the SceMaps methodological framework, namely SCAD ESL (through the analysis of institutional enablers) and MACPI.

CORRUPTION RELATED BEHAVIOUR IN PUBLIC PROCUREMENT

The risk assessment of suspicious corruption-related behaviour in public procurement implements an original “red flag” indicators, based on the integration of three different sets of data – on public procurement, on companies’ financial and ownership information, and a media alert system on corruption. The assessment is done on the basis of a combination of “red flags”, each of them indicating a risk situation, which might be the result of corruption or conflict of interests, and which could indicate state capture vulnerabilities. A single red flag is not a compulsory sign of suspicious behaviour but the accumulation of red flags for a particular company, a contracting authority or a country, indicates serious concerns about existing problems in the procurement process respectively on micro (single company or contracting entity) or macro (country) level.

The risk assessment in public procurement applies big-data analytics, based on artificial intelligence (AI) and machine learning - an approach which has gained popularity in recent years.⁴⁰ It overcomes the major weakness of the usage of red flag indicators before the advancement of modern computational technologies, namely – the systemic focus on analysing atypical samples, i.e. containing only cases of already-detected frauds, which consequently is seen to suffer from a systemic selection bias problem.⁴¹ The majority of research and policy publications on the issue suffered from this shortcoming until at least 2012, including methodologies developed by international organisations such as OECD, World Bank, European Commission, European Anti-Fraud Office (OLAF), etc.⁴² The SceMaps online interactive risk assessment tool⁴³ introduces a full-scale integration of three types of data – procurement data from the TED database⁴⁴, company financial and ownership information from public and proprietary sources⁴⁵ and media articles, referring to suspicious behaviour of a particular contracting authority or company.

The risk assessment tool analyses more than 100,000 tenders in the three selected sectors of construction, wholesale of fuels and wholesale of pharmaceuticals for the period 2010-2019. The analysed tenders amount to more than EUR 364 billion in public money spent by almost 3,000 contracting entities and allocated to more than 45,000 companies in Europe during this period.

⁴⁰ Fazekas, M., and Szalai, B., *Corruption risk assessment of the public procurement in Kosovo*. Report, Project against Economic Crime, Council of Europe, 2017.

⁴¹ Ferwerda, J., Deleanu, I., and Unger, B., *Corruption in Public Procurement: Finding the Right Indicators*. In: *European Journal of Criminal Policy Research*, 2017, vol. 23, pp. 245–267, p. 248.

⁴² Ibid.

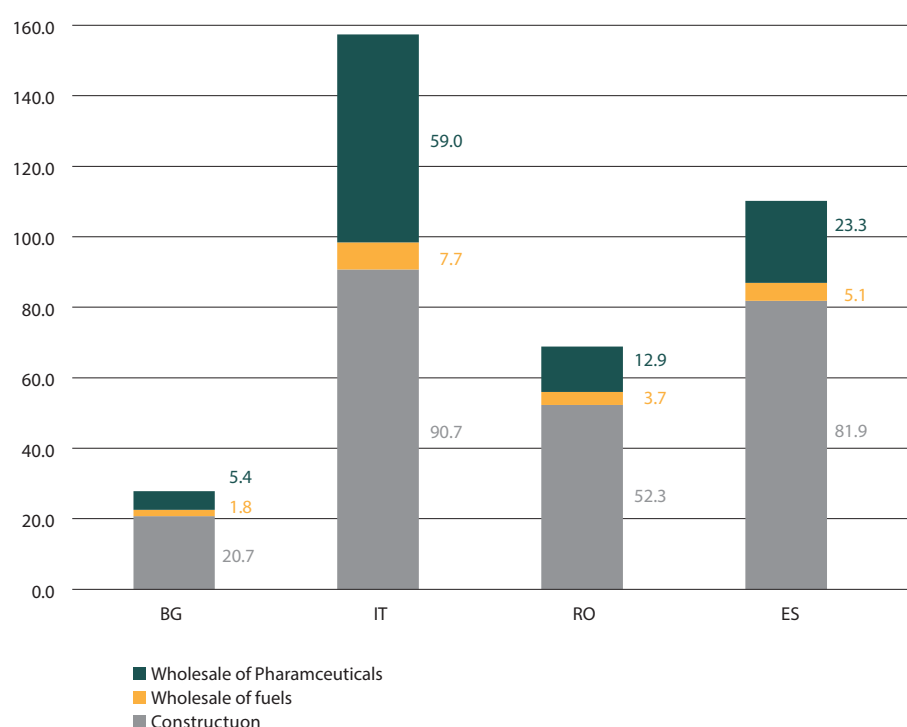
⁴³ <https://analytics.scemaps.eu>.

⁴⁴ Tenders Electronic Daily (TED) is the online version of the ‘Supplement to the Official Journal’ of the EU, dedicated to European public procurement, which publishes procurement award notices and other tenders’ documentation.

⁴⁵ Company ownership information is used to clusterise the data related to subsidiaries and shareholders into a single “parent” company. This allows for seeing more realistic picture of the behaviour of economic conglomerates despite looking at their separate legal entities (subsidiaries).

Construction accounts for the largest portion of public spending through procurement out of the three sectors, surpassing considerably the other two – it accounts for 58% of the three sectors in terms of awarded value in Italy, 74% in Spain and Bulgaria and 76% in Romania. The comparison between the countries, looking at the proportion of awarded value per capita annually, confirms the dominance of construction, but also reveals that **Bulgaria and Romania spent between 30% to 50% more per capita annually in construction for the period 2010-2019, than Italy and Spain**, despite the smaller size of its market (respectively EUR 1 509 per capita annually in Italy, EUR 1 756 in Spain, EUR 2 631 in Romania and EUR 2 867 in Bulgaria).

Figure 9. Total value of public procurement in the sectors of construction, wholesale of fuels and wholesale of pharmaceuticals 2010 – 2019 (EUR billion)



Source: CSD, <https://analytics.scemaps.eu>, 2021.

Data shows that the number of tenders and the number of awarded companies per country have increased for the period 2010 – 2019, which suggests that the general business and competition environment has also improved. However, this is difficult to be properly evaluated due to several reasons, related to the spread of many illegitimate practices such as the use of complex networks of subsidiaries and controlled companies for formal diversification of suppliers, despite the real concentration of awarded tenders into small number of economic actors or bid rigging, i.e. an illegal practice in which formally competing suppliers collude to determine the winner of a bidding process.

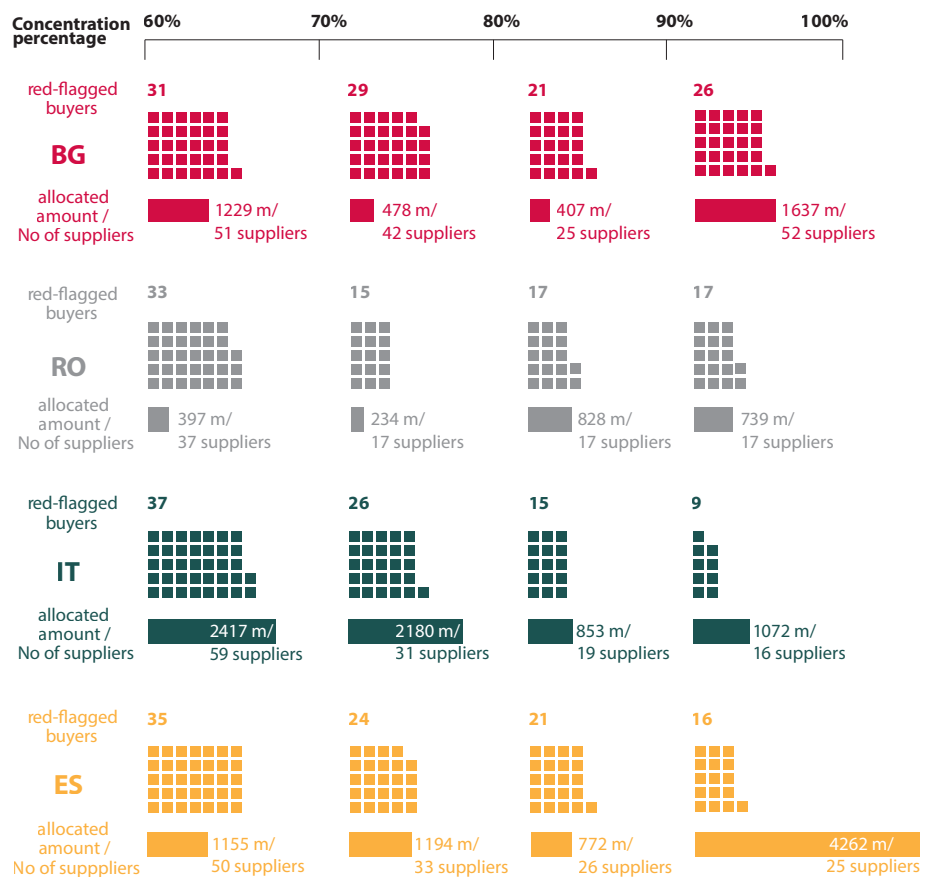
The assessment of vulnerabilities and risks in public procurement, based on originally developed red flags, shows that Bulgaria, Romania and partially Spain, display signs of state capture and corruption in public procurement, while Italy remains a less “captured” state. Despite the differences among them, the review of the red flags indicates that **public procurement in Bulgar-**

ia and Romania in general is more vulnerable to suspicious behaviour on the sides of both suppliers (companies) and buyers (contracting authorities) as compared to Spain and Italy.

In Bulgaria, the share of public authorities (buyers) that concentrate over 60% of the value of awarded contracts to a single supplier is about twice higher (21%) than the respective share in the other three countries (12% for Italy and Romania and 10% for Spain). Bulgaria also has the largest group of buyers accounting for over 90% of the tenders of a given supplier, although the total sum of awarded contracts by these buyers is much smaller than, for example, in Spain. This indicator raises red flags for both public authorities and companies, which could be further checked and investigated on a case-by-case basis through the information and profile data of each legal entity, available through the SceMaps online risk assessment tool, and especially in combination with other red flags.

The SceMaps buyer concentration index calculates the concentration of the total value of contracts, awarded by a contracting authority (the buyer), to a particular supplier for the period 2010-2019. The index represents the risk, that a given buyer (contracting authority) allows particular supplier to gain competitive advantage through the use of illegal means. An index equal to 100% means that a single buyer has provided the entire sum, received from public procurement contracts by a particular supplier.

Figure 10. Buyer concentration index (2011 – 2019)



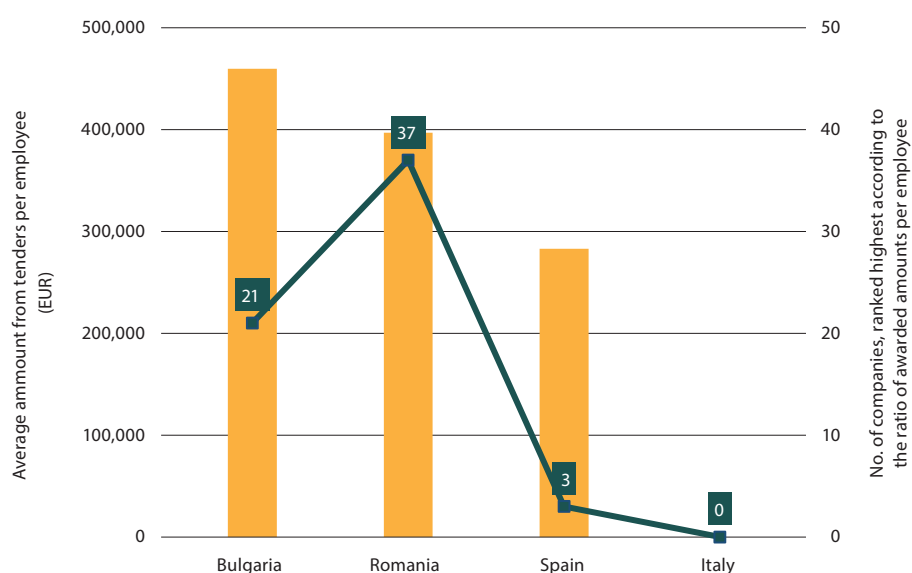
Source: CSD, <https://analytics.scemaps.eu>, 2021.

Procurement exposure to employee ratio shows that for a 10-year period 37 companies in Romania and 21 in Bulgaria have received large amounts of public tenders having limited number of employees (hence implementation capacity) as compared to their peer companies.⁴⁶ In Spain, the number of respective companies is only 3, while in Italy there is not even a single company to raise this red flag. Shorter periods could raise more red flags, but a longer period, while reducing sensitivity, allows for the identification of companies with continuous (recurring) suspicious behaviour.

In the classic economic analyses, the ratio of company's revenue per employee is one of the indicators of business efficiency. However, when this ratio is too high compared to the peer group of companies, it indicates a serious risk of misconduct, and particularly when the revenue is generated from public tenders, where the rules of the free market competition, driven by supply and demand, are replaced by administrative decisions regarding cost and selection of winner.

Procurement exposure per employee ratio calculates the average amount of tenders awarded per employee over a given period and ranks companies accordingly. A higher rank means that the company has a lower number of employees compared to its peers with similar revenues from public tenders. This red flag represents the risk of companies with an insufficient number of employees winning tenders that require a larger workforce and, in many cases, this is combined with the undeclared - and therefore illegal - use of subcontractors.

Figure 11. Procurement exposure per employee ratio (2011 – 2019)



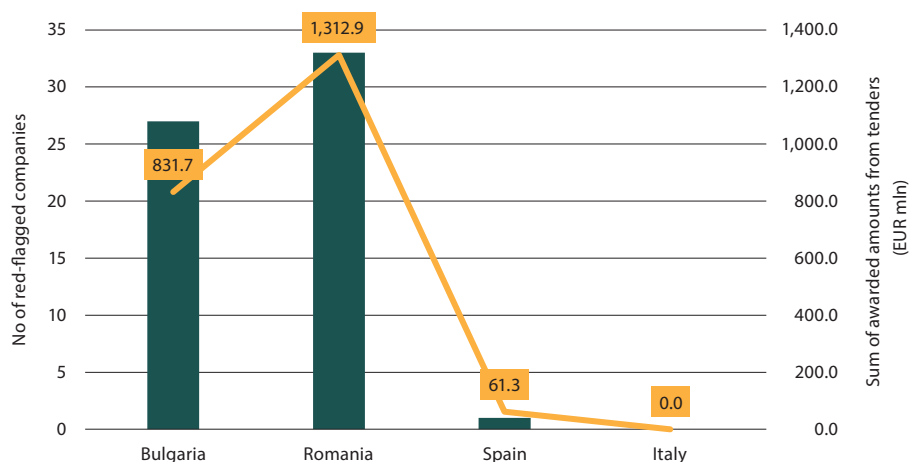
Source: ScemaMaps online risk assessment tool, <https://analytics.scemaps.eu>, 2021.

⁴⁶ The result covers only the companies ranking in the highest 20% of the ranking scale, which are assessed as being the riskiest.

Procurement exposure to revenue ratio calculates the share of revenue from awarded public tenders in the company's total revenue over a given period. It represents the risk that some companies depend highly on public procurement to survive – and thus, they are more vulnerable (motivated) to use illegal means to gain an advantage over their competitors. It may also point to companies that prefer not to operate in the free market and therefore cannot demonstrate viability without the support of public money.

Procurement exposure to revenue ratio confirms that Romania and Bulgaria are the most vulnerable among the four countries with a similar number of companies, which rely mainly on public procurement for their existence. However, due to the larger value of tenders on average, Romanian companies in this group have received 63% more in terms of awarded value of contracts. This indicator reveals not only a problem regarding the dependence of given companies on public procurement to survive but also may be a sign for the use of illegitimate means for achieving higher cost of their products and services. Similar to procurement exposure per employee ratio, this indicator would raise more red flags if calculated for a shorter period, as it includes only companies that have been operating for the entire period. However, when applied for a longer period, it allows for the identification of companies with stable and long-term track record in winning tenders that constitute significant share of their revenue as compared to their peers.

Figure 12. Procurement exposure to revenue ratio (2011 – 2019)



Source: SceMaps online risk assessment tool, <https://analytics.scemaps.eu>, 2021.

