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ARTICLE

Tackling Elite Impunity in the EU. The Case for a European Court for White-Collar Crime

Combater a Impunidade da Elite na UE. A Defesa de um Tribunal Europeu para Crimes de Colarinho Branco

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ABSTRACT | Purpose: This study examines how different systems of moral values influence voters' preferences for political leaders and shape perceptions of corruption in Brazil and Mexico. It specifically investigates whether personal (private-sphere) morality or social (public-sphere) morality carries greater weight when voters face trade-offs between honesty and effectiveness. **Methodology:** A mixed-methods design was employed. Quantitatively, longitudinal data from the World Values Survey (1981–2019) were analyzed using factor analysis and a Moral Evaluation Index to distinguish personal and social moral values and assess their evolution over time. Qualitatively, comparative online focus groups were conducted in both countries, structured around the Tripartite Model of Attitudes, to explore cognitive, affective, and behavioral dimensions of electoral decision-making. **Findings:** The results show that moral values are dynamic and context-dependent. In both countries, voters exhibit higher moral demands in the public sphere than in the private sphere, contradicting the expectation of greater tolerance for public transgressions. Brazilians tend to prioritize public integrity, favoring honest candidates even at the expense of perceived effectiveness. Mexicans, while valuing both moral dimensions, display a more pragmatic stance, often tolerating corruption when candidates are viewed as competent. Qualitative evidence reveals attitudinal inconsistency: declared moral principles frequently give way to emotional reactions, perceptions of extremism, and contextual considerations during concrete electoral choices. **Originality/Value:** The study advances the literature by integrating longitudinal survey data with experimental qualitative evidence to demonstrate that moral reasoning in electoral behavior is not fixed but shaped by emotional, political, and institutional contexts. It highlights the limits of moral discourse in ensuring democratic accountability and explains why support for "dishonest" candidates persists despite widespread moral condemnation of corruption.

Keywords | Corruption perception; Moral values; Public integrity; Electoral behavior; Political culture.

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RESUMO | Objetivo: Este estudo analisa como diferentes sistemas de valores morais influenciam as preferências dos eleitores por lideranças políticas e moldam as percepções sobre corrupção no Brasil e no México. Busca-se identificar se a moralidade pessoal (esfera privada) ou a moralidade social (esfera pública) exerce maior peso quando os eleitores enfrentam dilemas entre honestidade e eficácia política. **Metodologia:** Adotou-se um desenho de métodos mistos. Na etapa quantitativa, foram analisados dados longitudinais do *World Values Survey* (1981–2019), utilizando análise fatorial e a construção de um Índice de Avaliação Moral para distinguir valores morais pessoais e sociais e examinar sua evolução ao longo do tempo. Na etapa qualitativa, realizaram-se grupos focais comparativos on-line em ambos os países, fundamentados no Modelo Tripartite das Atitudes, a fim de explorar as dimensões cognitiva, afetiva e comportamental das escolhas eleitorais. **Resultados:** Os resultados indicam que os valores morais são dinâmicos e dependentes do contexto. Em ambos os países, observa-se maior exigência moral na esfera pública do que na privada, contrariando a expectativa de maior tolerância às transgressões públicas. Os eleitores brasileiros tendem a priorizar a integridade pública, valorizando candidatos honestos mesmo em detrimento da eficácia percebida. Já os mexicanos, embora reconheçam a importância de ambas as dimensões morais, demonstram postura mais pragmática, tolerando a corrupção quando os candidatos são percebidos como competentes. A análise qualitativa revela inconsistências atitudinais, pois princípios morais declarados frequentemente cedem espaço a reações emocionais, rejeição ao extremismo e fatores contextuais nas decisões eleitorais concretas. **Originalidade/Contribuição:** O estudo contribui para a literatura ao integrar evidências longitudinais e qualitativas experimentais, demonstrando que o raciocínio moral no comportamento eleitoral não é estático, mas condicionado por fatores emocionais, políticos e institucionais. Os achados ajudam a explicar por que o apoio a candidatos percebidos como desonestos persiste, apesar da ampla condenação moral da corrupção.

Palavras-chave | Percepção da corrupção; Valores morais; Integridade pública; Comportamento eleitoral; Cultura política.

