In the past three decades, corruption in a number of European countries has evolved to very complex, sophisticated forms. The received wisdom which shaped the standard, run-of-the-mill anticorruption policies no longer understands the challenge it is up against. In fact, sticking for too long with policies which did not produce the expected result may have inadvertently helped the evolution of corruption into its hypostasis as state capture.

For any policy to have an effect on social reality, it needs to know that reality inside out. This applies all the more for covert practices such as state capture. Effective evidence-based policies are centered on rigorous methodologies and include monitoring instruments allowing quick feedback and adaptation mechanisms. Any attempt to capture-proof a system of public governance is bound to affect powerful interests. Hence, it needs to be justified by verifiable evidence and be able to attract large-scale public support.

STATE CAPTURE ASSESSMENT DIAGNOSTICS (SCAD): FROM CONCEPT TO MEASUREMENT

State capture could generally be described as meta-organization and institutionalization of corruption relations which lead to virtual privatization of governance; instead of public goods, the state capture process **delivers systematically and permanently private goods** to the captors (or privatizers) of the government functions. State capture manages to maintain the appearance of due process in the legislature, in the administration of justice and in the workings of the public administration. Its objective is the long-term wholesale of privileges to captors by exploiting the power of government for private benefit. Its greatest enabler is the deniability which its patrons enjoy by virtue of the hidden nature of its workings. Thus, an indispensable step is to make it tangible, explicit, to find its dimensions and thereby its weaknesses.

The key characteristic of state capture is the public traces it leaves behind. Because it needs to affect public policy so as to bend it to its will, it is bound to leave public traces which can be discovered by suitable pattern-finding methods.

The current report presents a *State Capture Assessment Diagnostics* (SCAD) methodology and shows the results from its piloting in selected countries in Europe. SCAD is exactly the kind of evidence-gathering mechanism policy makers need to utilize for two purposes:

- Verify the existence of state capture practices in given economic sectors and regulatory/enforcement institutions;
- Consider policy adjustments which close the opportunities for special interests to use the institutions of public governance for private ends.

SCAD builds upon the conceptual framework of the *Monitoring Anticorruption Policy Implementation* (MACPI) methodology.[1] SCAD's pilot implementation assesses state capture vulnerabilities of public organizations and economic sectors, as well as policy design and policy implementation gaps in Bulgaria, the Czech Republic, Italy, Romania, and Spain.

SCAD is designed to measure state capture results/effects and the capture process itself, as the latter is most often hidden, secret, and inaccessible. The **SCAD model includes two major components**:

- Business state capture pressure (BSCP), which is centered at the Monopolization pressure (MP) at national, sectoral or institutional level; and
- State capture enablers (SCE), which encompasses institutional and environmental factors at national level.

Process-wise, state capture is the abuse of good governance rules (which includes abuse of power) in the process of drafting, adoption and enforcement of the rules themselves (including the laws) in favor of a small number of captors at the expense of society and business at large. SCAD models the abuse efforts by the business through **national level** indicators which reflect the Monopolization pressure and Ineffectiveness of antimonopoly laws (IAL). At the **sectoral level**, additional indicators are monitored, providing proxies for a privileged status of a given business entity (company), including whether: it enjoys privileged access to public procurement; there is legislation or laws enhancing its market position; it has gained a privileged legal status shielding it from prosecution; or it receives preferential treatment in getting subsidies (most often, EU funds).

For state capture to thrive, it requires a number of **enablers**, i.e. certain characteristics of the social domains which affect the system of governance allowing or facilitating state capture. Enablers could be *institutional* (e.g. the ineffectiveness of anticorruption policies, lack of integrity, lack of impartiality and selective enforcement biased to private interests) and *environmental* (e.g. media, administrative and judiciary corruption). Domestic captors could become channels of foreign malign influence and allow a foreign state to achieve its ends by hidden rent seeking and erosion of state functions.[2] Recently, for example, Russian economic and media influence in the US and the EU have gained a lot of prominence. State captors and enabling institutions such as banks, telecoms, and media have actively participated in the weakening and discrediting of their countries' democratic structures.[3]

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[1] Stoyanov, A., Gerganov, A. Di Nicola, A., and Costantino, F. 2015. *Monitoring Anti-Corruption in Europe. Bridging Policy Evaluation and Corruption Measurement.* Sofia: Center for the Study of Democracy; Center for the Study of Democracy. 2015. *Refocusing Anticorruption: A New Policy Evaluation Tool.* Policy Brief No. 52.