INSTITUTIONAL ENABLERS OF STATE CAPTURE PROCESSES

The regulatory and control authorities, irrespective whether they are general for the economy or sector-specific, can be seen as a reflection of the political will to ensure transparent, competitive and effective business environment in sectors prone to market and non-market driven concentration. Additionally, they need to develop good cooperation with other enforcement bodies, such as anti-corruption and law enforcement authorities, in order to ensure successful outcomes in tackling corruption and state capture. When these organisations are passive or ineffective, including because they are partially or fully captured, this enables the captors to ensure systemic privileges for themselves, privatising specific state functions. The functional characteristics of these institutions such as anti-corruption effectiveness, integrity of public officials, fairness and impartiality of decision-making and procedures, determine the second major component - together with BSCP, of the SceMaps state capture model. Called **institutional enablers**, these functional characteristics determine the institutional environment in which businesses operate. The enablers affect all actors in a sector and therefore they are measured at the sector level, even if some organisations, that are assessed, regulate the entire economy (e.g. tax administration, customs). Enablers denote processes that could contribute to the creation of an environment favourable to state capture and could make institutions vulnerable to different corruption influences. While measuring the state capture dimensions (e.g. business capture) provides assessment of the current status of state capture, measuring the institutional enablers provides hints also on expected future dynamics of state capture processes, as the enablers are structural features of the institutional framework. The institutional enablers, measured here, are⁴⁷:

- Anti-corruption effectiveness (the ability of administrative structures to identify, prevent, and counteract corruption practices among officials);
- Integrity of public officials (establishment and interiorisation of standards of behaviour, showing a consistent and uncompromising adherence to strong moral and ethical principles, incl. through increased accountability and transparency of work);
- Impartiality (the ability to adequately apply rules of fairness and impartiality in everyday transactions and services);
- Lack of bias toward specific private interests.

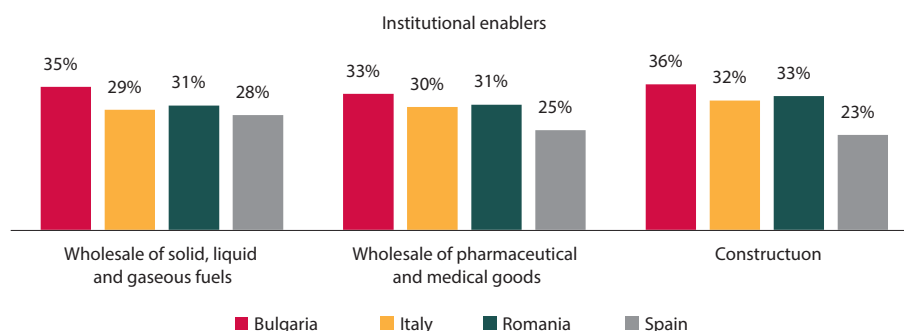
The institutional enablers index⁴⁸ has recorded consistently its highest values for the three sectors in Bulgaria (33% - 36%), followed by Romania (31%-33%) and Italy (29%-32%) and is significantly lower in Spain (23%-28%). While clearly Bulgaria is the country where the institutional environment is the most

⁴⁷ Stoyanov, Gerganov, and Yalamov, *State Capture Assessment Diagnostics*, Center for the Study of Democracy, 2019.

⁴⁸ The index is a composite indicator, calculated on the basis of the experts' assessments of each institutional enabler for a pre-defined list of public organisations with regulatory and control functions (incl. self-regulatory organisations such as industry associations) with respect to the selected sectors. Each enabler is measured through 3 empirical indicators, except "Private interest bias" consists of a single indicator.

vulnerable and contributes to the highest risks of state capture, the other three countries need to also improve the resilience capacity of their key regulatory and control organisations in the three economic sectors.

Figure 13. Institutional enablers index (scores, 0 – 100%)



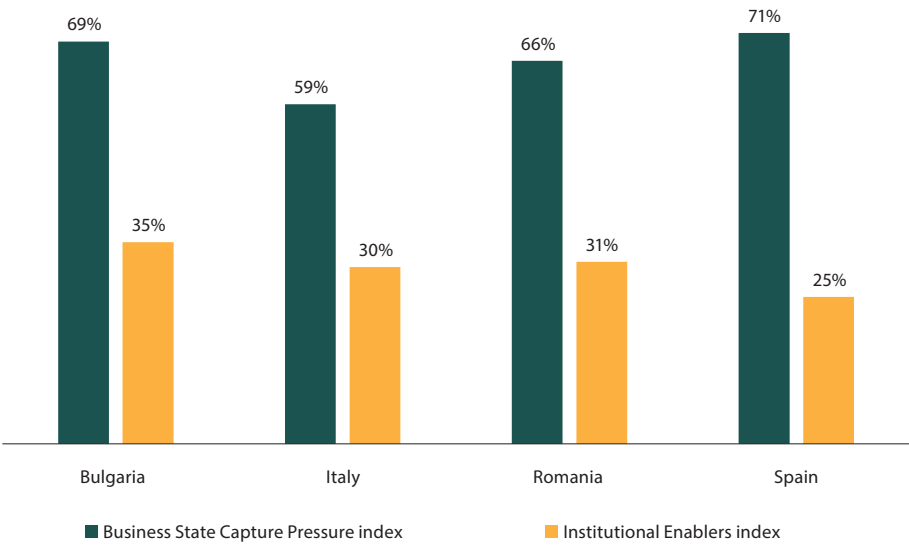
Source: CSD, SCAD ESL 2020.

Among the institutional enablers, sub-indexes **lack of integrity and ineffectiveness of anti-corruption policies have the highest scores for all sectors and all countries**, i.e. represent the riskiest environmental factors for the existence of state capture. The sub-indexes on private interest bias and lack of impartiality in the activities of state institutions remain less significant. The assessments of all sub-indicators of the lack of integrity sub-index (transparency, accountability, and availability of checks and balances), are very similar across the sectors with one notable exception – Romanian public organisations relevant to the wholesale of fuels are assessed as being not accountable by 75% of the experts. It indicates that all these factors should be considerably improved in all countries regarding both the regulatory and institutional frameworks.

When looking at the sub-indicators of the ineffectiveness of anti-corruption policies (external corruption pressure, pressure from above (higher ranking) managers, and Involvement in corruption), the riskiest factor is external corruption pressure. It is the only sub-indicator, which has similar values for all countries, including for Spain, despite this country's lowest score for the entire institutional enablers index.

Finally, the assessments of the lack of impartiality (which includes sub-indicators for serving private interests, inability to sanction certain people or companies, and braking internal rules or procedures) also do not differ significantly between the sectors. Yet, one of its sub-indicators - the inability of the respective organisation to sanction certain persons or companies is assessed as risky by 2 to 3 times more experts in all countries, as compared to the other sub-indicators. The result reveals the existence of a serious problem with persons and/or companies that are treated as excluded from the general regulatory and control rules and procedures in all four countries.

Figure 14. Business state capture pressure vs institutional enablers (scores, 0 – 100%)



Source: SCAD ESL 2020.

CONCLUSIONS AND RECOMMENDATIONS

Following the pilot application of the novel methodology for state capture assessment, SCAD, which measures the results and effects of business capture and institutional and environmental enablers at the country level, the current approach was developed as the SceMaps policy instrument, able to detect, assess and monitor state capture pressure and vulnerabilities in particular economic sectors. It combines two interlinked methodologies, based on soft (experts assessments) and hard data (corporate and public procurement). As an integral part of the approach, the analysis of the business capture pressure and the institutional enablers, helps for collecting evidence of actual pressure and vulnerabilities on the level of particular institutions, business enterprises, sectors and countries. Thus, it allows for designing and improving evidence-based sector-specific policies, as well as for using it as a monitoring tool for comparing the current state and progress across sectors and countries.

The concept and term of state capture has not been introduced in the legal framework of Bulgaria, Italy, Romania and Spain, even though it is widely used by media, politicians, and experts in recent years. Thus, there is no specific regulation for tackling or even only for monitoring state capture in its complexity per sector or per country. However, all of the four countries have in place specialised institutional and legal frameworks focused on anti-corruption, anti-monopoly, conflicts of interests and integrity of public officials. The SceMaps approach addresses these and other elements as components of a systematic approach for assessing state capture pressure on sectoral level.

The analysis reveals the existence of systematic problems of well-established and long-term forms of state capture vulnerabilities in all of the sectors under consideration. However, the countries and sectors rank differently according to the separate components of the state capture concept, indicating the country- and sector-specific characteristics, that need to be considered in the process of improving the relevant sectoral and national policies.

Bulgaria is the most vulnerable country to monopolisation pressure (average score 88%), with civil engineering (as a sub-sector of construction) having the highest index score (93%). Italy ranks second with an average score of 75% on monopolisation pressure, while Romania and Spain having lower values. The state capture vulnerability of the countries due to ineffective anti-monopoly regulation is the highest in Spain (wholesale of pharmaceuticals 64% and wholesale of fuels 50%) and in Romania (wholesale of fuels 62%). The higher scores for all four countries in these two sectors, confirms the need for fostering the effectiveness of anti-monopoly laws and institutions especially in sectors dominated by large international and/or national businesses.

The construction sector is the most vulnerable to specific monopolisation pressure, which covers illegal practices, aiming at ensuring illegitimate competitive advantages for particular companies, including privileged access to procurement, lobbyist laws, selective application of control and sanctions,

and concentration of public grants and subsidies. Having scores above 70% for all countries, construction exceeds the other sectors but the results reveal widespread presence of state capture vulnerabilities in all of them.

Bulgaria and Rumania appear as more vulnerable to state capture on the side of both suppliers (companies) and buyers (contracting authorities), as compared to Spain and Italy. Particularly the latter remains the least captured state in this respect. The assessment, based on innovative red flags, such as buyer concentration index, procurement exposure to revenue ratio, etc. reveals that the state capture risks in public procurement in Bulgaria and Romania are twice to several times higher than in the other two countries. This is further confirmed by the institutional enablers index, which reflects the vulnerability of the institutional environment, and has the highest values for all sectors in Bulgaria (average score 40%), followed by Italy and Romania (average score 36% each) and is significantly lower in Spain (average score 29%). While clearly Bulgaria is the country where the institutional environment in terms of anti-corruption effectiveness, integrity of public officials, and fairness and impartiality of decision-making, is the most vulnerable and contributes to the risk of state capture, the other three countries also need to improve the resilience capacity of their key regulatory and control institutions.

What's Next?

The widespread signs of state capture risks and vulnerabilities in Bulgaria, Italy, Romania and Spain, coupled with the lack of specialised policies and regulations for tackling this phenomenon in a systematic manner, reveals the **need for improving both the policy and the professional and administrative capacity of key public institutions**. Particularly, control, regulatory and law enforcement institutions should develop capabilities for identifying and monitoring state capture processes in their complexity and especially in high risky sectors and areas of economic life. The analysed sectors of construction, wholesale of fuels and wholesale of pharmaceuticals proved to be highly vulnerable, particularly in terms of governance of public spending through procurement and efficiency of institutional and regulatory framework for tackling well-established and long-term existing forms of corruption. Taking into account the complexity of state capture phenomenon and its characteristic of targeting precisely the key public institutions that are envisaged to tackle it, it is important the **sources of risks and vulnerabilities be identified according to their intensity per sector and area of economic life**. This will allow for the prioritisation of the necessary improvements in both the institutional and regulatory frameworks, as the issues that require policy interventions could be spread across wide range of major state authorities. The **identification of high-risk zones, following an evidence-based approach** as the SceMaps methodology, will allow for implementing policy interventions that aim also at preventing state capture to proliferate in other related areas.

In Bulgaria, Italy, Romania and Spain **the concept of state capture is still outside the political discourse**, which is much centred on different forms of corruption without systematic evaluation of the linkages between them. The situation is highly visible in the findings and the corresponding conclusions of the current analysis. These include specific risks in public procurement re-

lated to corruption and other governance irregularities and deficits, the lack of or inefficient implementation of regulations regarding conflicts of interests and lobbying, as well as the regulatory and administrative burdens on free competition, which create favourable conditions for monopolisation or high market concentration in specific sectors. Noting the underlying complexity of state capture and its possible links to other threats such as organised crime, foreign political influence, and international illicit financial transactions, there is a **need for development and implementation also of transnational, European policies and initiatives**, which should address this phenomenon in conceptual, political and economic terms.

APPENDIX 1.

COMPUTED INDEXES – BULGARIA

Table A1.1. Lack of Impartiality

ID	Organisation	Often serves private interests	Would never sanction certain people/firms	Its rules of operation are broken often	Lack of Impartiality	Base
1	District administrations	30%	67%	29%	42%	71
2	Municipal administrations	42%	71%	34%	49%	82
3	Customs Agency	30%	61%	23%	38%	82
4	National Revenue Agency	20%	66%	19%	35%	88
5	National Audit Office	7%	53%	7%	23%	73
6	Public Procurement Agency	25%	58%	23%	35%	72
7	Commission for Protection of Competition	20%	62%	15%	33%	69
8	Commission for Combating Corruption and Confiscation of Illegally Acquired Property	30%	55%	30%	39%	73
9	Audit of European Union Funds Executive Agency	24%	55%	19%	33%	44
10	Energy and Water Regulatory Commission	19%	69%	22%	37%	61
11	Executive Environment Agency	22%	71%	21%	38%	59
12	General Labour Inspectorate Executive Agency	12%	63%	13%	29%	71
13	Bulgarian Drug Agency	24%	67%	20%	37%	54
14	National Council on Prices and Reimbursement of Medicinal Products	20%	58%	17%	32%	38
15	Directorate for National Construction Supervision	42%	70%	38%	50%	63
16	Road Infrastructure Agency	42%	69%	40%	50%	69
17	Registry Agency	13%	51%	10%	25%	73
18	Geodesy, Cartography and Cadastre Agency	14%	62%	17%	31%	62

Source: SceMaps, SCAD ESL 2020.

Table A1.2. Lack of Integrity

ID	Organisation	Activities are not transparent	Not accountable for its actions	No checks and balances	Lack of Integrity	Base
1	District administrations	44%	31%	45%	40%	71
2	Municipal administrations	56%	33%	47%	45%	82
3	Customs Agency	42%	26%	47%	38%	82
4	National Revenue Agency	33%	25%	46%	35%	88
5	National Audit Office	19%	19%	45%	28%	73
6	Public Procurement Agency	36%	28%	38%	34%	72
7	Commission for Protection of Competition	33%	27%	52%	37%	69
8	Commission for Combating Corruption and Confiscation of Illegally Acquired Property	47%	32%	57%	46%	73
9	Audit of European Union Funds Executive Agency	46%	31%	49%	42%	44
10	Energy and Water Regulatory Commission	51%	39%	51%	47%	61
11	Executive Environment Agency	53%	38%	49%	47%	59
12	General Labour Inspectorate Executive Agency	33%	19%	36%	29%	71
13	Bulgarian Drug Agency	55%	31%	44%	43%	54
14	National Council on Prices and Reimbursement of Medicinal Products	44%	14%	46%	35%	38
15	Directorate for National Construction Supervision	61%	39%	61%	54%	63
16	Road Infrastructure Agency	61%	42%	58%	54%	69
17	Registry Agency	28%	32%	47%	35%	73
18	Geodesy, Cartography and Cadastre Agency	36%	25%	50%	37%	62

Source: SceMaps, SCAD ESL 2020.

Table A1.3. Private Interest Bias

ID	Organisation	Private Interest Bias	Base
1	District administrations	15%	71
2	Municipal administrations	28%	82
3	Customs Agency	15%	82
4	National Revenue Agency	20%	88
5	National Audit Office	6%	73
6	Public Procurement Agency	15%	72
7	Commission for Protection of Competition	16%	69
8	Commission for Combating Corruption and Confiscation of Illegally Acquired Property	25%	73
9	Audit of European Union Funds Executive Agency	12%	44
10	Energy and Water Regulatory Commission	21%	61
11	Executive Environment Agency	14%	59
12	General Labour Inspectorate Executive Agency	9%	71
13	Bulgarian Drug Agency	18%	54
14	National Council on Prices and Reimbursement of Medicinal Products	17%	38
15	Directorate for National Construction Supervision	33%	63
16	Road Infrastructure Agency	26%	69
17	Registry Agency	6%	73
18	Geodesy, Cartography and Cadastre Agency	10%	62

Source: SceMaps, SCAD ESL 2020.