1 INTRODUCTION

The concept of economic crimes committed by people in positions of authority – known as "white-collar crime" – was first introduced by sociologist Edwin H. Sutherland in 1939. He described the phenomenon as a form of crime specific to individuals of high social status, who act in the context of their profession (Sutherland, 1940, p. 2). Today, such crimes – corruption, tax evasion, embezzlement or privileged transactions – are often committed by actors with political or economic influence. Unlike conventional crime, these acts do not involve violence but are based on the sophisticated manipulation of legal norms, which makes them much more difficult to punish.

In recent decades, the European Union (EU) has witnessed numerous high-profile corruption scandals implicating national political elites, senior officials, and corporate actors. Despite a complex framework of institutions, such as OLAF, Europol, Eurojust, and most recently the European Public Prosecutor's Office (EPPO), these mechanisms have struggled to ensure consistent and impartial prosecution of such crimes. The fragmentation of competences, persistence of immunity regimes, and political interference have led to a growing enforcement gap across Member States. Transparency International's 2023 report underlines that "systemic political corruption continues to thrive in certain EU countries due to insufficient legal deterrents and institutional independence" (Transparency International, 2023).

Against this backdrop, this paper asks a central research question:

How can the EU ensure effective legal accountability for high-level white-collar crimes when national systems fail to prosecute?

The article argues that a structural solution needs a supranational judicial mechanism with complementary jurisdiction over economic and corruption-related offenses. Specifically, the paper explores the legal feasibility, institutional design, and normative justification for establishing a European Court of White-Collar Crime. Such a body would be empowered to intervene in cases where Member States are unwilling or unable to prosecute, thus bridging the existing accountability gap while respecting the principle of subsidiarity and preserving state sovereignty.

However, in practice, disparities in the implementation and enforcement of EU law can create vulnerabilities, particularly in fields such as financial oversight and anti-corruption. The lack of effective whistleblower protection remains one of the persistent obstacles to unveiling high-level corruption, as also noted by Silva (2023) in the context of the EU legal framework (Silva, 2023).

2 INSTITUTIONAL FEASIBILITY OF A EUROPEAN COURT FOR WHITE-COLLAR CRIME

The idea of creating a European Court dedicated to white-collar crime stems from a growing concern that national judicial systems alone can no longer hold powerful public and private actors accountable when corruption occurs at the highest levels. Despite the efforts of institutions such as the EPPO and Eurojust, significant enforcement gaps remain across the European Union. These gaps are obvious in cases where political interference, immunity, or lack of judicial independence prevent the fair and timely prosecution of financial crimes.

From a legal perspective, the EU already has precedents for creating supranational judicial or quasi-judicial institutions with limited and well-defined competences. The best example is the European Public Prosecutor's Office (EPPO), established under Article 86 of the Treaty on the Functioning of the European Union (TFEU). EPPO shows that, when political will exists, the Union can go beyond traditional cooperation mechanisms and establish institutions with real investigative and prosecutorial powers. While EPPO currently focuses only on crimes affecting the EU budget, its creation proves that similar legal frameworks could support the foundation of a European Court for broader financial and corruption offenses.

One path to creating such a court would be through a treaty among Member States, following the model used for the establishment of the International Criminal Court (ICC). This would allow for a clearly defined mandate and a flexible opt-in system, preserving national sovereignty for those unwilling to participate. Another, more EU-specific route would be to use the procedure of enhanced cooperation, under Articles 326–334 TFEU, which allows a group of at least nine Member States to move forward with deeper integration in a specific area. If such a court were to be created this way, it would initially operate only among participating states, with the possibility of expansion.

A third possibility is to expand the mandate of EPPO to include serious forms of corruption beyond the protection of the EU's financial interests. While this would be politically sensitive, it might be more

feasible in the short term than creating a brand-new institution. Legal scholars have already pointed out that EPPO's mandate could be revised by a unanimous decision of the Council and agreement of the European Parliament, by Article 86(4) TFEU (Luchtman and Vervaele, 2022).

The principle of complementarity, borrowed from international criminal law, could serve as the legal foundation of the proposed court. This means the new court would not replace the national systems but would intervene only when they fail to act. Complementarity allows for a balance between respect for national sovereignty and the need for effective enforcement at the EU level (El Zeidy, 2008).