[2] Conley, H. A., Ruy, D., Stefanov, R., and Vladimirov, M. 2019. *The Kremlin Playbook 2: The Enablers.* Lanham: Rowman & Littlefield.

[3] Shentov, O., Stefanov, R., and Vladimirov, M. (Eds.). 2018. *The Russian Economic Grip on Central and Eastern Europe.* Abingdon: Routledge.

FINDINGS FROM THE PILOT SCAD IMPLEMENTATION

The pilot implementation of SCAD shows that Bulgaria, the Czech Republic, Italy, Romania and Spain all suffer from **state capture vulnerabilities.** However, they have different **sources of risk** and **intensity levels**:

- Bulgaria's score on the Business state capture pressure (BSCP) indicator is 26,[4] the highest among the five countries, closely followed by Romania with 21. Italy's and Spain's score is 17 and 15 respectively. And the Czech Republic performs relatively best with a BSCP score of 12.
- The State capture enablers (SCE) indicator ranks countries in the same order, but adds more **diversity in vulnerabilities** (the standard deviation of SCE is higher than BSCP). Institutional and environmental enablers amplify or reduce state capture pressure from various sources and shape its corruption manifestations.

State capture vulnerabilities measured by the pilot SCAD implementation demonstrate some important structural differences between Bulgaria, the Czech Republic, Italy, Romania, and Spain. This suggests specific **scope** and **sequencing** of **policy reforms** targeting state capture in each country.
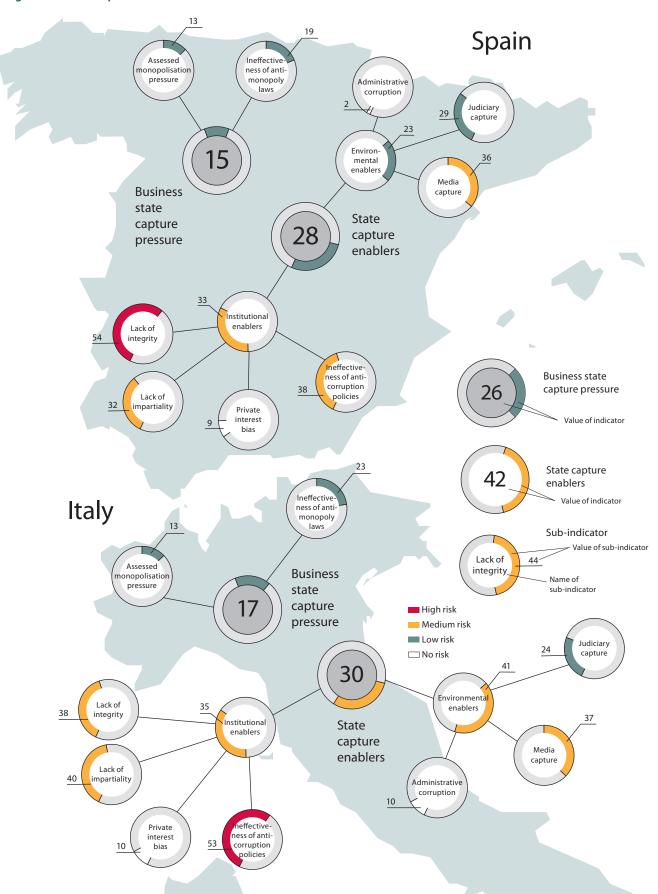