Table A1.4. Ineffectiveness of Anti-corruption Policies

ID	Organisation	Estimated External Corruption Pressure	Estimated Pressure from Above	Estimated Involvement in Corruption	Ineffectiveness of Anti-corruption Policies	Base
1	District administrations	70%	62%	39%	57%	71
2	Municipal administrations	76%	68%	49%	64%	82
3	Customs Agency	69%	53%	32%	51%	82
4	National Revenue Agency	66%	45%	25%	45%	88
5	National Audit Office	39%	31%	7%	26%	73
6	Public Procurement Agency	66%	45%	26%	46%	72
7	Commission for Protection of Competition	63%	44%	20%	43%	69
8	Commission for Combating Corruption and Confiscation of Illegally Acquired Property	66%	50%	28%	48%	73
9	Audit of European Union Funds Executive Agency	59%	46%	27%	44%	44
10	Energy and Water Regulatory Commission	78%	50%	35%	54%	61
11	Executive Environment Agency	71%	59%	32%	54%	59
12	General Labour Inspectorate Executive Agency	52%	46%	24%	41%	71
13	Bulgarian Drug Agency	65%	56%	24%	48%	54
14	National Council on Prices and Reimbursement of Medicinal Products	72%	53%	31%	52%	38
15	Directorate for National Construction Supervision	75%	66%	49%	63%	63
16	Road Infrastructure Agency	78%	65%	42%	62%	69
17	Registry Agency	49%	41%	19%	36%	73
18	Geodesy, Cartography and Cadastre Agency	50%	41%	19%	37%	62

Source: SceMaps, SCAD ESL 2020.

APPENDIX 2.

COMPUTED INDEXES – ITALY

Table A2.1. List of Public organisations

ID	Italian	English	Wholesale of solid, liquid and gaseous fuels			Wholesale of pharmaceutical and medical goods			Construction		
			Regulation	Control	Big client	Regulation	Control	Big client	Regulation	Control	Big client
1	Autorità Garante della Concorrenza e del Mercato (AGCM)	Italian Antitrust Authority		X			X			X	
2	Autorità Nazionale Anticorruzione (ANAC)	National Anti-corruption Authority		X			X			X	
3	Commissione nazionale per le società e la borsa (CONSOB)	National Commission for the Society and the Stock Market	X	X		X	X		X	X	
4	Banca d'Italia	Bank of Italy		X			X			X	
5	Azienda Nazionale Autonoma delle Strade (ANAS)	Italian national roads authority									X
6	Agenzia delle dogane e dei monopoli	Customs and Monopolies Agency	X	X		X	X		X	X	
7	Agenzia delle Entrate	Italian Revenue Agency	X	X		X	X		X	X	
8	Istituto di previdenza sociale (INPS)	National Social Security Institute		X			X			X	
9	Corte dei Conti	Supreme Audit Court		X			X			X	
10	Autorità di Regolazione per Energia Reti e Ambiente (ARERA)	Italian Regulatory Authority for Energy, Networks and Environment	X	X							
11	Commissioni per l'urbanistica e la tutela del paesaggio (regionali)	Regional commission on urbanism and landscape protection							X	X	
12	Agenzia nazionale per i servizi sanitari regionali (Agenas)	National Healthcare Agency					X	X			
13	Azienda Sanitaria locale	Local Health Agency						X			
14	Regioni	Regions			X					X	X

Table A2.1. List of Public organisations (Continues)

ID	Italian	English	Wholesale of solid, liquid and gaseous fuels			Wholesale of pharmaceutical and medical goods			Construction		
			Regulation	Control	Big client	Regulation	Control	Big client	Regulation	Control	Big client
15	Province e Comuni	Provinces and Municipalities			X					X	X
16	Ufficio Italiano Brevetti e Marchi	Italian Patent and Trademark Office	X	X		X	X		X	X	
17	Agenzia Italiana del Farmaco	Italian Drug Agency					X				
18	Camere di Commercio	Chamber of Commerce		X			X			X	
19	Ministero dello Sviluppo Economico	Ministry of Economic Development	X	X							
20	Ministero dell'Economia e Finanza	Ministry of Economy and Finance	X	X		X	X		X	X	
21	Ministero della Salute	Ministry of Health				X	X	X			
22	Ministero delle Infrastrutture e dei Trasporti	Ministry of Infrastructures and Transport							X	X	X
23	Ministero dell'Ambiente e della Tutela del Territorio e del Mare	Ministry for the Environment and the Protection of Land and Sea		X			X			X	
24	Guardia di finanza	Finance Guard		X			X			X	
25	Istituto per la vigilanza sulle assicurazioni (IVASS)	Institute for the Supervision of Insurance		X			X			X	
26	Consip spa	Consip spa									X
27	Ospedali	Hospitals						X			X

Source: SceMaps, SCAD ESL 2020.

Table A2.2. Lack of Impartiality

ID	Organisation	Often serves private in-terests	Would never sanction certain people/firms	Its rules of operation are broken often	Lack of Impartiality	Base
1	Italian Antitrust Authority	7%	64%	7%	26%	31
2	National Anti-corruption Authority	3%	50%	6%	20%	34
3	National Commission for the Society and the Stock Market	22%	64%	22%	36%	30
4	Bank of Italy	14%	69%	11%	31%	31
5	Italian national roads authority	44%	70%	38%	51%	28
6	Customs and Monopolies Agency	10%	71%	10%	31%	31
7	Italian Revenue Agency	29%	69%	25%	41%	34
8	National Social Security Institute	10%	71%	10%	31%	30
9	Supreme Audit Court	10%	50%	13%	25%	32
10	Italian Regulatory Authority for Energy, Networks and Environment	21%	63%	11%	32%	22
11	Regional commission on urbanism and landscape protection	57%	75%	48%	60%	22
12	National Healthcare Agency	25%	63%	25%	38%	19
13	Local Health Agency	48%	64%	42%	52%	35
14	Regions	47%	66%	45%	53%	35
15	Provinces and Municipalities	44%	75%	47%	55%	34
16	Italian Patent and Trademark Office	15%	58%	4%	26%	29
17	Italian Drug Agency	33%	71%	33%	46%	24
18	Chamber of Commerce	3%	61%	9%	24%	35
19	Ministry of Economic Development	18%	75%	11%	35%	31
20	Ministry of Economy and Finance	17%	67%	17%	33%	33
21	Ministry of Health	27%	66%	43%	45%	32
22	Ministry of Infrastructures and Transport	17%	69%	21%	36%	31
23	Ministry for the Environment and the Protection of Land and Sea	13%	76%	20%	36%	27
24	Finance Guard	19%	65%	16%	33%	35
25	Institute for the Supervision of Insurance	14%	59%	14%	29%	24
26	Consip spa	33%	73%	23%	43%	32
27	Hospitals	50%	61%	42%	51%	36

Source: SceMaps, SCAD ESL 2020.

Table A2.3. Lack of Integrity

ID	Organisation	Activities are not transparent	Not accountable for its actions	No checks and balances	Lack of Integrity	Base
1	Italian Antitrust Authority	36%	36%	59%	44%	31
2	National Anti-corruption Authority	22%	28%	45%	32%	34
3	National Commission for the Society and the Stock Market	46%	37%	37%	40%	30
4	Bank of Italy	41%	52%	46%	47%	31
5	Italian national roads authority	57%	52%	16%	42%	28
6	Customs and Monopolies Agency	45%	39%	33%	39%	31
7	Italian Revenue Agency	42%	41%	26%	36%	34
8	National Social Security Institute	37%	31%	21%	30%	30
9	Supreme Audit Court	26%	38%	55%	40%	32
10	Italian Regulatory Authority for Energy, Networks and Environment	50%	37%	39%	42%	22
11	Regional commission on urbanism and landscape protection	52%	47%	25%	42%	22
12	National Healthcare Agency	41%	38%	27%	35%	19
13	Local Health Agency	41%	42%	13%	32%	35
14	Regions	67%	53%	29%	50%	35
15	Provinces and Municipalities	61%	56%	16%	44%	34
16	Italian Patent and Trademark Office	44%	31%	40%	38%	29
17	Italian Drug Agency	50%	48%	30%	43%	24
18	Chamber of Commerce	35%	41%	28%	35%	35
19	Ministry of Economic Development	45%	39%	37%	40%	31
20	Ministry of Economy and Finance	39%	33%	37%	36%	33
21	Ministry of Health	40%	41%	32%	38%	32
22	Ministry of Infrastructures and Transport	52%	36%	33%	40%	31
23	Ministry for the Environment and the Protection of Land and Sea	40%	38%	30%	36%	27
24	Finance Guard	30%	38%	29%	32%	35
25	Institute for the Supervision of Insurance	41%	33%	44%	40%	24
26	Consip spa	59%	52%	29%	46%	32
27	Hospitals	47%	42%	16%	35%	36

Source: SceMaps, SCAD ESL 2020.

Table A2.4. Private Interest Bias

ID	Organisation	Private Interest Bias	Base
1	Italian Antitrust Authority	8%	31
2	National Anti-corruption Authority	7%	34
3	National Commission for the Society and the Stock Market	17%	30
4	Bank of Italy	15%	31
5	Italian national roads authority	8%	28
6	Customs and Monopolies Agency	7%	31
7	Italian Revenue Agency	7%	34
8	National Social Security Institute	4%	30
9	Supreme Audit Court	4%	32
10	Italian Regulatory Authority for Energy, Networks and Environment	12%	22
11	Regional commission on urbanism and landscape protection	11%	22
12	National Healthcare Agency	7%	19
13	Local Health Agency	10%	35
14	Regions	7%	35
15	Provinces and Municipalities	7%	34
16	Italian Patent and Trademark Office	0%	29
17	Italian Drug Agency	16%	24
18	Chamber of Commerce	3%	35
19	Ministry of Economic Development	4%	31
20	Ministry of Economy and Finance	4%	33
21	Ministry of Health	15%	32
22	Ministry of Infrastructures and Transport	4%	31
23	Ministry for the Environment and the Protection of Land and Sea	5%	27
24	Finance Guard	3%	35
25	Institute for the Supervision of Insurance	10%	24
26	Consip spa	12%	32
27	Hospitals	10%	36

Source: SceMaps, SCAD ESL 2020.

Table A2.5. Ineffectiveness of Anti-corruption Policies

ID	Organisation	Estimated External Corruption Pressure	Estimated Pressure from Above	Estimated Involvement in Corruption	Ineffectiveness of Anti-corruption Policies	Base
1	Italian Antitrust Authority	45%	32%	10%	29%	31
2	National Anti-corruption Authority	26%	12%	3%	14%	34
3	National Commission for the Society and the Stock Market	70%	43%	13%	42%	30
4	Bank of Italy	52%	32%	16%	33%	31
5	Italian national roads authority	85%	64%	39%	63%	28
6	Customs and Monopolies Agency	81%	47%	20%	49%	31
7	Italian Revenue Agency	68%	50%	18%	45%	34
8	National Social Security Institute	57%	40%	10%	36%	30
9	Supreme Audit Court	31%	25%	3%	20%	32
10	Italian Regulatory Authority for Energy, Networks and Environment	59%	55%	23%	45%	22
11	Regional commission on urbanism and landscape protection	91%	77%	32%	67%	22
12	National Healthcare Agency	63%	63%	21%	49%	19
13	Local Health Agency	79%	60%	35%	58%	35
14	Regions	85%	68%	52%	68%	35
15	Provinces and Municipalities	88%	56%	45%	63%	34
16	Italian Patent and Trademark Office	43%	29%	4%	25%	29
17	Italian Drug Agency	92%	50%	38%	60%	24
18	Chamber of Commerce	46%	26%	6%	26%	35
19	Ministry of Economic Development	71%	39%	10%	40%	31
20	Ministry of Economy and Finance	64%	39%	16%	40%	33
21	Ministry of Health	72%	53%	32%	52%	32
22	Ministry of Infrastructures and Transport	74%	42%	13%	43%	31
23	Ministry for the Environment and the Protection of Land and Sea	63%	37%	12%	37%	27
24	Finance Guard	65%	38%	9%	37%	35
25	Institute for the Supervision of Insurance	52%	35%	17%	35%	24
26	Consip spa	75%	53%	37%	55%	32
27	Hospitals	80%	57%	38%	58%	36

Source: SceMaps, SCAD ESL 2020.

APPENDIX 3.

COMPUTED INDEXES – ROMANIA

Table A3.1. List of Public organisations

ID	Romanian	English	Wholesale of solid, liquid and gaseous fuels			Wholesale of pharmaceutical and medical goods			Construction		
			Regulation	Control	Big client	Regulation	Control	Big client	Regulation	Control	Big client
1	Primării	Municipalities			X					X	X
2	Consilii judeţene	County councils			X					X	X
3	Agenţia Naţională pentru Achiziţii Publice (ANAP)	National Agency for Public Procurement.	X	X		X	X		X	X	
4	Curtea de Conturi a României	Romanian Court of Accounts		X			X			X	
5	Consiliul Naţional de Soluţionare a Contestaţiilor (C.N.S.C.)	National Council for Solving Complaints		X			X			X	
6	Agenţia Naţională de Integritate	National Integrity Agency		X			X			X	
7	Consiliul Concurenţei	Competition Council		X			X			X	
8	Departamentul pentru Lupta Antifrauda (DLAF)	Fight against Fraud Department		X			X			X	
9	Direcţia Generală a Vămirilor	National Customs Directorate									
10	Agenţia Naţională de Administrare Fiscală (ANAF)	National Agency for Fiscal Administration		X			X			X	
11	Direcţia Naţională Anticorupţie (DNA)	National Anti-corruption Directorate		X			X			X	
12	Ministerul Fondurilor Europene	Ministry of European Funds								X	
13	Ministerul Energiei	Ministry of Energy	X	X							
14	Ministerul Economiei	Ministry of Economy	X								
17	Ministerul Sănătăţii	Ministry of Health				X	X	X			

Table A3.1. List of Public organisations (Continues)

ID	Romanian	English	Wholesale of solid, liquid and gaseous fuels			Wholesale of pharmaceutical and medical goods			Construction		
			Regulation	Control	Big client	Regulation	Control	Big client	Regulation	Control	Big client
18	Agentia Nationala a Medicamentului si a Dispozitivelor Medicale din Romania	National Agency for Medicines and Medical Devices of Romania				X	X				
19	Ministerul Dezvoltarii Regionale si Administratiei Publice (MDRAP)	Ministry of Regional Development and Public Administration							X	X	
20	Ministerul Transporturilor	Ministry of Transport							X		
21	Compania Nationala de Administrare a Infrastructurii Rutiere (CNAIR)	National Company for Road Infrastructure Administration							X	X	X
22	Compania Națională de Investiții (CNI)	National Investments Company								X	X
23	Inspectoratul de Stat în Construcții (I.S.C.)	State Inspectorate in Constructions								X	
25	Spitale	Hospitals						X			

Source: SceMaps, SCAD ESL 2020.

Table A3.2. Lack of Impartiality

ID	Organisation	Often serves private interests	Would never sanction certain people/firms	Its rules of operation are broken often	Lack of Impartiality	Base
1	Municipalities	48%	68%	48%	55%	25
2	County councils	33%	58%	42%	44%	24
3	National Agency for Public Procurement.	12%	50%	16%	26%	27
4	Romanian Court of Accounts	8%	56%	0%	21%	26
5	National Council for Solving Complaints	4%	25%	8%	13%	25
6	National Integrity Agency	4%	48%	4%	19%	25
7	Competition Council	4%	57%	9%	23%	23
8	Fight against Fraud Department	0%	47%	6%	18%	16
9	National Customs Directorate	36%	73%	30%	46%	11
10	National Agency for Fiscal Administration	18%	64%	32%	38%	23
11	National Anti-corruption Directorate	0%	40%	5%	15%	20
12	Ministry of European Funds	9%	52%	17%	26%	24
13	Ministry of Energy	28%	61%	28%	39%	18
14	Ministry of Economy	19%	62%	14%	32%	21
17	Ministry of Health	28%	50%	33%	37%	19
18	National Agency for Medicines and Medical Devices of Romania	10%	60%	20%	30%	11
19	Ministry of Regional Development and Public Administration	38%	63%	25%	42%	24
20	Ministry of Transport	32%	58%	42%	44%	19
21	National Company for Road Infrastructure Administration	38%	63%	31%	44%	16
22	National Investments Company	28%	50%	11%	30%	19
23	State Inspectorate in Constructions	24%	67%	14%	35%	21
25	Hospitals	50%	50%	50%	50%	19

Source: SceMaps, SCAD ESL 2020.