Of course, such a proposal faces both legal and political challenges. Amending treaties or negotiating new ones is a long and complex process. There are also concerns about overlapping competences with existing institutions like EPPO or the Court of Justice of the European Union (CJEU). Moreover, legitimacy and public support would be essential—no institution can function effectively without trust and cooperation from both national authorities and citizens.

Still, the idea is not unrealistic. It reflects a natural evolution of the EU's fight against corruption and white-collar crime. If powerful individuals can shield themselves from justice through legal loopholes or political influence, the rule of law in the Union will remain fragile. Establishing a specialized, neutral, and independent judicial body could help restore confidence in public institutions and reinforce the EU's foundational values.

The proposal for a European Court specialized in combating economic crime and high-level corruption is undoubtedly an ambitious and politically sensitive step. However, this initiative must be seen in the light of the urgent need to strengthen the rule of law and citizens' trust in public institutions. In a context where national and current EU mechanisms are struggling to ensure coherent and effective application of the law, a specialized court can provide an independent, balanced and complementary legal framework that does not infringe on the sovereignty of Member States but supports it by ensuring accountability and transparency. Also, by using the principle of complementarity, the Court would intervene only in situations where national authorities are unable or reluctant to act, thus avoiding any legal overlap or conflict. Moreover, in the long term, such an institution can contribute to harmonizing standards and increasing judicial cooperation, which would significantly strengthen the integrity and cohesion of the European Union.

3 RESEARCH PROBLEM AND METHODOLOGICAL FRAMEWORK

This paper explores the legal and institutional rationale for establishing a European Court of White-Collar Crime as a response to persistent failures in prosecuting high-level corruption and financial offenses across the European Union. The central hypothesis is that existing national and EU-level mechanisms are insufficient to ensure consistent accountability for white-collar crimes involving politically or economically powerful actors, and that a specialized supranational court could address these gaps while respecting the principle of subsidiarity.

The study employs a qualitative legal research methodology, rooted in doctrinal analysis, comparative case studies, and institutional evaluation. The doctrinal component consists of examining primary and secondary legal sources relevant to the EU legal order, including the Treaties (TEU, TFEU), existing anti-corruption instruments (such as the UNCAC, OECD Convention, and Council of Europe

Conventions), and the jurisprudence of EU and national courts. The comparative approach draws on high-profile corruption cases from Romania, France, Italy, and Slovenia to identify structural patterns of legal inefficiency, political interference, or judicial capture. These case studies serve to ground the analysis in real-world institutional practice.

In addition, the research engages in a functional critique of current EU instruments such as the European Public Prosecutor's Office (EPPO), OLAF, Eurojust, and the Rule of Law Reports, focusing on their capacity to enforce compliance and secure prosecutions in politically sensitive cases. The limitations of these tools—particularly regarding scope, enforcement power, and immunity constraints—are assessed in the proposed model of a European Court.

The contribution of this article lies in offering a structured and legally grounded proposal for a European Court of White-Collar Crime, based on the principle of complementarity and modeled on existing supranational judicial frameworks. By integrating legal theory with institutional practice, the paper aims to fill a gap in the existing literature on transnational accountability mechanisms within the EU.

4 SYSTEMIC ACCOUNTABILITY FAILURES RELATED TO WHITE-COLLAR CRIME IN THE EU

4.1 From Foundational Values to Systemic Vulnerabilities in EU Anti-Corruption Enforcement

The European Union was founded after WWII as an economic cooperation between European nations with the idea that countries involved in trade become interdependent and are more likely to keep peace. The initial concept has since bloomed into different areas in politics areas such as human rights, migration, security, justice, climate, environment and health (European Commission, 2025). This initial economic vision was grounded in the idea that legal and institutional integration could ultimately serve not only prosperity but also democratic stability and the prevention of authoritarian tendencies. The Union recognizes the importance of the unifying principles of liberty, democracy, human rights, fundamental freedoms and the rule of law. Also, the need to promote economic, social progress and to develop judicial and police cooperation is necessary to combat transnational crime and assist in the security and prosperity of all individual States. All Member States must transpose and apply EU directives into national frameworks and provide mutual assistance and cooperation to partners. Those found in breach can be subject to economic sanctions of EU payments (Euronews, 2025). However, in practice, disparities in the implementation and enforcement of EU law can create vulnerabilities, particularly in fields such as financial oversight and anti-corruption.