Four out of the five countries (all but Bulgaria) have at least one SCAD indicator or sub-indicator where they **perform best.** The Czech Republic and Spain each are leaders in four dimensions and Romania and Italy have the best result in terms of integrity. Areas where vulnerability indicators are higher than 50 constitute red zones which **require immediate policy interventions**. If left unchallenged, the vulnerability in these areas might have negative spillover effects in other areas in the long term. There are common problematic areas for all countries, such as local authorities, customs, and construction, in particular such linked to large-scale infrastructure projects. Yet, every country could strengthen its positioning vis-à-vis the others.
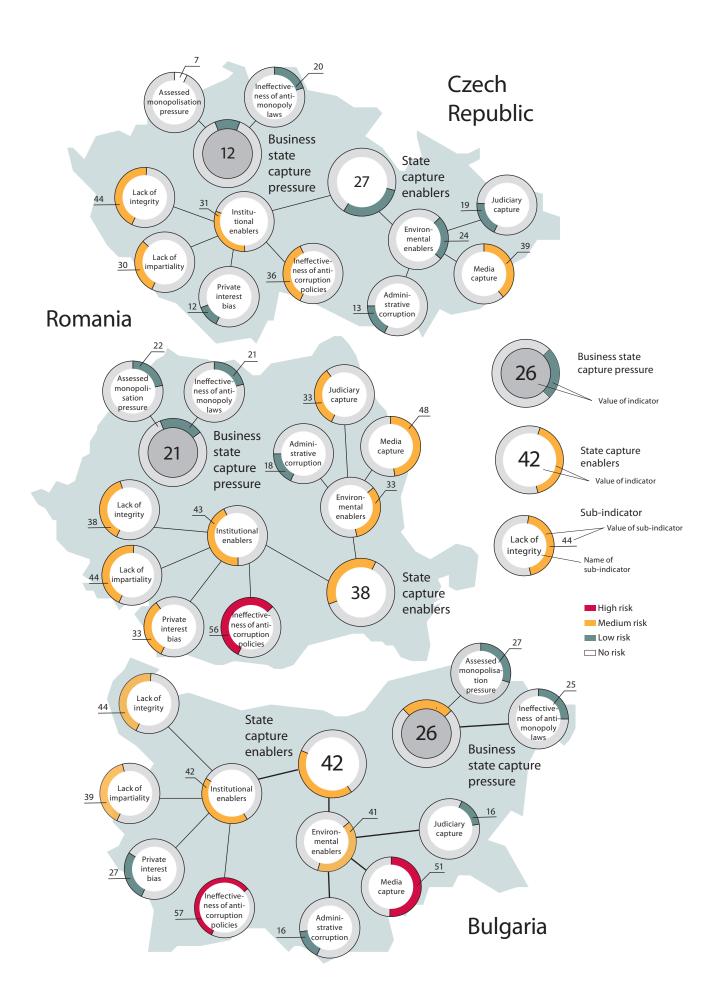
Bulgaria should address the **ineffectiveness of anticorruption policies**, **judiciary capture** (which is a serious barrier to the implementation of anticorruption policies) and **media capture** (which also further facilitates other forms of capture). It is expected that the European Prosecution Office could contribute significantly to levelling the playing field by preventing special interests from receiving "protection" from the judiciary in individual EU countries. Bulgaria stands out with vulnerabilities in **tax and audit** institutions, **procurement** bodies and the pharmaceutical sector, forestry, and **gambling** business regulators.

Problems with the effectiveness of anticorruption policies are present also in **Italy** and **Romania**. Italy is particularly vulnerable with labor inspectorates and **mobility and transport institutions.** Romania's worst vulnerabilities are in **environmental regulation and control**, agriculture and **tourism** regulators, health and social security**,** and, somewhat surprisingly, **science and education** regulators.

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[4]   On a scale of 0 to 100, 0 being best and 100 worst.