Table A3.3. Lack of Integrity

ID	Organisation	Activities are not transparent	Not accountable for its actions	No checks and balances	Lack of Integrity	Base
1	Municipalities	42%	32%	32%	35%	25
2	County councils	39%	29%	33%	34%	24
3	National Agency for Public Procurement.	32%	15%	31%	26%	27
4	Romanian Court of Accounts	42%	24%	56%	41%	26
5	National Council for Solving Complaints	13%	17%	50%	27%	25
6	National Integrity Agency	33%	16%	56%	35%	25
7	Competition Council	41%	17%	52%	37%	23
8	Fight against Fraud Department	40%	13%	63%	38%	16
9	National Customs Directorate	70%	45%	45%	54%	11
10	National Agency for Fiscal Administration	67%	36%	36%	46%	23
11	National Anti-corruption Directorate	53%	5%	55%	38%	20
12	Ministry of European Funds	36%	22%	48%	35%	24
13	Ministry of Energy	65%	44%	50%	53%	18
14	Ministry of Economy	55%	33%	43%	44%	21
17	Ministry of Health	71%	50%	44%	55%	19
18	National Agency for Medicines and Medical Devices of Romania	78%	50%	40%	56%	11
19	Ministry of Regional Development and Public Administration	48%	33%	54%	45%	24
20	Ministry of Transport	71%	53%	47%	57%	19
21	National Company for Road Infrastructure Administration	53%	50%	25%	43%	16
22	National Investments Company	35%	28%	17%	27%	19
23	State Inspectorate in Constructions	55%	38%	48%	47%	21
25	Hospitals	82%	50%	39%	57%	19

Source: SceMaps, SCAD ESL 2020.

Table A3.4. Private Interest Bias

ID	Organisation	Private Interest Bias	Base
1	Municipalities	29%	25
2	County councils	30%	24
3	National Agency for Public Procurement.	12%	27
4	Romanian Court of Accounts	16%	26
5	National Council for Solving Complaints	4%	25
6	National Integrity Agency	4%	25
7	Competition Council	17%	23
8	Fight against Fraud Department	13%	16
9	National Customs Directorate	18%	11
10	National Agency for Fiscal Administration	32%	23
11	National Anti-corruption Directorate	5%	20
12	Ministry of European Funds	17%	24
13	Ministry of Energy	17%	18
14	Ministry of Economy	19%	21
17	Ministry of Health	39%	19
18	National Agency for Medicines and Medical Devices of Romania	10%	11
19	Ministry of Regional Development and Public Administration	29%	24
20	Ministry of Transport	21%	19
21	National Company for Road Infrastructure Administration	31%	16
22	National Investments Company	22%	19
23	State Inspectorate in Constructions	33%	21
25	Hospitals	33%	19

Source: SceMaps, SCAD ESL 2020.

Table A3.5. Ineffectiveness of Anti-corruption Policies

ID	Organisation	Estimated External Corruption Pressure	Estimated Pressure from Above	Estimated Involvement in Corruption	Ineffectiveness of Anti-corruption Policies	Base
1	Municipalities	64%	72%	64%	67%	25
2	County councils	54%	63%	52%	56%	24
3	National Agency for Public Procurement.	31%	52%	15%	33%	27
4	Romanian Court of Accounts	33%	44%	12%	30%	26
5	National Council for Solving Complaints	22%	25%	8%	18%	25
6	National Integrity Agency	21%	28%	4%	18%	25
7	Competition Council	36%	26%	4%	22%	23
8	Fight against Fraud Department	20%	31%	6%	19%	16
9	National Customs Directorate	36%	45%	36%	39%	11
10	National Agency for Fiscal Administration	57%	59%	50%	55%	23
11	National Anti-corruption Directorate	26%	20%	10%	19%	20
12	Ministry of European Funds	50%	43%	26%	40%	24
13	Ministry of Energy	61%	61%	39%	54%	18
14	Ministry of Economy	65%	67%	38%	57%	21
17	Ministry of Health	53%	56%	61%	57%	19
18	National Agency for Medicines and Medical Devices of Romania	33%	50%	30%	38%	11
19	Ministry of Regional Development and Public Administration	58%	67%	54%	60%	24
20	Ministry of Transport	61%	63%	58%	61%	19
21	National Company for Road Infrastructure Administration	47%	75%	69%	63%	16
22	National Investments Company	59%	44%	33%	46%	19
23	State Inspectorate in Constructions	50%	62%	33%	48%	21
25	Hospitals	59%	67%	67%	64%	19

Source: SceMaps, SCAD ESL 2020.

APPENDIX 4.

COMPUTED INDEXES – SPAIN

Table A4.1. List of Public organisations

ID	Spanish	English	Wholesale of solid, liquid and gaseous fuels			Wholesale of pharmaceutical and medical goods			Construction		
			Regulation	Control	Big client	Regulation	Control	Big client	Regulation	Control	Big client
3	Comisión Nacional de los Mercados y la Competencia	National Commission on Markets and Competition		X			X			X	
4	Agencia Estatal de la Administración Tributaria	Spanish Tax Agency		X			X			X	
5	Comisión Nacional del Mercado de Valores	National Securities Market Commission		X			X			X	
6	Oficina Independiente de Regulación y Supervisión de la Contratación	Independent Office for Regulating and Monitoring Procurement		X	X		X	X		X	X
8	Agencia Española de Medicamentos y Productos Sanitarios	Spanish Agency of Medicines and Medical Devices				X	X				
10	Sociedad Estatal de Infraestructuras del Transporte Terrestre	State Company for Land Transport Infrastructures (SEITT)									X
11	Administrador de Infraestructuras Ferroviarias	Railway Infrastructure Manager									X
12	Organismos autonómicos de Consumo	Regional Consumer Agencies				X	X				
13	Instituto de Contabilidad y Auditoría de Cuentas	Institute of Accounting and Audit of Accounts					X			X	
15	Ministerio de Sanidad, Consumo y Bienestar Social	Ministry of Health, Consumer Affairs and Social Welfare				X	X				
16	Ministerio para la Transición Ecológica (o ministerio equivalente con competencias en Energía)	Ministry for the Ecological Transition	X	X							

Table A4.1. List of Public organisations (Continues)

ID	Spanish	English	Wholesale of solid, liquid and gaseous fuels			Wholesale of pharmaceutical and medical goods			Construction		
			Regulation	Control	Big client	Regulation	Control	Big client	Regulation	Control	Big client
17	Ministerio de Fomento	Ministry of Development							X	X	X
19	Ministerio de Industria (o ministerio equivalente con competencias en Industria)	Ministry of Industry, Trade and Tourism	X	X		X	X		X	X	
20	Oficina Antifraude de Cataluña	Catalan Anti-Fraud Office					X			X	
21	Agencia Valenciana Antifraude	Valencia Anti-Fraud Agency					X			X	
22	Oficina de Prevención y Lucha contra la Corrupción en las Illes Balears	Balearic anti-Corruption Office					X			X	
23	Oficinas municipales antifraude y anticorrupción	Local Anti-Fraud and Anti-Corruption Offices					X			X	
24	Tribunales administrativos autonómicos de la contratación pública	Regional administrative tribunal for public procurement					X			X	
25	Tribunal Administrativo Central de Recursos Contractuales	Central Administrative Tribunal of Contractual Appeals					X			X	
29	Administraciones autonómicas	Autonomous and Regional Governments	X			X		X	X		X
30	Agencias o institutos autonómicos de la energía (EVE, ICAEN, FENERCOM, AGENEX, etc.)	Regional Energy Agencies and Authorities	X								
31	Comisión Interministerial de Precios de Medicamentos y Productos Sanitarios	Inter-ministerial Commission on the Prices of Medicines and Health Products				X					

Source: SceMaps, SCADE ESL 2020.

Table A4.2. Lack of Impartiality

ID	Organisation	Often serves private interests	Would never sanction certain people/firms	Its rules of operation are broken often	Lack of Impartiality	Base
3	National Commission on Markets and Competition	4%	35%	4%	14%	23
4	Spanish Tax Agency	11%	42%	11%	21%	19
5	National Securities Market Commission	0%	57%	7%	21%	14
6	Independent Office for Regulating and Monitoring Procurement	0%	6%	0%	2%	18
8	Spanish Agency of Medicines and Medical Devices	27%	50%	9%	29%	12
10	State Company for Land Transport Infrastructures (SEITT)	20%	29%	0%	16%	7
11	Railway Infrastructure Manager	31%	38%	15%	28%	13
13	Institute of Accounting and Audit of Accounts	0%	50%	0%	17%	14
15	Ministry of Health, Consumer Affairs and Social Welfare	25%	62%	8%	31%	14
16	Ministry for the Ecological Transition	14%	40%	7%	20%	15
17	Ministry of Development	38%	47%	18%	34%	17
19	Ministry of Industry, Trade and Tourism	33%	60%	14%	36%	15
20	Catalan Anti-Fraud Office	0%	13%	0%	4%	15
21	Valencia Anti-Fraud Agency	0%	15%	0%	5%	13
22	Balearic anti-Corruption Office	0%	14%	0%	5%	14
23	Local Anti-Fraud and Anti-Corruption Offices	0%	43%	0%	14%	14
24	Regional administrative tribunal for public procurement	0%	25%	0%	8%	16
25	Central Administrative Tribunal of Contractual Appeals	0%	14%	0%	5%	14
29	Autonomous and Regional Governments	41%	82%	27%	50%	22
30	Regional Energy Agencies and Authorities	13%	53%	7%	24%	15
31	Inter-ministerial Commission on the Prices of Medicines and Health Products	14%	57%	0%	24%	7
28	Local governments in Spain	63%	83%	50%	65%	24
32	State Consultive Board on Public Procurement	0%	33%	0%	11%	18

Source: SceMaps, SCAD ESL 2020.

Table A4.3. Lack of Integrity

ID	Organisation	Activities are not transparent	Not accountable for its actions	No checks and balances	Lack of Integrity	Base
3	National Commission on Markets and Competition	32%	24%	65%	40%	23
4	Spanish Tax Agency	42%	44%	47%	45%	19
5	National Securities Market Commission	46%	46%	79%	57%	14
6	Independent Office for Regulating and Monitoring Procurement	18%	12%	56%	28%	18
8	Spanish Agency of Medicines and Medical Devices	55%	45%	25%	42%	12
10	State Company for Land Transport Infrastructures (SEITT)	43%	29%	14%	29%	7
11	Railway Infrastructure Manager	75%	58%	38%	57%	13
13	Institute of Accounting and Audit of Accounts	42%	33%	86%	54%	14
15	Ministry of Health, Consumer Affairs and Social Welfare	75%	67%	43%	62%	14
16	Ministry for the Ecological Transition	54%	46%	47%	49%	15
17	Ministry of Development	56%	50%	47%	51%	17
19	Ministry of Industry, Trade and Tourism	62%	50%	47%	53%	15
20	Catalan Anti-Fraud Office	33%	7%	47%	29%	15
21	Valencia Anti-Fraud Agency	23%	8%	38%	23%	13
22	Balearic anti-Corruption Office	15%	8%	43%	22%	14
23	Local Anti-Fraud and Anti-Corruption Offices	36%	14%	43%	31%	14
24	Regional administrative tribunal for public procurement	20%	33%	63%	39%	16
25	Central Administrative Tribunal of Contractual Appeals	31%	31%	57%	40%	14
29	Autonomous and Regional Governments	62%	43%	36%	47%	22
30	Regional Energy Agencies and Authorities	46%	50%	40%	45%	15
31	Inter-ministerial Commission on the Prices of Medicines and Health Products	57%	57%	57%	57%	7
28	Local governments in Spain	74%	61%	46%	60%	24
32	State Consultive Board on Public Procurement	24%	18%	44%	29%	18

Source: SceMaps, SCAD ESL 2020.

Table A4.4. Private Interest Bias

ID	Organisation	Private Interest Bias	Base
3	National Commission on Markets and Competition	9%	23
4	Spanish Tax Agency	11%	19
5	National Securities Market Commission	7%	14
6	Independent Office for Regulating and Monitoring Procurement	6%	18
8	Spanish Agency of Medicines and Medical Devices	9%	12
10	State Company for Land Transport Infrastructures (SEITT)	14%	7
11	Railway Infrastructure Manager	23%	13
13	Institute of Accounting and Audit of Accounts	7%	14
15	Ministry of Health, Consumer Affairs and Social Welfare	15%	14
16	Ministry for the Ecological Transition	21%	15
17	Ministry of Development	12%	17
19	Ministry of Industry, Trade and Tourism	20%	15
20	Catalan Anti-Fraud Office	0%	15
21	Valencia Anti-Fraud Agency	0%	13
22	Balearic anti-Corruption Office	0%	14
23	Local Anti-Fraud and Anti-Corruption Offices	7%	14
24	Regional administrative tribunal for public procurement	6%	16
25	Central Administrative Tribunal of Contractual Appeals	7%	14
29	Autonomous and Regional Governments	23%	22
30	Regional Energy Agencies and Authorities	14%	15
31	Inter-ministerial Commission on the Prices of Medicines and Health Products	14%	7
28	Local governments in Spain	26%	24
32	State Consultive Board on Public Procurement	6%	18

Source: *SceMaps*, SCAD ESL 2020.

Table A4.5. Ineffectiveness of Anti-corruption Policies

ID	Organisation	Estimated External Corruption Pressure	Estimated Pressure from Above	Estimated Involvement in Corruption	Ineffectiveness of Anti-corruption Policies	Base
3	National Commission on Markets and Competition	39%	17%	4%	20%	23
4	Spanish Tax Agency	17%	5%	5%	9%	19
5	National Securities Market Commission	46%	14%	8%	23%	14
6	Independent Office for Regulating and Monitoring Procurement	33%	11%	0%	15%	18
8	Spanish Agency of Medicines and Medical Devices	42%	17%	25%	28%	12
10	State Company for Land Transport Infrastructures (SEITT)	29%	29%	29%	29%	7
11	Railway Infrastructure Manager	69%	46%	31%	49%	13
13	Institute of Accounting and Audit of Accounts	36%	7%	7%	17%	14
15	Ministry of Health, Consumer Affairs and Social Welfare	50%	36%	14%	33%	14
16	Ministry for the Ecological Transition	47%	27%	13%	29%	15
17	Ministry of Development	65%	35%	38%	46%	17
19	Ministry of Industry, Trade and Tourism	67%	40%	33%	47%	15
20	Catalan Anti-Fraud Office	33%	13%	0%	16%	15
21	Valencia Anti-Fraud Agency	38%	8%	0%	15%	13
22	Balearic anti-Corruption Office	36%	14%	0%	17%	14
23	Local Anti-Fraud and Anti-Corruption Offices	36%	14%	0%	17%	14
24	Regional administrative tribunal for public procurement	25%	6%	0%	10%	16
25	Central Administrative Tribunal of Contractual Appeals	29%	0%	0%	10%	14
29	Autonomous and Regional Governments	59%	41%	36%	45%	22
30	Regional Energy Agencies and Authorities	47%	33%	20%	33%	15
31	Inter-ministerial Commission on the Prices of Medicines and Health Products	86%	43%	14%	48%	7
28	Local governments in Spain	75%	71%	58%	68%	24
32	State Consultive Board on Public Procurement	33%	6%	0%	13%	18

Source: SceMaps, SCAD ESL 2020.

APPENDIX 5.