The basis for the security of the Union is the uniform rule of law and primacy of EU law, as set out in the Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU) (European Union, 2016). Coordination and cooperation among police and judicial authorities help ensure security by preventing and combating crime. This coordination is particularly important when national authorities are unable or unwilling to prosecute high-level financial crimes due to political interference, lack of resources, or structural deficiencies. Mutual recognition of criminal judgements

and similarities in criminal laws help ensure uniformity and smooth cooperation by TFEU Articles 67 and 82. Judicial cooperation in criminal matters is assured by the European Parliament and Council, through procedures to recognize judgments, settle conflicts, training and enforcement. Regardless of the legal systems of Member States, TFEU Article 82 ensures compatible rules are applied to evidence, rights of the accused, rights of the victims and criminal procedure. The Parliament and Council have also ensured harmonious definitions for trans-border crimes, to include corruption, money laundering, computer crimes, trafficking in arms, drugs, and people, terrorism, organized crime and counterfeits, by TFEU Article 83. Cooperation, as described in TFEU Article 75, is also made possible through administrative measures such as freezing assets (European Union, 2016).

Police cooperation between Member States is another important feature of the EU, which is assured by the TFEU Articles 87 and 88. At the heart of the cooperation is Europol, to make cooperation possible through collection, storage, analysis and exchange of police and criminal information, exchange of staff, research and equipment. Europol also facilitates training in common investigation techniques and coordinates joint investigative teams for investigative and operational actions (European Union, 2016). Despite these tools, the actual capacity of Europol to initiate or enforce investigations remains limited, as it does not have prosecutorial authority and relies heavily on national law enforcement cooperation. Furthermore, TFEU Article 325 specifically addresses the problem of fraud and requires States to take the same measures to counter fraud affecting Union finances as they would counter fraud affecting their national finances. Coordination of action is also a requirement of Member States. Enhanced cooperation, as described in Articles 326-334, can be established based on a specific scope and objective. Any Member State may join and participate under the established conditions. The High Representative of the Union for Foreign Affairs and Security Policy is tasked with ensuring enhanced cooperation is consistent with the common foreign policy and security of the Union.

While the EU has established a solid legal and institutional framework to promote cooperation in criminal matters, its mechanisms remain largely dependent on Member State willingness and political will, particularly problematic in the context of high-level corruption and white-collar crime.

4.2 Elite Impunity and Public Sector Corruption in the EU

The phenomenon commonly referred to as grand corruption typically involves acts of corruption committed at the highest levels of government or business, where decisions are taken that significantly affect large segments of the population. It is often characterized by the abuse of entrusted power for personal or political gain, leading to systemic distortions in public governance (UNODC, 2020; Transparency International, 2023). Closely linked to this is the concept of elite impunity, which denotes the persistent failure to investigate, prosecute, or sanction powerful individuals—whether political elites or high-level corporate actors—due to legal immunities, political interference, or institutional capture (Johnston, 2005). These phenomena undermine democratic legitimacy, entrench unequal access to justice, and obstruct effective accountability, particularly in cross-border financial crime cases within the European Union.

White-collar crimes, especially those involving public officials and politically connected actors, remain one of the most under-prosecuted forms of corruption in the European Union. These crimes

are typically non-violent but produce widespread social harm, particularly through the erosion of public trust in institutions, the distortion of market competition, and the misallocation of public funds. Globalization, free trade and technology have enabled a wide array of financial crimes to be committed by both State leaders, influential businessmen and organized crime groups. Such crimes as corruption, fraud, tax evasion and money laundering have an impact not only on a State's economic and political climate, but also on regional and international (Zagaris, 2015). Governments and international law enforcement organizations are entrusted to investigate and prosecute all suspects, but that task becomes more difficult when dealing with political and business leaders. They hold power to make policy and influence the agendas of federal agencies, so at times, prosecutions may be an impossible conflict of interest. Immunity and shielding play a role in delayed prosecution and impunity. Moreover, due to their access to legislative or executive processes, such actors may shape or delay anti-corruption reforms, limiting institutional responsiveness and oversight.