Figure 1.   State capture vulnerabilities

Czech Republic

7 — Assessed monopolisation pressure

20 — Ineffectiveness of anti-monopoly laws

12 — Business state capture pressure

27 — State capture enablers

44 — Lack of integrity

31 — Institutional enablers

19 — Judiciary capture

24 — Environmental enablers

39 — Media capture

30 — Lack of impartiality

36 — Ineffectiveness of anti-corruption policies

12 — Private interest bias

13 — Administrative corruption

Romania

22 — Assessed monopolisation pressure

21 — Ineffectiveness of anti-monopoly laws

21 — Business state capture pressure

33 — Judiciary capture

18 — Administrative corruption

48 — Media capture

38 — Lack of integrity

43 — Institutional enablers

33 — Environmental enablers

44 — Lack of impartiality

38 — State capture enablers

33 — Private interest bias

56 — Ineffectiveness of anti-corruption policies

Legend

26 — Business state capture pressure — Value of indicator

42 — State capture enablers — Value of indicator

Sub-indicator

44 — Value of sub-indicator

Lack of integrity — Name of sub-indicator

High risk
Medium risk
Low risk
No risk

Bulgaria

44 — Lack of integrity

42 — State capture enablers

27 — Assessed monopolisation pressure

25 — Ineffectiveness of anti-monopoly laws

26 — Business state capture pressure

42 — Institutional enablers

39 — Lack of impartiality

41 — Environmental enablers

16 — Judiciary capture

27 — Private interest bias

51 — Media capture

57 — Ineffectiveness of anti-corruption policies
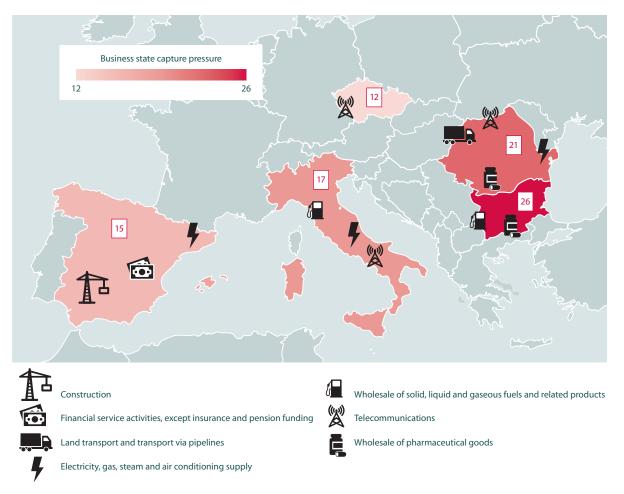
16 — Administrative corruption

Comparatively low monopolization pressure, impartiality, effectiveness of anticorruption policies and lack of corruption in the judiciary are relative strengths of the **Czech Republic**. At the same time, the country still has to improve its policies for coping with **administrative corruption** and selective enforcement which favors certain **private interests**.

The score of 54 for lack of integrity in **Spain** suggests high risks of systemic negative effects and eroding otherwise successful policy instruments. Lack of integrity is the result of high level of mistrust stemming from **low level of transparency** along with there being **not enough available and enforceable checks and balances** at the local level.

Although scores below 30 suggest that the **vulnerability threats are manageable**, these still deserve policy attention. Bulgaria has the highest **monopolization pressure** (score of 27), amplified by **ineffectiveness of antimonopoly laws** (score of 25), and therefore **appropriate policy actions are needed immediately**. Similarly, Romania needs to take further measures to cope with **administrative corruption** (score of 18 is low enough, but still worst among the five EU countries), **private interest bias** (score of 33) and **lack of impartiality** (score of 44).

Figure 2. Sectors with high-risk of monopolization

Construction

Financial service activities, except insurance and pension funding

Land transport and transport via pipelines

Electricity, gas, steam and air conditioning supply

Wholesale of solid, liquid and gaseous fuels and related products

Telecommunications

Wholesale of pharmaceutical goods

Source: *SCAD, Center for the Study of Democracy.*

There are a lot of **similarities between countries in terms of vulnerable sectors**, but with important differences in their causes and effects. There are **high vulnerabilities** in the sectors of electricity, gas, steam and air conditioning supply, and telecommunications. They have an average level monopolization pressure of 55. **Medium vulnerability** risk sectors are: wholesale of pharmaceutical goods (49), wholesale of solid, liquid and gaseous fuels and related products (45), construction (40), land transport and transport via pipelines (31), and gambling and betting activities (31). The other sectors (13 in total) have a **lower risk**, with an average assessment of under 30. Yet, even among these 13 sectors, there are some with higher risks is some of the countries. Financial services, except insurance and pension funds, and holdings is a sector of high risk for Spain. The wholesale of wood, construction materials and sanitary equipment is a medium risk for Bulgaria and Romania. And at least one of the remaining 11 sectors is a medium risk for either Bulgaria, Italy or Romania.