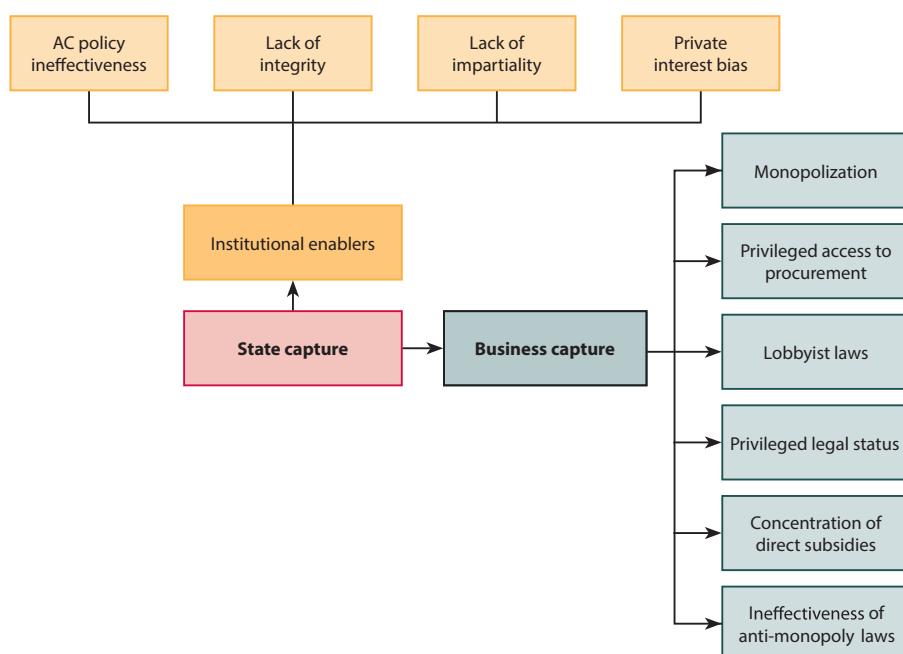
COMPUTED INDEXES – METHODOLOGY

Background

The methodology behind SCAD ESL and the analysis of the risk and vulnerabilities to state capture in public procurement is presented in detail in the SCAD ESL toolkit.⁴⁹ A brief overview of the different indicators and red flags is provided here for clarity.

SCAD ESL focuses on **business capture** and **institutional enablers**. It is based on a model which features two level-one indicators of state capture: institutional enablers and business capture pressure (see Figure A5.1. below). The model interpretation is straightforward: state capture processes could be assumed, if the values of the indicators linked to phenomena symptomatic for state capture (like monopolisation, illegal lobbying, etc.) are high and/or unfavourable. Furthermore, indicators (and respectively the processes they measure) tend to reinforce each other. Dynamically, unfavourable statuses in one dimension (level-one concept) have a negative impact on values in the other dimensions.

Figure A5.1. Observed State Capture dimensions and indicators

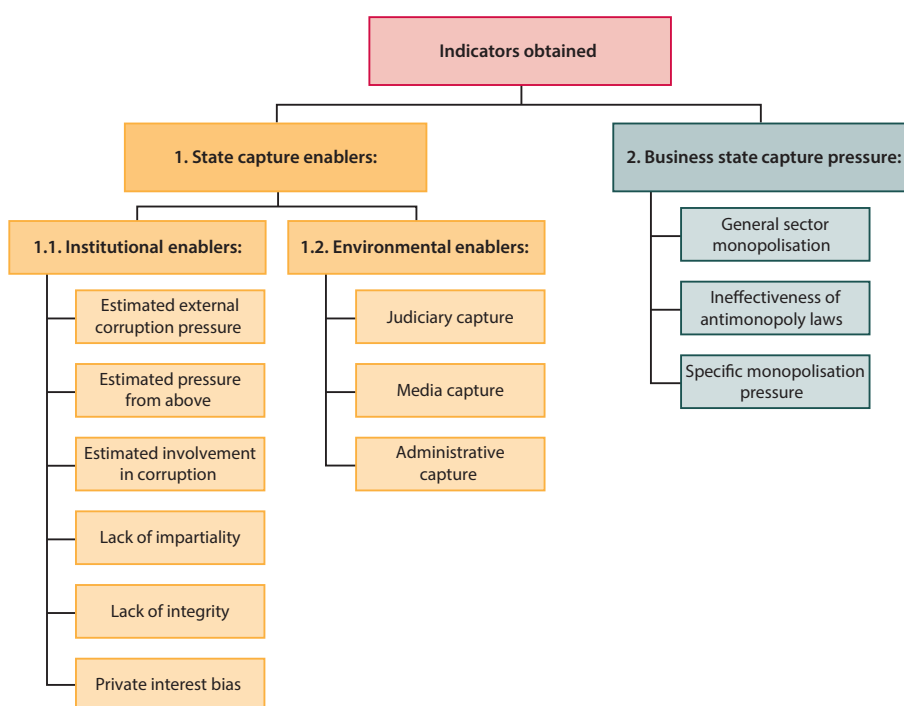


⁴⁹ Gerganov, A., Mineva, D., and Galev, T., *State Capture Assessment on Sectoral Level: Methodological Toolkit*, Sofia: Center for the Study of Democracy, 2021.

SCAD ESL is developed specifically for assessment of some of the less readily available dimensions and enablers of state capture. It employs a sample expert survey which provides assessment scores for two groups of indicators:

- The first group focuses on **public organisations regulating and/or controlling the market**. These organisations are assessed in terms of integrity, impartiality, tendency to serve the public or on the contrary – demonstrating private bias, and the effectiveness of their anti-corruption policies. Organisations relevant to the assessed economic sector are listed in the questionnaire and experts indicate their level of familiarity with each of the organisations and then they assess only those of the organisation with which they have indicated they are familiar.
- The second group focusses on the **assessment of the economic sector**. Experts are initially asked if they have reasons to suspect the existence of a monopoly / oligopoly / cartel in the sector. If a sector is assessed as monopolised by an expert, additional questions regarding the potential risks in this sector are asked. Finally, experts assess the quality of rules and regulations in the sector in the context of their anti-monopoly effectiveness.

Figure A5.2. Structure of SCAD ESL indicators



Source: CSD/ScEMaps.

Unlike typical instruments relying on expert assessments, SCAD ESL survey uses a large pool of both external experts and acting public officials who can participate in the assessment process with only one restriction – they have to be familiar with some of the regulatory and control bodies in the sector. Different views and opinions are represented through the large sample and the high-pressure areas are those where the different expert opinions converge. Discrepancies between public officials and external experts contribute to yet another informative level of analysis rather than decrease the quality of the results. The two main groups of experts are outlined below:

- **Public officials** are all people currently working at the management or expert levels in the public administration, in judiciary, prosecution, etc.
- **External experts** are:
 - o NGO experts with expertise on corruption, conflict of interest, market competitiveness, etc.;
 - o Academia representatives with expertise on corruption, conflict of interest, market competitiveness, etc.;
 - o Ex-public officials who are familiar with at least some of the public organisations included in the survey;
 - o Heads of large businesses who are familiar with at least some of the public organisations included in the survey.

Selection of Organisations

The selection of organisations is harmonised in order to assure cross-country comparability. Three types of organisations are included: agencies which have control functions for the sector, regulators with regulative influence on the sector, and organisations which are big clients of goods/services from the sector. Once the list of public organisations is compiled, the survey is programmed online and experts are invited to fill it in. The table A5.1. below shows the number of experts for each of the countries and sectors

Table A5.1. Number of experts who took part in SCAD ESL

Sector\Country	Bulgaria	Italy	Romania	Spain
Wholesale of fuels (solid, liquid and gas)	67	20	15	14
Wholesale of pharmaceutical goods	56	21	14	14
Construction	71	30	27	19

The SCAD ESL includes three levels of operationalisation of indicators (see the table A5.2. below) and combines data obtained from the assessment instrument as well as data from external sources.

Table A5.2. Measured concepts, indicators and sources of information of SCAD ESL

Level one concept	Business state capture pressure	Level three indicators ⁵⁰
Level two indicators	General sector monopolisation	Assessed overall level of monopolisation of the sector
	Ineffectiveness of antimonopoly laws	Laws regulating the sector help/hinder/not related to the formation of monopolistic, oligopolistic or cartel structures
	Specific monopolisation pressure	A specific company or a small number of companies win too many public tenders
		Laws provide illegitimate competitive advantage
		Selective application of control and/or sanctions
		Concentration of public funds in the sector (euro funds, direct subsidies, etc.)
Level one concept	Institutional enablers	Level three indicators
Level two indicators	Lack of integrity	Activities are not transparent
		Not accountable for its actions
		No checks and balances
	Lack of impartiality	Often serves private interests
		Would never sanction certain people/firms
		Its rules of operation are violated often
	Private interest bias	
	Ineffectiveness of anti-corruption policies	Estimated external corruption pressure
		Estimated pressure from above
		Estimated involvement in corruption

Business State Capture Pressure

The business state capture pressure indicators are based on the following three SCAD ESL questionnaire components:

- **General sector monopolisation** represents the percentage of experts who believe there is reason to suspect the existence of a monopoly / oligopoly / cartel in the sector.
- **Ineffectiveness of antimonopoly laws** describes the percentage of experts who think the laws regulating the assessed sector hinder the formation of monopolies/oligopolies/cartels in the sector or help the monopolisation of the sector. Ineffectiveness of antimonopoly laws is computed as the percentage of experts who believe that the laws for the sector rather **help** the monopolisation of the sector.
- The third component **specific monopolisation pressure** is computed as the percentage of all experts who think that the sector suffers from at least

⁵⁰ Indicators and questions are formulated negatively in order to make interpretation of values easier – the higher the value, the more unfavorable the status of the respective capture aspect is.

one of four specific problems: (1) a specific company or a small number of companies win too many public tenders, (2) laws provide illegitimate competitive advantage, (3) control and/or sanctions are applied selectively which helps particular companies, and (4) concentration of grants and subsidies in the sector (European funds, direct subsidies, etc.). While natural monopolies do exist and monopolisation can be considered a naturally occurring market phenomenon despite the efforts of anti-trust authorities, the specific monopolisation pressure indicator focuses on arguably non-market mechanisms which provide illegitimate competitive advantage and when occurring systemically, are a strong symptom of state capture in the sector.

The final level-one indicator **business state capture pressure** is computed according to the following formula which reflects the importance of the specific monopolisation pressure indicator:

Business state capture pressure = (Specific monopolisation pressure*2 + General sector monopolisation + Ineffectiveness of Antimonopoly laws) /4

Institutional Enablers

Ineffectiveness of anti-corruption policies. The indicator is computed as the simple average of three level-three indicators:

- The **average** percentage from all public organisations with answers “high” and “medium” external pressure (**Estimated external corruption pressure**);
- The average percentage of answers “very likely” or “rather likely” for a superior to exert pressure on his/her subordinates (**Estimated pressure from above**)
- The percentage of experts who answer that the corresponding organisation “rather increases corruption with its activity” (**Estimated involvement in corruption**).

Each of the indicators is first computed at the sectoral level as the average percentage of the corresponding answer for all public organisations listed in the survey for this sector. The ineffectiveness of anti-corruption policies is the average of the three indicators.

Lack of impartiality follows the same algorithm and is the average of the following three indicators:

- The **average** percentage from all public organisations with answers “It happens often” to “In your opinion, are there cases when the listed organisations protect private interests in violation to their formal rules of operation?” (**Often serves private interests**);
- The average percentage of answers “There are some companies/individuals” or “There are many companies/individuals like this” to the question “In your opinion, are there companies or individuals that this institution would never sanction?” (**Would never sanction certain people/firms**);
- The average percentage of answers “They are often violated” to the question “In your opinion, how often are the laws or rules governing the op-

erations (regulating the activity) of each of the listed organisations violated?" (**Its rules of operation are violated often**).

Each of the indicators is first computed at the sectoral level as the **average** percentage of the corresponding answer for all public organisations listed in the survey for this sector. The lack of impartiality is the average of the three indicators.

Lack of integrity follows the very same logic and is the average of the following three indicators:

- The **average** percentage from all public organisations of answers "No" to the question "Its activity is transparent" (indicator **Activities are not transparent**);
- The average percentage of answers "No" to the question "It is accountable for its actions (activities)" (**Not accountable for its actions**);
- The average percentage of answers "No" to the question "There are other public organisations that could exercise effective control over its activities" (**No checks and balances**).

Each of the indicators is first computed at the sectoral level as the **average** percentage of the corresponding answer for all public organisations listed in the survey for this sector. The lack of integrity is then computed as the average of the three level 3 indicators.

Finally, the indicator private interest bias is based on the % answers "The control and the imposition of sanctions are done selectively, and the choice of whom to control / sanction follows private interests" to the question "In your opinion, how effective is the control and punitive activity of the following organisations?" This % is computed for all public organisations listed in the survey and then an average is computed from all organisations, giving the score for **private interest bias**.

Sector indicators are computed through a **weighted average of all organisations in the sector** where the weights are empirically derived from experts' assessments of the importance of each of the public organisations for regulating, controlling, and influencing of market processes in a given economic sector in a particular country. The weighting scale is from 3: "Very important" to 0: "Not important at all" and weights for each organisation are the mean values from the experts' answers to the question.

EXECUTIVE SUMMARY (IN BULGARIAN LANGUAGE)

Понятието „завладяване на държавата“

Завладяване на държавата представлява незаконно и нелегитимно монополизиране на управлението и икономиката на тази държава. Последниците от това монополизиране се изразяват в неефективно изразходване на публичните средства, поставяне на нормативната уредба в служба на частни интереси, липса на контрол върху привилегированите предприятия и т.н. Незаконните интереси и влияния, чрез които се оказва натиск за завладяване на държавата, се олицетворяват от т.нар. „завоеватели“ (captors) – субекти с привилегирован статут, които се ползват от незаслужени икономически и/или политически облаги.

Завладяването на държавата се осъществява посредством комбинация от различни форми на корупция, насочени към постигането на една-единствена цел – осигуряването на мащабни и дългосрочни привилегии за завоевателите чрез експлоатация на правителствения апарат и неговите правомощия, насочена към облагодетелстването на частни субекти. Тъй като завладяването на държавата е скрито явление, повечето доказателства за неговото настъпване са откъслечни и единични. Пълното му разкриване е възможно с подходящи методи за идентифициране на закономерности, тъй като завладяването задължително преминава през публичните политики и във всички случаи остава видими следи.

Диагностична оценка на завладяната държава (ДОЗД)⁵¹ е подход, насочен към идентифицирането и оценяването на тези именно видими признаци за съществуването на практики за завладяване на държавата, и към формулирането на препоръки за коригиране на политиките с цел институциите да станат по-устойчиви на опитите за завладяване. ДОЗД измерва резултатите от завладяването на държавата и въздействията на двата основни компоненти на модела:

- **натискът за завладяване на държавата от страна на бизнеса**, отразяващ различните компоненти на привилегирования статус, който завоевателите могат да придобият, от една страна, и
- **способстващите фактори** (enablers), а именно характеристиките на институционалната и обществената среда, които създават възможност за завладяването на държавата, от друга страна.

ДОЗД предлага цялостен модел на завладяването на държавата и методика за измерване на резултатите и въздействията на овладяването ѝ от бизнеса, и на способстващите институционални и обществени фактори на национално ниво. Прилагането на ДОЗД обаче разкрива също необходимост от отделни методики и инструменти за идентифициране и измерване на реалния натиск за завладяване на държавата и на

⁵¹ Stoyanov A., Gerganov A., Yalamov T., *State Capture Assessment Diagnostics*, Sofia: Center for the Study of Democracy, 2019.

уязвимостта на този натиск на равнището на конкретни икономически сектори, публични институции и дори – отделни компании, както и за оценяване и подобряване на съответните институционални и секторни политики.

В отговор на тази необходимост беше разработен **Инструмент за интегрирана диагностична оценка на завладяната държава на секторно ниво (ДОЗД–ИИСН)**. Пилотни изследвания с новия инструмент бяха проведени в четири държави – членки на ЕС (България, Испания, Италия и Румъния). Това е практически инструмент, позволяващ на политици, НПО и журналисти да откриват и наблюдават натиска за завладяване на държавата на секторно ниво. ДОЗД–ИИСН съчетава три иновативни, взаимно допълващи се методики и съответните им изследователски инструменти:

- **Диагностична оценка на завладяната държава на секторно ниво (ДОЗД–СН)**. С този инструмент се оценяват рисковете за завладяване и уязвимостите на секторно ниво. Резултатите от прилагането му определят насоките за последващи задълбочени изследвания на различните сектори.
- **Анализ на рисковете за завладяване на държавата и корупционните практики в областта на обществените поръчки** посредством „червени флагове“. Анализът се основава на интегрирани данни и се извършва посредством специално разработена интерактивна уеб-базирана платформа, която съчетава информация за обществените поръчки, данни за финансовото състояние и собствеността на фирмите и сигнали от медиите за подозирани нередности.
- **Мониторинг на прилагането на политики за противодействие на корупцията (МППК)**⁵² е инструмент за оценяване на приложимостта, изпълнението и налагането на мерки и политики за противодействие на корупцията на равнището на отделните публични институции, които са от значение за рисковите икономически сектори, идентифицирани посредством ДОЗД–СН. Това е всъщност инструмент за формулиране на препоръки към ръководствата на съответните публични институции, насочени към подобряване на условията за противодействие на корупцията в техните администрации.