While no single international agreement upon definition for what constitutes corruption, applicable to all acts, types and degrees of severity, exists, the EU has refined the term to the most inclusive version of public or private abuse of power for personal gain (Szarek-Mason, 2010). The EU's broad position, to include private sector corruption, has only recently gained wider traction internationally, with newly enacted regulations directed towards business activities. Both private and public corruption have immense ramifications internationally and the line often blurs in developing countries due to privatization and outsourcing, inviting an indecipherable blend of corruption (Szarek-Mason, 2010). Widespread corruption in the EU threatens the application of the *acquis* and undermines the legitimacy of criminal justice systems and judgements, in turn threatening trust and mutual recognition of decisions. Corruption also threatens EU funds, which are managed in a shared system between the Commission and Member States. Unfair competition, through favoritism, bribery, fraud and corruption, in the internal market is also a concern that is primarily evident in public procurement. Transparency for awarding contracts and a system of monitoring, checks and enforcement are included in EU Directives and anti-corruption frameworks (Szarek-Mason, 2010). This definitional ambiguity hampers cross-border investigations and mutual legal assistance, as states may interpret similar conduct differently or apply inconsistent thresholds for criminal liability.

Political corruption comes in several forms: conflicts of interest in business ventures, abuse of State resources such as embezzlement and bribery (Transparency International, 2025). Anyone can become susceptible to these crimes; politicians, government officials, public employees, businessmen and professionals such as bankers, lawyers and real estate agents (Transparency International, 2025). The increasing complexity of public-private partnerships, lobbying activities, and revolving door practices between government and industry further blur the lines between legal influence and criminal misconduct. These financial crimes don't only affect the national level, but the entire Union since Member State foreign policy is the same (Bard, 2022). Lack of judicial independence is another form of corruption that affects the rule of law, freedoms, trust in government and the economy. The effects are again transferable to the entire Union. A lack of separation of powers with proper checks and balances can allow corruption to spread in further institutions and at the EU level. Police corruption and a failure to enforce the rule of law at the national level mean the crumbling of the EU system. However, enforcement of these rules varies significantly among Member States, and institutional capture or administrative opacity can render EU safeguards ineffective in practice.

Even where national frameworks formally comply with EU directives, enforcement remains uneven and often compromised by political influence. In this context, criminal compliance has been increasingly proposed as a strategic policy tool in the fight against corruption, reinforcing the argument for the establishment of structured and independent enforcement bodies at the supranational level (Corneau, 2023).

The EU frameworks for addressing corruption within Member States focused on criminal law and preventative measures regulated through procurement, accounting and auditing standards. There is a lack of protection for whistleblowers, a lack of regulation in political party financing, a lack of compensation for damages and a lack of independent anti-corruption bodies. It is theorized that even where significant problems exist, the EU is unlikely to confront corruption due to political sensitivity, the interests of political elites who sustain the practice and national resistance to external efforts to legislate or reform (Transparency International, 2023; Szarek-Mason, 2010). Empirical data from the European Commission's Rule of Law reports and GRECO evaluations often reveal limited implementation of anti-corruption recommendations in several Member In several Member States, persistent issues such as limited judicial independence, constrained media freedom, and weaknesses in public procurement oversight remain largely unresolved, despite repeated EU recommendations (European Commission, 2023). While the EU's most powerful anti-corruption tools have proven to be its pre-accession conditionality mechanisms, these apply only in a limited context and cannot ensure long-term compliance once membership is granted (Szarek-Mason, 2010). Beyond this, the Union's formal competences in criminal justice are limited, and Member States are often reluctant to transfer authority over politically sensitive areas such as the prosecution of corruption or the regulation of public officials. As Kochenov (2015) highlights, the tension between national sovereignty and supranational enforcement remains a central challenge, and only genuine political will at the domestic level can enable the EU to take stronger action against entrenched corruption. These systemic shortcomings highlight the inherent limitations of the EU's current anti-corruption framework, particularly in addressing crimes committed by national elites. As such, there is a growing need to explore stronger, centralized judicial mechanisms capable of ensuring accountability at the highest levels.