The **ineffectiveness of antimonopoly laws** increases the private sector's motivation and ability to exercise monopolization pressure. SCAD provides an empirical verification of this relationship at the sectoral level.[5] The effect of the antitrust enforcement (the combination between antimonopoly laws and enforcement institutions) on monopolization pressure is the strongest in Italy. Even when the studied countries have the same increase rate of the indicator Ineffectiveness of antimonopoly laws in a certain sector, the concurrent increase in Monopolization pressure seems to be highest in Italy. Since the Italian competition authority is assessed as relatively impartial and with strong integrity, this vulnerability is most probably due to legislative capture by politicians.

Figure 3. Impact of the ineffectiveness of antimonopoly laws on monopolization pressure at the sectoral level
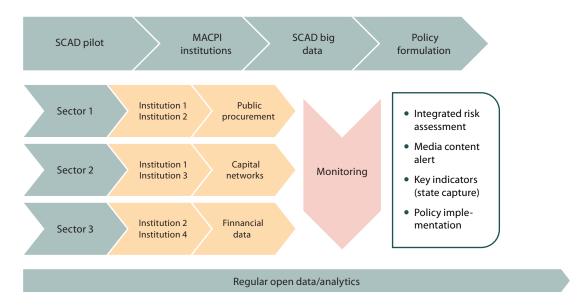

Source: SCAD, Center for the Study of Democracy.

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5   The Pearson correlation coefficient is 0.81 and highly significant.

TOWARDS A SCAD POLICY MAKING MODEL

The *State Capture Assessment Diagnostics* is a pioneering effort for the exposure of state capture through measurement. To transform SCAD into a tool for effective prevention and repression policies, a comprehensive blueprint for action is needed (Figure 4). Once high vulnerability sectors and institutions have been identified through SCAD, then the MACPI tool[6] can be applied to evaluate the enforceability and impact of anti-state-capture measures, and policies on the level of individual public institutions, relevant to the identified high-risk economic sectors.

Figure 4.   SCAD policy making model

The integration of cross-sectional big data with SCAD pilot results and MACPI diagnostics of vulnerable institutions enriches the understanding of state capture. It combines an **integrated risk assessment tool for estimating state capture and monitoring anticorruption policies at the sectoral level**. Examples of such big data include: (i) the Tenders Electronic Daily on public procurement; (ii) corporate financial data and ownership structure databases with ultimate beneficial owners or clique structure options; (iii) public registries of concessions; (iv) Comext data on production and trade of goods at lowest customs code; (v) registries for real estate contracts, registered pledges and others.

The SCAD policy design model and its components would allow EU authorities to build evolving, risk-sensitive instruments to assess and tackle corruption and state capture risks in regulatory heavy areas and industries. Regular monitoring of state capture indicators and policy implementation milestones provides an effective feedback mechanism for policy makers. Public access to monitoring data would guarantee both civic ownership over the anti-state-

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6   Center for the Study of Democracy. 2015. *Refocusing Anticorruption: A New Policy Evaluation Tool.* Policy Brief No. 52.

capture policies and political commitment to the continuation of the process, even if it confronts powerful private interests. SCAD could be particularly **helpful in several existing or planned EU policy instruments**:

- It can inform the EU strategy and regular reports on progress in **enlargement** countries in the areas of rule of law, judiciary and anticorruption, as well as on competition and public procurement.
- It can provide valuable additional information to the **EU Semester structural reforms** recommendations, in particular informing its good governance efforts.
- It can help underpin the planned EU **mechanism on democracy, the rule of law and fundamental rights**. SCAD can provide guidance on deficiencies in both the rule of law area and the respective risks for the EU budget.