В настоящия доклад са представени резултатите от прилагането на първите две методики, а именно ДОЗД–СН и анализа на рисковете и корупционните практики в областта на обществените поръчки. Обхванати са три икономически сектора, установени като високорискови и податливи на завладяване и корупция въз основа на резултатите от предишни прилагания на ДОЗД:

- търговия на едро с твърди, течни и газообразни горива – силно регулиран сектор, доминиран от големи международни корпорации;
- търговия на едро с лекарствени средства – многонационален пазар, характерни за който са участието на големи корпорации и силната експозиция на влияния и (незаконни) лобистки практики;

⁵² Стоянов, А. и др., *Мониторинг на антикорупцията в Европа. Оценка на антикорупционните политики и измерване на корупцията*, София: Център за изследване на демокрацията, 2015.

- строителство – сектор, уязвим на няколко вида заплахи за завладяване на държавата, най-вече концентриране на обществените поръчки.

Предотвратяване на завладяването на държавата – липсващото звено

Понятието „завладяване на държавата“ се използва широко от медиите, политиките, експертите и широката общественост в четирите страни. То обаче не съществува като термин в законодателство за разлика от добре дефинираното понятие корупция. По тази причина и в четирите страни липсват специални законови или подзаконови актове, насочени към предотвратяването на този процес. Във всички тях има обаче специализирани политики, институционални и правни рамки по различни теми, които са тясно свързани с темата за завладяването на държавата, като корупция, противодействие на монополизирането, конфликт на интереси и професионален интегритет (integrity) на държавните служители. В настоящия анализ тези въпроси са разгледани като съставни елементи на системния подход за оценяване уязвимостите и натиска за завладяване на държавата на секторно ниво.

Независимо от широко споделяните възгледи относно наличието на различни видове корупция и в четирите страни, в тях липсва ефективна, интегрирана политика срещу завладяването на държавата, а техните институционални и регулаторни рамки страдат в една или друга степен от разпокъсаност и неефективност. Ето защо липсват систематични и дългосрочни мерки за преодоляване на идентифицираните рискове и уязвимости, които сочат към съществуването на реални механизми за завладяване на държавата. Една от основните причини е липсата на цялостна аналитична рамка и на съответни политически инструменти за оценяване и мониторинг на процесите на завладяване на държавата, за разлика от проблема с корупцията, който е обект на мащабни изследвания и неразделна част от обществения дебат.

Настоящият доклад преодолява тази липса поне частично, като предлага интегрирана и комплексна методика за измерване на резултатите и въздействията на двата основни елемента на завладяването на държавата – овладяването от бизнеса и способстващите институционални фактори.

Заключения и констатации

Анализът разкрива наличието на системни проблеми, свързани със съществуването на утвърдени и трайни видове уязвимост в трите изследвани сектора. Различни са обаче характеристиките на отделните компоненти на завладяването на секторно и държавно ниво и тези различия следва да се вземат предвид в процеса на подобряване на съответните секторни и национални политики.

Най-уязвима на натиск за монополизиране е България (осреднен индекс 88%), като най-висок (93%) е индексът в публичното строителство

(подотрасъл на строителството). На второ място по натиск за монополизиране е Италия с осреднен индекс 75%, следвана от Румъния и Испания с по-ниски стойности. Най-уязвими на завладяване вследствие на неефективно антимонополно регулиране са Испания (64% за търговията на едро с лекарствени средства и 50% за търговията на едро с горива) и Румъния (62% за търговията на едро с горива). По-високата стойност на индексите за тези два сектора и в четирите страни потвърждава необходимостта от увеличаване на ефективността на антимонополните закони и институции, по-специално в секторите, доминирани от големи международни и/или национални предприятия.

Строителният сектор е най-уязвим на специфичен натиск за монополизиране във вид на незаконни практики, насочени към осигуряването на нелегитимни конкурентни предимства за конкретни фирми, включително привилегирован достъп до обществени поръчки, селективно прилагане на мерките за контрол и санкциониране и концентрация на безвъзмездни публични средства и субсидии. С индекс над 70% и в четирите страни, строителството е по-уязвимо от останалите сектори, обаче резултатите показват, че всички изследвани сектори са податливи на завладяване.

По отношение на сферата на обществените поръчки, България и Румъния изглеждат по-уязвими на завладяване от страна на доставчиците (фирмите) и от страна на купувачите (възлагащите органи) в сравнение с Испания и Италия. По-специално Италия остава най-малко завладяна в това отношение. Извършена въз основа на иновативни червени флагове (като напр. индекс на концентрация на купувачите, дял на обществените поръчки в приходите и т.н.), оценката показва, че рисковете за завладяване на България и Румъния в областта на обществените поръчки са поне два пъти по-високи от тези в другите две страни. Това се потвърждава и от индекса на институционалните способстващи фактори, който отразява уязвимостта на институционалната среда. Този индекс има най-високи стойности във всички сектори в България (40% на осреднена база). На следващо място са Италия и Румъния (по 36% на осреднена база), а значително по-ниска е стойността на индекса за Испания (29% на осреднена база). Въпреки че България определено е страната, чиято институционална среда (ефективност на антикорупционните политики, почтеност на държавните служители, справедливост и безпристрастност при вземането на решения) е най-уязвима и способстваща за завладяване на държавата, необходимост от увеличаване на съпротивителните сили на ключовите надзорни и регулаторни институции съществува и в другите три страни.

Какво следва?

Повсеместните признаци за наличието на рискове и уязвимости за завладяване на държавата в България, Испания, Италия и Румъния, съчетани с липсата на специализирани политики и регулации за систематично справяне с това явление, са показателни за необходимостта от подобряване на политиките и на професионалния и административния капацитет на основните публични институции. Това

се отнася по-специално до надзорните, регулаторните и правоприлагащите институции, които следва да развият способности за идентифициране и мониторинг на процесите на завладяване на държавата в цялата им сложност и по-конкретно във високорисковите сектори и области на икономическия живот. Анализираните сектори – строителство, търговия на едро с горива и търговия на едро с лекарствени средства – се оказват особено уязвими, особено по отношение на управлението на публичните разходи посредством обществените поръчки и ефективността на институционалната и регулаторната рамка за противодействие на добре известните и отдавна съществуващи форми на корупция. Предвид сложността на завладяването на държавата като явление и типичната му характеристика да се насочва към тези именно основни публични институции, които са призвани да се борят с него, важно е източниците на риск и уязвимост да бъдат определяни въз основа на техния интензитет в отделните сектори и области на икономическия живот. Това ще създаде условия за приоритизиране на необходимите подобрения на институционалните и регулаторните рамки, тъй като проблемите, изискващи политически интервенции, понякога са от компетентността на различни държавни органи. Идентифицирането на високорисковите зони посредством базиран на доказателства подход, например методиката SseMars, ще позволи осъществяването на политически интервенции, които са насочени и към предотвратяването на това завладяването на държавата да обхване други свързани области.

В България, Испания, Италия и Румъния темата за завладяването на държавата засега остава извън политическия дебат, който в голяма степен е съсредоточен върху различните форми на корупция, но без систематично оценяване на връзките между тези явления. Сред тези връзки можем да откροим специфичните рискове от корупция в обществените поръчки и други нередности и дефицити на държавното управление, неприлагането или неефективното прилагане на нормативната уредба в областта на конфликтите на интереси и лобирането, както и регулаторните и административните пречки пред свободната конкуренция, които създават благоприятни условия за монополизиране или силно концентриране на пазарите в специфични сектори. Предвид присъщата сложност на завладяването на държавата и възможната му свързаност с други заплахи, като организирана престъпност, чуждестранни политически влияния и незаконни международни финансови трансакции, съществува също необходимост от разработване и прилагане на международни, европейски политики и инициативи за справяне с това явление на концептуално, политическо и икономическо ниво.

EXECUTIVE SUMMARY (IN ITALIAN LANGUAGE)

Il concetto di “cattura dello stato” (state capture)

Con il termine “cattura dello stato” (*state capture*) ci si riferisce alla **monopolizzazione** illegittima del governo e dell’economia di un determinato stato. Le conseguenze di questa monopolizzazione si esprimono, tra le altre cose, nell’inefficiente spesa dei fondi pubblici, nel porre la normativa al servizio di interessi privati e nella mancanza di controllo sulle imprese privilegiate. Gli interessi e le influenze illecite, attraverso le quali si esercita la pressione per catturare lo stato, sono perpetrati dai cosiddetti “catturatori” (*captors*), ovvero da soggetti privati con uno status privilegiato che godono di indebiti vantaggi economici e/o politici.

La cattura dello stato si realizza attraverso una **combinazione di varie forme di corruzione**, tutte volte al raggiungimento di un unico obiettivo: fornire privilegi su larga scala e a lungo termine ai “catturatori” attraverso lo sfruttamento dell’apparato governativo e dei suoi poteri per ottenere vantaggi privati. Poiché la cattura dello stato è un **fenomeno nascosto**, la maggior parte delle prove del suo verificarsi è frammentaria e isolata. La sua piena rivelazione è possibile solo con modalità idonee all’individuazione di irregolarità, in quanto la cattura passa necessariamente attraverso le politiche pubbliche lasciando tracce visibili.

Lo *State Capture Assessment Diagnostics* (SCAD) (*Valutazione diagnostica dello state capture*)⁵³ è un approccio volto a identificare e valutare i segni visibili dell’esistenza di pratiche di cattura dello stato e a formulare raccomandazioni per adeguare le politiche delle istituzioni pubbliche per renderle più resistenti. **Lo SCAD misura i risultati della cattura dello stato e gli impatti delle due componenti principali del modello:**

- **la pressione per la cattura dello stato da parte delle aziende private**, che riflette le varie componenti dello status privilegiato che i catturatori possono acquisire;
- **i facilitatori**, ovvero le caratteristiche dell’ambiente istituzionale e ambientale che creano l’opportunità di catturare lo stato.

Lo SCAD offre un modello completo sullo *state capture* e una metodologia per misurare i risultati e gli impatti della cattura da parte delle aziende private, nonché dei facilitatori istituzionali e ambientali a **livello nazionale**. Tuttavia, l’attuazione della SCAD rivela anche la necessità di metodologie e strumenti separati per identificare e misurare la reale pressione e le vulnerabilità di cattura dello stato a livello di **specifici settori economici**, istituzioni pubbliche e persino singole aziende, nonché per valutare e migliorare le pertinenti politiche istituzionali e settoriali.

⁵³ Stoyanov A., Gerganov A., Yalamov T., *State Capture Assessment Diagnostics*, Center for the Study of Democracy, 2019

In risposta a questa esigenza, è stato sviluppato lo State Capture Assessment Diagnostics Sectoral Level Integrated Tool (SCAD-SLIT) (Strumento per la valutazione diagnostica integrata dello state capture a livello settoriale). Studi pilota con il nuovo strumento sono stati condotti in quattro Stati membri dell'UE (Bulgaria, Spagna, Italia e Romania). Si tratta di uno strumento pratico che consente a politici, ONG e giornalisti di **rilevare e monitorare la pressione per catturare lo stato a livello settoriale**. SCAD-SLIT combina tre metodologie innovative e complementari una l'altra e i rispettivi strumenti di ricerca:

- **La State Capture Assessment Diagnostics on Economic Sectors Level (SCAD-ESL) (Valutazione diagnostica integrata dello state capture a livello settoriale)** valuta i sintomi dello *state capture* e le vulnerabilità a livello settoriale, evidenziando le aree su cui prestare particolare attenzione..
- L'analisi dei **rischi dei comportamenti legati alla corruzione nel campo degli appalti pubblici** attraverso i "segnali d'allarme" (*red flags*) si basa su dati integrati e viene svolta attraverso una piattaforma web interattiva appositamente sviluppata, che combina informazioni sugli appalti pubblici, dati sulla condizione finanziaria e sulla proprietà delle imprese e segnali dei media su sospette irregolarità.
- **Il Monitoring Anticorruption Policy Implementation (MACPI) (Monitoraggio dell'attuazione delle politiche anticorruzione)**⁵⁴ è uno strumento per valutare l'applicabilità, l'attuazione e l'applicazione delle misure e delle politiche anticorruzione a livello delle singole istituzioni pubbliche rilevanti nei settori economici a rischio, individuati attraverso la SCAD-ESL. Si tratta di uno strumento per formulare raccomandazioni alle direzioni delle istituzioni pubbliche, finalizzate a migliorare il quadro di contrasto alla corruzione nelle loro amministrazioni.

Nel presente rapporto sono presentati i risultati dell'applicazione delle prime due metodologie, ovvero la SCAD-ESL e l'analisi dei rischi e delle pratiche corruttive nel campo degli appalti pubblici. Sono stati presi in considerazione **tre settori economici**, individuati come ad alto rischio e suscettibili di cattura e corruzione sulla base degli esiti delle precedenti applicazioni della SCAD:

- il commercio all'ingrosso di combustibili solidi, liquidi e gassosi: un settore altamente regolamentato e dominato da grandi corporazioni internazionali;
- il commercio all'ingrosso di farmaci: un mercato multinazionale, caratterizzato dalla partecipazione di grandi aziende e dalla forte esposizione a influenze e pratiche (illegali) di lobbying;
- L'edilizia: un settore vulnerabile a diversi tipi di minacce di cattura dello stato, in particolare quelli relativi alla concentrazione degli appalti pubblici.

⁵⁴ Stoyanov A. et al, *Monitoring Anti-Corruption in Europe. Bridging Policy Evaluation and Corruption Measurement*, Center for the Study of Democracy, Sofia, 2015.

Contrastare la cattura dello stato – il collegamento mancante

Il concetto di “cattura dello stato” è ampiamente utilizzato dai media, dai politici, dagli esperti e dal pubblico in generale nei quattro paesi. Tuttavia, non esiste come termine nella legislazione, a differenza del concetto ben definito di *corruzione*. Per questo motivo, in tutti e quattro i paesi mancano leggi o regolamenti specifici volti a contrastare questo fenomeno. Tuttavia, tutti hanno politiche, quadri istituzionali e legali specificatamente dedicati a vari argomenti strettamente correlati al tema della cattura dello stato, come la corruzione, l'antimonopolio, il conflitto di interessi e l'integrità professionale dei dipendenti pubblici. Nella presente analisi, questi temi sono considerati come componenti di un approccio sistematico alla valutazione delle vulnerabilità e delle pressioni per catturare lo stato a livello settoriale.

Nonostante le opinioni ampiamente condivise sull'esistenza di diversi tipi di corruzione in tutti e quattro i paesi, in essi **manca una politica efficace e integrata contro la cattura dello stato**, e i loro quadri istituzionali e normativi soffrono in una certa misura di frammentazione e inefficienza. Mancano quindi misure sistematiche e di lungo periodo dedicati ai rischi e alle vulnerabilità individuati, che indicano l'esistenza di veri e propri meccanismi di cattura dello stato. Uno dei motivi principali è la **manca di un quadro analitico completo e di strumenti politici pertinenti** per valutare e monitorare i processi di cattura dello stato, a differenza del problema della corruzione, che è oggetto di ricerche su larga scala e parte integrante del dibattito pubblico.

Il presente rapporto affronta questa lacuna, almeno in parte, proponendo una metodologia integrata e complessa per misurare i risultati e gli impatti dei due elementi principali della cattura dello stato: la cattura da parte delle imprese private e i facilitatori istituzionali.

Conclusioni e constatazioni.

L'analisi rivela l'esistenza di problemi sistemici legati all'esistenza di tipologie di vulnerabilità consolidate e persistenti nei tre settori studiati. Sono, tuttavia, diverse le caratteristiche delle diverse componenti della cattura a livello settoriale e nazionale: queste differenze dovrebbero pertanto essere prese in considerazione nel processo di miglioramento delle pertinenti politiche settoriali e nazionali.