4.3 International Legal Mechanisms and Their Limitations

International and regional organizations have been created to assist countries in the fight against transnational crime. Problems with jurisdiction, investigations and prosecutions arise when crime crosses national borders, so these organizations support and assist in cooperation and coordination among nations. INTERPOL Financial Crime and Anti-Corruption Centre (IFCACC) is designed to streamline existing initiatives to tackle financial crimes through information exchange for the recovery of criminal assets. They can support asset freezes, seizures and recovery of assets. Through secure channel networks and platforms, member States can access sensitive information for investigations, resources, training and expert advice (Interpol, 2025). Although IFCACC provides valuable tools and support for national authorities, its effectiveness is limited by its lack of enforcement powers and reliance on voluntary cooperation among member states. Moreover, information sharing is often constrained by political sensitivities or domestic legal barriers (INTERPOL, 2022).

Europol was established to support and strengthen cooperation among Member States' law enforcement in preventing and combatting transnational crime and crime that affects the common interests of the Union. Europol, through the International Anti-Corruption Coordination Centre (IACCC), makes available to law enforcement agencies a platform to share information and provides asset recovery and financial investigation capabilities (Europol, 2025). However, Europol's mandate remains largely supportive, and it lacks the authority to initiate independent investigations or prosecutions. As a result, its impact is contingent on the political will and procedural cooperation of national authorities (Carrera and Mitsilegas, 2017).

Eurojust was established to support coordination and cooperation in investigations and prosecutions of transnational crimes. Their mandate includes initiating criminal investigations and proposing Member States initiate prosecutions, especially offenses against the Union's economic wellbeing. Eurojust also coordinates investigations and prosecutions and resolves conflicts arising between national courts regarding jurisdiction (Consolidated Versions of the TEU and TFEU, 2016). In complex transnational corruption cases, Eurojust plays a key role in facilitating joint investigation teams (JITs), yet its coordination efforts are often hindered by legal discrepancies, language barriers, and competing national interests (Eurojust, 2022). The European Public Prosecutor's Office (EPPO) was established from Eurojust as an independent prosecution office to investigate and prosecute crimes against the EU budget, such as corruption, fraud and VAT fraud. It operates in 22 EU countries and has a mission to strengthen cooperation to investigate cross-border crimes where national jurisdictions often end. They can function within the competent courts of Member States and use national staff, applying national law (European Anti-Fraud Office, n.d.). Although EPPO represents a significant advancement in supranational prosecution within the EU, its jurisdiction is currently limited to crimes affecting the EU's financial interests (such as fraud or misuse of EU funds), and it does not cover broader white-collar crimes that fall outside the EU budget (European Commission, 2023a).

International and regional organizations depend on international legal frameworks and ratifications by States to effectively uphold their mandate. For financial crimes against the EU, anti-corruption, anti-bribery, and anti-money laundering conventions must work together with State agreements for cooperation in criminal matters and mutual legal assistance. Difficulties arise in individual interpretations of the convention, especially in definitions and the scope of criminalization. Corruption and bribery can be interpreted narrowly or broadly by States and the outcome can lead to a lack of harmony in cooperation, assistance and prosecution.

The OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions encourages Parties to criminalize any individual offering, promising or giving a foreign official undue financial or other advantages. While this convention encourages fair business practices, it does not criminalize receiving bribes, thus depending on the foreign government to investigate and prosecute their official for receiving the bribe. The Convention also does not criminalize crime sector bribery or situations not related to business (OECD, n.d.; Zagaris, 2015, pp. 134–138).

The Council of Europe Criminal Law Convention on Corruption of 2002 criminalizes both the act of bribery and the act of soliciting or receiving a bribe. The Convention allows each State to determine who is a public officer under its system. It also encompasses private sector bribery and improper influence or undue advantage over decisions. Money laundering from corruption proceeds is also criminalized

and corporate liability is established for offenses committed on behalf of an entity. International cooperation is required, and refusals cannot be made based on bank secrecy or dual criminality (Zagaris, 2015, pp. 142–143). However, despite the many gaps it fills from the OECD Convention, Article 16 specifies that the Convention shall be without prejudice regarding the withdrawal of immunity of any Treaty, Protocol or Statute. The Convention allows up to five reservations, allowing States to ignore some important provisions (Council of Europe, 1999).