La Bulgaria è la più vulnerabile alle pressioni per la monopolizzazione (indice medio 88%), con il livello più alto (93%) registrato nell'edilizia pubblica (sotto settore delle costruzioni). Al secondo posto in termini di pressione monopolistica troviamo l'Italia, con un indice medio del 75%, seguita da Romania e Spagna (con valori inferiori). I più vulnerabili alla cattura dello stato a causa dell'inefficace regolamentazione antitrust sono la Spagna (64% per il commercio all'ingrosso di medicinali e 50% per il commercio all'ingrosso di carburanti) e la Romania (62% per il commercio all'ingrosso di carburanti). Il maggior valore degli indici per questi due settori in tutti e quattro i paesi conferma la

necessità di aumentare l'efficacia delle leggi e delle istituzioni antitrust, soprattutto nei settori dominati da grandi imprese internazionali e/o nazionali.

Il settore delle costruzioni è il più vulnerabile a specifiche pressioni di monopolio sotto forma di pratiche illegali volte a fornire vantaggi competitivi illegittimi a società specifiche, tra cui l'accesso privilegiato agli appalti pubblici, l'applicazione selettiva delle misure di controllo e sanzionatorie e la concentrazione di sovvenzioni e sussidi. Con un indice superiore al 70% in tutti e quattro i paesi, l'edilizia è più vulnerabile degli altri settori, ma i risultati mostrano che tutti i settori studiati sono suscettibili alla cattura dello stato.

Per quel che concerne la sfera degli appalti pubblici, Bulgaria e Romania sembrano essere più vulnerabili alla cattura da parte dei fornitori (le aziende) e degli acquirenti (le amministrazioni aggiudicatrici) rispetto a Spagna e Italia. In particolare, l'Italia rimane lo stato meno "catturato" sotto questo punto di vista. Eseguita sulla base di segnali d'allarme innovativi (come, per esempio, l'indice di concentrazione degli acquirenti, la quota degli appalti pubblici nelle entrate, ecc.), la valutazione mostra che i rischi di catturare Bulgaria e Romania nel campo degli appalti pubblici sono almeno il doppio di quelli negli altri due paesi. Ciò è confermato dall'indice dei facilitatori istituzionali, che riflette la vulnerabilità del contesto istituzionale. Questo indice presenta i valori più alti in tutti i settori in Bulgaria (40% in media). Seguono Italia e Romania (36% in media per ciascuno dei due paesi): il valore dell'indice è significativamente più basso per la Spagna (29% in media). Sebbene la Bulgaria sia sicuramente il paese il cui contesto istituzionale (efficacia delle politiche anticorruzione, integrità dei dipendenti pubblici, equità e imparzialità nel processo decisionale) è il più vulnerabile e favorevole alla cattura dello stato, la necessità di aumentare la resistenza delle principali autorità di vigilanza e di regolamentazione sussiste anche negli altri tre paesi.

Cosa segue?

I diffusi segnali che indicano la presenza di rischi e vulnerabilità per la cattura dello stato in Bulgaria, Spagna, Italia e Romania, combinati con la mancanza di politiche e normative specializzate per affrontare sistematicamente questo fenomeno, sono indicativi della **necessità di migliorare sia le politiche che le capacità professionali e amministrative nelle principali istituzioni pubbliche**. Ciò riguarda in particolare le istituzioni di vigilanza, di regolamentazione e di applicazione della legge, che dovrebbero sviluppare la capacità di identificare e monitorare i processi di cattura dello stato in tutta la loro complessità, e in particolare nei settori e negli ambiti della vita economica ad alto rischio. I settori analizzati (l'edilizia, il commercio all'ingrosso di combustibili e il commercio all'ingrosso di farmaci) risultano particolarmente vulnerabili, soprattutto per quanto riguarda la gestione della spesa pubblica attraverso gli appalti e l'efficacia del quadro istituzionale e normativo per contrastare le forme ben note e consolidate di corruzione. Data la complessità della cattura dello stato come fenomeno e la sua caratteristica tipica di colpire proprio le istituzioni pubbliche che sono chiamate a contrastarlo, è importante **individuare le fonti di rischio e vulnerabilità in base alla loro intensità nei singoli settori e nelle singole aree della vita economica**. Ciò creerà le condizioni per dare priorità ai necessari miglioramenti del quadro istituzionale e normativo,

poiché i problemi che richiedono un intervento politico possono essere diffusi in diverse importanti autorità pubbliche. **L'individuazione delle aree ad alto rischio attraverso un approccio basato sulle prove**, come la metodologia SceMaps, consentirà l'esecuzione di interventi politici che mirano anche a impedire alla cattura dello stato di coprire altre aree correlate.

In Bulgaria, Spagna, Italia e Romania **il tema della cattura dello stato rimane fuori dal dibattito politico**, in gran parte incentrato su varie forme di corruzione, ma senza una valutazione sistematica dei nessi tra questi fenomeni. Tra questi nessi possiamo evidenziare i rischi specifici di corruzione negli appalti pubblici e altre irregolarità e carenze nella *governance*, la mancata o inefficace attuazione delle normative in materia di conflitti di interesse e lobbying, nonché gli ostacoli normativi e amministrativi alla libera concorrenza, tutte condizioni favorevoli alla monopolizzazione o alla forte concentrazione dei mercati in settori specifici. Data la complessità intrinseca della cattura dello stato e il suo possibile collegamento con altre minacce, come la criminalità organizzata, l'influenza politica estera e le transazioni finanziarie internazionali illegali, è anche **necessario sviluppare e attuare politiche e iniziative internazionali ed europee per affrontare questo problema dal punto di vista concettuale, politico e economico**.

EXECUTIVE SUMMARY (IN ROMANIAN LANGUAGE)

Noțiunea „capturarea statului”

Capturarea statului reprezintă **monopolizarea ilegală**, nelegitimă a guvernării și a economiei statului. Consecințele acestei monopolizări sunt cheltuirea ineficientă a fondurilor publice, punerea actelor normative în serviciul unor interese private, lipsa de control asupra unor afaceri privilegiate etc. Interesele și influențele nelegitime, prin care se exercită presiune pentru capturarea statului, se realizează de către entitățile care capturează (*captors*) – subiecți cu statut privilegiat care beneficiază de foloase economice și/sau politice care nu li se cuvin.

Capturarea statului este o **combinație de diferite forme ale corupției**, care au un singur scop: obținerea unor privilegii de amploare și de lungă durată, exploatând guvernanta statului și puterea acestuia, urmărind obținerea de foloase pentru entități private. Întrucât capturarea statului este un **fenomen ascuns**, majoritatea probelor pentru apariția acestuia se reflectă în cazuri ad-hoc, separate. Cu toate acestea, o caracteristică cheie este legată de urmele publice observabile pe care le lasă în urmă. Deoarece trebuie să afecteze politica publică, este obligat să lase efecte vizibile care pot fi descoperite prin metode adecvate de identificare a tiparelor.

*Diagnosticul de Evaluare a Capturării Statului (SCAD)*⁵⁵ este o abordare îndreptată către identificarea și evaluarea acestor urme vizibile care demonstrează existența unor practici de capturare a statului și spre elaborarea unor recomandări pentru ajustarea politicilor, care au ca scop consolidarea instituțiilor în fața încercărilor de capturare. **SCAD măsoară rezultatele și efectele capturării prin două componente principale ale modelului:**

- **presiunea exercitată pentru capturarea statului din partea mediului de afaceri**, care măsoară diferite componente ale statutului privilegiat pe care l-ar putea avea entitățile care capturează și
- **factorii care facilitează** extinderea fenomenului (*enablers*), și anume – caracteristicile de mediu și cele instituționale care creează posibilități pentru capturarea statului

SCAD oferă un model comprehensiv al fenomenului și o metodologie pentru măsurarea rezultatelor și efectelor capturării afacerilor și a facilitatorilor instituționali și de mediu **la nivel național**. Aplicarea instrumentului SCAD însă, ne arată și necesitatea unor metode și instrumente specifice de identificare și măsurare a presiunii reale care se exercită pentru capturarea statului, de identificare a punctelor vulnerabile care pot ceda la această presiune la nivelul unor **sectoare economice concrete**, la anumite instituții publice sau companii, oferind totodată și posibilitatea de evaluare și îmbunătățire a politicilor respective instituționale și de sector.

⁵⁵ Stoyanov A., Gerganov A., Yalamov T., *State Capture Assessment Diagnostics*, Center for the Study of Democracy, 2019.

Ca un răspuns la nevoile identificate, a fost elaborat *Instrumentul integrat pentru diagnosticarea evaluării capturării statului la nivel sectorial (SCAD-SLIT)*. Cu ajutorul noului instrument au fost efectuate studii pilot în patru state membre ale UE (Bulgaria, Spania, Italia și România). S-a dovedit că acesta este un instrument practic care permite oamenilor politici, organizațiilor nonguvernamentale și jurnaliștilor, **să depisteze și să observe presiunea exercitată pentru capturarea statului la nivel de sector**. SCAD – SLIT este o combinație între trei metodologii inovatoare, complementare și instrumentele lor de cercetare:

- *Diagnosticul de Evaluare a Capturării Statului la Nivel de Sectoare Economice (SCAD-ESL)* evaluează simptomele capturării statului și vulnerabilitățile la nivel sectorial. De asemenea, poate susține investigații sectoriale aprofundate.
- Analiza **riscurilor practicilor corupte din domeniul achizițiilor publice**, cu ajutorul semnalelor, denumite factori de risc (red flags). Această analiză se bazează pe date integrate și se efectuează printr-o platformă interactivă web, care a fost elaborată special pentru acest scop, cuprinzând informații despre achizițiile publice respective, date despre situația financiară și proprietatea firmelor participante, precum și un sistem de alerte media referitoare la unele suspiciuni legate de nereguli privind achizițiile publice respective.
- *Monitorizarea aplicării politicilor de combatere a corupției (MACPI)*⁵⁶ este un instrument de evaluare a aplicabilității, implementării și gradului de acoperire a măsurilor și politicilor necesare combaterii corupției la nivelul diferitelor instituții publice individuale, relevante pentru sectoarele economice cu risc ridicat, identificate prin SCAD-ESL. Practic, acesta este un instrument prin care pot fi formulate recomandări către organele de conducere ale instituțiilor publice, în vederea îmbunătățirii mecanismelor anticorupție în cadrul structurilor acestora.

În prezentul raport sunt prezentate rezultatele obținute în urma aplicării primelor două metodologii, și anume – SCAD-EL și analiza vulnerabilităților și riscurilor legate de practicile corupte din domeniul achizițiilor publice. Raportul se referă la **trei sectoare economice**, apreciate ca fiind cu risc major de capturare a statului și de săvârșire a unor acte de corupție, conform rezultatelor obținute din aplicarea anterioară a instrumentului SCAD:

- în domeniul comerțului angro cu combustibili solizi, lichizi și gazoși, care este un sector strict reglementat și dominat cu precădere de către companii multinaționale;
- în domeniul comerțului angro cu medicamente, aceasta fiind o piață multinațională la care participă cu precădere corporații mari care sunt expuse la influențe puternice și la practici de tip lobby (ilegal);
- în domeniul construcțiilor, care este un sector vulnerabil la câteva tipuri de riscuri de capturare a statului, legate în principal de atribuirea contractelor de achiziții publice la unele și aceleași entități economice.

⁵⁶ Stoyanov A. et al, *Monitoring Anti-Corruption in Europe. Bridging Policy Evaluation and Corruption Measurement*, Centrul de studii în domeniul democrației, Sofia, 2015.

Combaterea fenomenului capturării statului – legătura lipsă

Noțiunea de „capturare a statului” se folosește pe larg de presă, de către oamenii politici și de experți, de publicul larg din cele patru state participante la acest studiu. Aceasta însă nu există ca o noțiune în legislația în vigoare, spre deosebire de *corupție*, care este o noțiune bine definită. Astfel, în cele patru state lipsesc acte normative speciale sau reglementări îndreptate către combaterea proceselor legate de acest fenomen. Totuși, în aceste state există politici specializate, un cadru instituțional și juridic care se referă la diferitele subiecte care sunt strâns legate de fenomenul capturării statului, precum corupția, politici anti monopol, prevenirea conflictelor de interese și a celor legate de integritatea funcționarilor publici. În prezenta analiză, aceste probleme sunt dezbătute ca elemente care fac parte din abordarea sistematică de evaluare a vulnerabilității și a presiunii exercitate, în vederea capturării statului la nivel de sector.

Indiferent de faptul că există viziuni care reflectă existența unor tipuri diferite de corupție, totuși, **lipsește o politică integrată împotriva capturării statului**, iar cadrul instituțional și de reglementare a acestei politici suferă într-o măsură mai mare sau mai mică de fragmentare și ineficiență. De aceea, lipsesc măsuri sistematice și de lungă durată pentru depășirea riscurilor și vulnerabilității identificate, ceea ce arată că există mecanisme reale pentru capturarea statului. Unul dintre motivele principale este **lipsa unui cadru de analiză comprehensiv și a instrumentelor de politici publice necesare** pentru evaluarea și monitorizarea proceselor de capturare a statului, spre deosebire de problema cu corupția, care este obiectul unor studii de amploare, și în plus, a devenit deja o parte integrantă a discuțiilor publice duse în rândul societății de astăzi.

Prezentul raport acoperă această lipsă, cel puțin parțial, oferind o metodologie integrată și complexă pentru măsurarea rezultatelor și efectelor obținute în urma analizării celor două elemente principale ale capturării statului, și anume: capturarea acestuia de către mediul de afaceri și factorii instituționali care facilitează extinderea fenomenului.

Concluzii și constatări

Analiza arată că există o serie de probleme sistematice, legate de existența unor tipuri bine-stabilite și durabile de vulnerabilități în cele trei sectoare studiate. Cu toate acestea, țările și sectoarele se clasifică diferit în funcție de componentele separate ale conceptului de capturare a statului, indicând caracteristicile specifice fiecărei țări și sector, care trebuie luate în considerare în procesul de îmbunătățire a politicilor sectoriale și naționale relevante.

Cea mai vulnerabilă la monopolizare este Bulgaria (scor mediu de 88%), cel mai ridicat scor (de 93%) este în domeniul ingineriei civile (fiind o sub-ramură a construcțiilor). Pe locul doi, în privința presiunii exercitate în vederea monopolizării, se află Italia, cu un scor mediu de 75%, urmată de România și Spania cu valori mai scăzute. Cele mai vulnerabile la fenomenul de cap-

turare a statului din cauza reglementărilor ineficiente sunt Spania (64% în domeniul comerțului la angro cu medicamente și 50% în comerțul la angro cu combustibili) și România (62% în comerțul la angro cu combustibili). Valorile mai mari pentru aceste două sectoare în cele patru state participante la acest studiu, confirmă necesitatea de creștere a eficienței prevederilor legale anti-monopol și a instituțiilor care exercită controlul în acest domeniu, mai special în sectoarele dominate de firme multinaționale sau naționale mari.

Sectorul construcțiilor este cel mai vulnerabil în fața presiunilor de monopolizare, prin diferite tipuri de practici ilegale, care ținesc pentru a asigura avantaje concurențiale nelegitime pentru anumite companii, inclusiv și a unui acces privilegiat la achiziții publice, prin aplicarea selectivă a măsurilor de control și sancționare, acordarea unor fonduri publice nerambursabile și a subvențiilor anumitor companii privilegiate. Cu un scor de peste 70%, în cele patru state, sectorul construcțiilor este mai vulnerabil decât restul sectoarelor economice, dar rezultatele arată că toate sectoarele studiate sunt predispuse spre capturare de anumite cercuri nelegitime.

Cu privire la domeniul achizițiilor publice, Bulgaria și România par mai vulnerabile la capturare de către furnizori (firme) pe de o parte, iar pe de altă parte – de către achizitori (autoritățile contractante), în comparație cu Spania și Italia. În special Italia, este mai puțin capturată din această perspectivă. Evaluarea efectuată pe baza factorilor de risc (cum ar fi indicii de atribuire de către achizitori a contractelor unui număr restrâns de prestatori, raportul achiziții – venituri etc.), arată că riscurile de capturare a statului în Bulgaria și în România, în domeniul achizițiilor publice, sunt cel puțin de două ori mai mari decât în celelalte două țări. Această evaluare se confirmă și de indicii factorilor instituționali care contribuie la creșterea vulnerabilității mediului instituțional și care are cele mai mari valori în toate sectoarele din Bulgaria (scor mediu de 40%). Apoi urmează Italia și România (în medie câte 36%), iar în Spania acest scor este mai scăzut (de 29%). În ciuda faptului că Bulgaria cu siguranță este o țară în care mediul instituțional este cel mai vulnerabil (din punct de vedere al eficienței politicilor anticorupție, al nivelului integrității funcționarilor de stat, al luării unor decizii nepărtinitoare și echitabile), care contribuie la extinderea fenomenului de capturare a statului, ne dăm seama că este nevoie de consolidarea instituțiilor cheie de supraveghere și reglementare și în celelalte trei state.

Ce urmează?

Au fost constatate semne pentru existența unor vulnerabilități și riscuri de capturare a statului în cele patru state – Bulgaria, Spania, Italia și România, combinate cu lipsa de politici și reglementări speciale împotriva combaterii sistematice a acestui fenomen nedorit, ceea ce arată că este nevoie de **îmbunătățirea politicilor, capacității profesionale și administrative a principalelor instituții publice**, în vederea combaterii acestuia. Lucrul acesta se referă în special la instituțiile cu rol de reglementare, de supraveghere și de aplicare a legii, care trebuie să dezvolte o bună capacitate pentru identificarea și monitorizarea proceselor legate de capturarea statului, indiferent de complexitatea acestora, mai ales în sectoarele economice cu un risc major. Sectoarele analizate, cel al construcțiilor, al comerțului la angro cu combusti-

bili și cu medicamente, sunt foarte vulnerabile, mai ales din punct de vedere al gestionării cheltuielilor din fondurile publice, care se fac prin intermediul achizițiilor publice și al eficienței scăzute a cadrului instituțional și de reglementare, care se referă la combaterea formelor de corupție bine cunoscute de toți și existente de ani de zile. Având în vedere complexitatea fenomenului de capturare a statului și caracteristicile acestuia de a ținti exact instituțiile care se ocupă cu combaterea sa, este esențială identificarea **surselor riscului și vulnerabilităților în baza estimării diferitelor aspecte ale activității intense din fiecare sector economic în parte**. Lucrul acesta va crea condițiile necesare pentru prioritizarea îmbunătățirilor necesare ale cadrului instituțional și de reglementare, pentru că problemele care necesită intervenție de politici publice sunt de competența diferitelor organe de stat, și nu de competența a unei singure instituții. **Identificarea zonelor în care se constată un risc major**, în urma unei **abordări bazate pe politici**, cum ar fi metodologia SceMaps, va permite intervenții de politici îndreptate către prevenirea extinderii fenomenului de capturare a statului și în alte domenii conexe.

În Bulgaria, Spania, Italia și România, **tema capturii statului deocamdată rămâne în afara dezbaterilor politice**, care în mare măsură sunt concentrate asupra diferitelor forme de corupție, dar fără evaluarea legăturilor între cele două fenomene. Printre aceste legături putem remarca unele riscuri specifice de în domeniul achizițiilor publice, legate de corupție sau alte nereguli referitoare la guvernare, de neaplicarea sau aplicarea ineficientă a actelor normative în domeniul conflictelor de interese și acțiuni de lobby nelegitime, de crearea unor piedici administrative în fața liberei concurențe pe piață, care practic creează condiții favorabile pentru procesul de monopolizare sau de concentrare puternică a piețelor în unele sectoare mai specifice. Având în vedere complexitatea fenomenului de capturare a statului și legătura potențială a acestuia cu alte amenințări, cum ar fi criminalitatea organizată, influențele politice străine și tranzacțiile financiare internaționale ilegale, constatăm că **există o mare necesitate de elaborare și aplicare a unor politici și inițiative internaționale și de nivel european, în vederea combaterii acestui fenomen din punct de vedere conceptual, politic și la nivel economic**.

EXECUTIVE SUMMARY (IN SPANISH LANGUAGE)

La noción de captura del Estado

La captura del Estado representa una **monopolización** ilegal e ilegítima de la gestión de la economía del país. Sus consecuencias se manifiestan en el gasto ineficiente de recursos públicos, la puesta de la legislación al servicio de intereses privados, la falta de control sobre las empresas privilegiadas, etc. Los intereses y las influencias ilegales por medio de los cuales se ejerce presión para la captura del Estado se personifican por los llamados “capttores”: sujetos con un estatuto privilegiado que disfrutaban de beneficios económicos y/o políticos inmerecidos.

La captura del Estado se realiza mediante **la combinación de diversas formas de corrupción** que están orientadas a alcanzar un único objetivo: asegurar a los capttores privilegios de gran escala y a largo plazo a través de la explotación del gobierno y de sus poderes, con el propósito de beneficiar a sujetos particulares. Puesto que la captura del Estado es un **fenómeno oculto**, la mayoría de las pruebas de que se ha producido son fragmentarias y singulares.

La Evaluación de Diagnóstico de la Captura del Estado (SCAD, por sus siglas en inglés)⁵⁷ está orientada precisamente a evaluar aquellos indicios visibles de que existen prácticas de captura del Estado y formular recomendaciones para corregir las políticas anticorrupción para que las instituciones sean más resistentes a los intentos de captura. **SCAD mide los resultados de la captura del Estado y los impactos de los dos componentes principales:**

- **la presión de capturar el Estado desde las empresas**, que refleja los diversos componentes de la posición social privilegiada que los capttores pueden adquirir, por una parte, y
- **los factores propiciadores** (*enablers*), es decir, las características del entorno institucional y social que brindan la posibilidad de capturar el Estado, por otra parte.

SCAD ofrece una metodología para medir los resultados y los impactos de esta captura por parte de las empresas, así como de los factores institucionales y sociales que lo propicien a **nivel nacional**. No obstante, la aplicación de SCAD revela también la necesidad de herramientas independientes para identificar y medir la presión real de la captura del Estado y la vulnerabilidad de esta al nivel de **sectores económicos concretos**, instituciones públicas e incluso determinadas compañías como también para evaluar y mejorar las correspondientes políticas institucionales y sectoriales.

⁵⁷ Stoyanov A., Gerganov A., Yalamov T., *State Capture Assessment Diagnostics*, Centro de Investigación de la Democracia, 2019.

En respuesta a esta necesidad, se ha desarrollado una *Herramienta de Evaluación Integrada y de Diagnóstico de la Captura del Estado a Nivel Sectorial (SCAD-SLIT, por sus siglas en inglés)*. Se han llevado a cabo estudios piloto con la nueva herramienta en cuatro países miembros de la UE (Bulgaria, España, Italia y Rumanía). Es una herramienta práctica que permite a políticos, sociedad civil y periodistas **identificar y observar la presión de captura del Estado a nivel sectorial**. SCAD-SLIT combina tres metodologías innovadoras que se complementan mutuamente, así como sus respectivas herramientas de investigación:

- *Evaluación de Diagnóstico de la Captura del Estado a Nivel Sectorial (SCAD-ESL)*. Con esta herramienta se evalúan los riesgos de la captura y las vulnerabilidades a nivel sectorial. Los resultados de su aplicación marcan el camino de las futuras investigaciones en profundidad de los diferentes sectores.
- Análisis de **los riesgos de captura del Estado y de las prácticas corruptivas en el ámbito de la contratación pública** mediante “banderas rojas”. El análisis se fundamenta en datos integrados y se realiza mediante una plataforma interactiva, basada en una página web, que combina la información sobre las licitaciones, datos acerca de la situación financiera y sobre la propiedad de las empresas, y alertas de los medios de comunicación por presuntas irregularidades.
- *Seguimiento de la Aplicación de Políticas Anticorrupción (MACPI, por sus siglas en inglés)*⁵⁸. Es una herramienta para evaluar la aplicación, el cumplimiento y la imposición de medidas y políticas anticorrupción a nivel de cada una de las instituciones públicas que son relevantes para los sectores económicos en riesgo, identificados mediante SCAD-ESL. De hecho, es una herramienta para formular recomendaciones a los dirigentes de las instituciones públicas para mejorar las condiciones de contrarrestar la corrupción en sus administraciones.

En este informe se presentan los resultados de las dos primeras metodologías, es decir, de la SCAD-ESL, y el análisis de los riesgos y de las prácticas corruptivas en el ámbito de la contratación pública. Se han abarcado **tres sectores económicos** que han sido establecidos como de alto riesgo y propensos a la captura y corrupción, y tiene como base los resultados de las aplicaciones anteriores de SCAD :

- comercio mayorista de combustibles sólidos, líquidos y gaseosos: un sector altamente regulado, dominado por grandes corporaciones internacionales;
- comercio mayorista de productos farmacéuticos : un mercado multinacional que se caracteriza por la participación de grandes corporaciones y una fuerte exposición a influencias y prácticas de presión (ilegales);
- construcción: un sector vulnerable a varios tipos de amenaza de captura del Estado, sobre todo por la concentración de las adjudicaciones de obra pública.

⁵⁸ Stoyanov A. et al., *Monitoring Anti-Corruption in Europe. Bridging Policy Evaluation and Corruption Measurement*, Centro de Investigación de la Democracia, Sofía, 2015.

Prevención de la captura del Estado: el eslabón ausente

Las consecuencias de la captura del Estado se trata ampliamente por los medios de comunicación, por los expertos y es conocida por el público en general en los cuatro países. Sin embargo, no existe como término en la legislación, a diferencia de un concepto claro como es la *corrupción*. Por esta razón, en los cuatro países faltan medidas legales y reglamentarias exclusivas que estén orientadas a prevenir este proceso. No obstante, en cada uno de estos países hay políticas especializadas, marcos institucionales y jurídicos sobre diversos temas que están estrechamente vinculados con la cuestión de la captura del Estado como son la corrupción, la competencia los conflictos de intereses o la ética profesional de los funcionarios del Estado. En el presente análisis, estas cuestiones se estudian como elementos que componen el enfoque sistemático que desarrolla nuestra metodología.

Independientemente de las ideas compartidas sobre la existencia de diversos tipos de corrupción en los cuatro países, en estos países **falta una política eficiente e integrada contra la captura del Estado**. Sus marcos institucionales y reguladores adolecen, en uno u otro grado, de fragmentación e ineficiencia. Por esta razón, faltan medidas estructurales y a largo plazo para superar los riesgos y las vulnerabilidades que se han identificado y que indican la existencia de mecanismos reales de captura del Estado. Una de las razones principales es **la falta de un marco global analítico, así como de las herramientas políticas correspondientes** para la evaluación y el seguimiento de los procesos de captura del Estado, a diferencia del problema de la corrupción que es objeto de investigaciones de gran escala y forma parte inseparable del debate social.

El presente informe supera esta falta, al menos parcialmente, ofreciendo una metodología integrada para medir los resultados y los impactos de los dos elementos principales de captura del Estado: la dominación de las empresas y los factores institucionales propiciadores.

Conclusiones y constataciones

El análisis revela la existencia de problemas estructurales relacionados con la existencia de diversos tipos de vulnerabilidad y que son duraderos en los tres sectores investigados. Sin embargo, cada uno de los componentes de la captura a nivel sectorial y estatal posee diferentes características y estas diferencias deberán tomarse en consideración en el proceso de mejora de las respectivas políticas sectoriales y nacionales.

El país más vulnerable a la presión de monopolización es Bulgaria (índice medio del 88%), siendo el índice más alto (93%) en la obra pública (subsector de la construcción). Ocupa el segundo lugar de presión de monopolización Italia con un índice medio del 75%, seguida por Rumanía y España con valores más bajos. Las más vulnerables de captura como consecuencia de la regulación antimonopolio ineficiente es España (64% para el comercio mayorista de medicamentos y 50% para el comercio mayorista de combustibles) y Rumanía (62% para el comercio mayorista de combustibles). El valor más alto de los índices para estos dos sectores en los cuatro países confirma la necesidad de

aumentar la eficiencia de la legislación y de las instituciones antimonopolio, más especialmente en los sectores que están dominados por grandes empresas internacionales y/o nacionales.

El sector de la construcción es el más vulnerable a una presión específica de monopolización mediante prácticas ilegales dirigidas a garantizar ventajas de competencia ilegítimas para empresas concretas, incluido el acceso privilegiado a las contrataciones públicas, la aplicación selectiva de las medidas de control, la sanción, la concentración de recursos públicos sin cargo y las subvenciones. Con un índice por encima del 70% en los cuatro países, la construcción es más vulnerable que los demás sectores, pero los resultados demuestran que todos los sectores investigados son susceptibles de captura.

Respecto a la esfera de la contratación pública, Bulgaria y Rumanía parecen más vulnerables de captura por parte de los proveedores (las empresas) y por parte de los compradores (las autoridades contratantes) en comparación con España e Italia. De hecho, esta última es la menos vulnerable en este sentido. Realizada sobre la base de banderas rojas (por ejemplo, índice de concentración de compradores, cuota de las contrataciones públicas en los ingresos, etc.), esta evaluación demuestra que los riesgos de captura en Bulgaria y Rumanía en el ámbito de la licitación pública son, al menos, dos veces más altos que en los otros dos países. Eso se confirma también por el índice de los factores institucionales que facilitan la captura, que refleja la vulnerabilidad del entorno institucional. Este índice posee los valores máximos en todos los sectores en Bulgaria (40% de base promedia). En el siguiente lugar están Italia y Rumanía (cada uno con 36% de media), siendo considerablemente más bajo el valor del índice para España (29% de media). A pesar de que Bulgaria es definitivamente el país cuyo entorno institucional (eficiencia de las políticas de anticorrupción, ética de los funcionarios del Estado, justicia e imparcialidad a la hora de tomar decisiones) es el más vulnerable y propiciador de captura del Estado, la necesidad de aumentar las fuerzas de resistencia de las instituciones de supervisión y regulación claves se da también en los otros tres países.

¿Qué sigue?

Los índices generales de existencia de riesgos y vulnerabilidades de captura del Estado en Bulgaria, España, Italia y Rumanía, combinados con la ausencia de políticas especializadas y regulaciones para superar este fenómeno, indican **la necesidad de mejorar las políticas y la capacidad profesional y administrativa de las principales instituciones públicas**. En particular, de las instituciones de supervisión, de regulación y de aplicación de la legislación que deberán desarrollar las capacidades para identificar y hacer un seguimiento de los procesos de captura del Estado en toda su complejidad, más concretamente en los sectores y en las áreas económicas de alto riesgo. Los sectores analizados, que son la construcción, el comercio mayorista de combustibles y productos farmacéuticos, resultan sumamente vulnerables, sobre todo en lo que se refiere a la gestión del gasto e inversión públicos y la eficiencia del marco institucional y regulador para contrarrestar las formas de corrupción, conocidas y existentes desde hace mucho tiempo. Con miras a la complejidad de la captura del Estado como fenómeno y sus característica

típica de dirigirse, de manera expresa, a las principales instituciones públicas dedicadas a luchar contra él, es importante que **las fuentes de riesgo y vulnerabilidad se determinen sobre la base de su intensidad en cada uno de los sectores y de las áreas económicas**. Con ello se podrán priorizar las mejoras necesarias de los marcos institucionales y reguladores, ya que los problemas que requieren intervenciones políticas a veces son competencia de diferentes autoridades del Estado. **La identificación de las zonas de alto riesgo mediante un enfoque basado en la evidencia**, por ejemplo, la metodología implementada por SceMaps, permitirá la realización de intervenciones políticas que estarán dirigidas también a evitar que la captura del Estado abarque otras áreas vinculadas.

En Bulgaria, España, Italia y Rumanía **la captura del Estado por ahora queda fuera del debate político**, que, en gran medida, está concentrado sobre las diversas formas de corrupción, pero sin una evaluación estructural de los vínculos entre estos fenómenos. Entre estos podemos destacar los riesgos específicos de corrupción en la contratación pública y otras irregularidades y déficits en la gestión pública, la falta de aplicación o la aplicación ineficiente de la normativa en el ámbito del conflicto de intereses y de los grupos de presión, así como los obstáculos de regulación y administración ante la libre competencia que crean condiciones favorables para la monopolización o la fuerte concentración en los mercados de sectores específicos. Tomando en consideración la complejidad inherente de la captura del Estado y su posible vinculación posible con otros fenómenos como la delincuencia organizada, las injerencias extranjeras o las transacciones financieras internacionales ilegales, existe también **la necesidad de desarrollar y aplicar políticas e iniciativas internacionales y europeas para superar este fenómeno a nivel teórico, político y económico**.