The Council of Europe Civil Law Convention on Corruption of 2003 provides civil remedies and full compensation for persons who suffered damage from corruption. This includes the right of action for corruption by public officials in the exercise of their function. To encourage whistleblowers, the State would enact protections for unjustified sanctions for employees who, in good faith, report suspicions to the authorities. The reporting would not be considered a breach of confidentiality. Annual auditing implementations for companies are required by State Parties and the Convention allows declarations but not reservations (Council of Europe, 1999; Zagaris, 2015, p. 144). Implementation reports revealed that politically appointed prosecutors in civil law countries have wide discretion in initiating, continuing or dismissing cases, leading to the possibility of political corruption in corruption prosecutions (Zagaris, 2015, p. 145).

These divergences often result in fragmented implementation, undermining the efficiency of international anti-corruption regimes. According to the OECD's *2023 Anti-Bribery Report*, enforcement levels vary significantly among signatories, with only a few countries achieving sustained levels of high enforcement (OECD, 2023).

The United Nations Convention against Corruption of 2005 stresses coordinated anti-corruption policies with an aim at prevention through knowledge, oversight and transparency in public administration. There are also preventative measures for the private sector regarding bookkeeping, financial disclosures, proper accounting and audits. Similar to the COE Conventions, there are provisions addressing bribery of public officials, foreign officials, embezzlement, trading in influence, abuse of public function, illicit enrichment, bribery and embezzlement in the private sector, money laundering, concealment of property, obstruction of justice and liability for legal persons (Zagaris, 2015, pp. 145–155). Knowledge, intent or purpose are required elements for the offenses, which may be inferred from objective factual circumstances. Furthermore, the Convention also allows for freezing, seizure and confiscation of assets, protection for witnesses, victims and experts and compensation to persons who suffered damage from the act of corruption. The Convention notably expands international business to include international aid but does not require a commercial link for foreign officials accepting bribes (Zagaris, 2015, pp. 145–155). Despite being the most comprehensive international instrument in the field, UNCAC suffers from weak enforcement mechanisms. The implementation review mechanism (IRM) lacks binding force, and peer review processes often remain confidential, reducing transparency and public accountability (UNCAC Coalition, 2022).

While international and regional mechanisms offer valuable frameworks and tools, their effectiveness in tackling white collar crime remains limited. This is especially true when offenders operate from positions of power, shielded by legal immunities and domestic political protection.

These fragmented mechanisms, while valuable, fail to address a fundamental enforcement vacuum in situations where national political elites are implicated. This structural gap reinforces the need to consider a centralized judicial mechanism with binding authority.

4.4 Jurisdictional and Normative Constraints in International Law

In the unique crime of corruption, the perpetrators are often powerful political figures or powerful and influential business tycoons who use the advantages and influence of their position for personal gain. Because of their official capacity, such individuals may benefit from different forms of immunity under international law. Personal immunity (ratione personae) applies to sitting heads of state, heads of government, and foreign ministers, shielding them from prosecution for both official and private acts while in office. By contrast, functional immunity (ratione materiae) applies to official acts performed in an official capacity, even after the person leaves office (Bianchi, 2001). These immunities, though grounded in the principle of state sovereignty, have drawn increasing criticism when used to shield corruption and serious economic crimes (Gaeta, 2002). This form of immunity - often functions or ratione materiae - applies even in cases where officials abuse their public function for private enrichment, creating a gap in the international accountability framework (Bassiouni, 2011). Currently, foreign national prosecutions for Heads of State or senior officials lack jurisdiction and there exists no international court with jurisdiction over the crime of corruption. The international community, which has great concern about the global effects of corruption, relies on States to ratify conventions, individually criminalize, investigate, prosecute, and punish the offenders in their jurisdiction and to cooperate with partners internationally when incidents have transnational elements. This fragmented approach is particularly ineffective in cases where domestic political elites obstruct investigations or influence judicial institutions, as seen in countries with declining rule of law indicators (Transparency International, 2023).

State sovereignty in the European Union, according to Article 4 of the Treaty of European Union (TEU), remains with the Member State unless competences are conferred upon the Union (Consolidated Versions of the TEU and TFEU, 2016, Art. 85). The Union is bound to respect the Member States' identities, structures, politics, constitutions and self-government. The conferral of competencies is governed by the principle of subsidiarity in areas outside exclusive competence and the principle of proportionality. The Union can act only as far as the proposed action can't be achieved by Member States, and it can be better achieved at the Union level. In practice, this means that anti-corruption policies at the EU level must avoid encroaching upon core aspects of national sovereignty, such as criminal law systems, judicial organization, and public administration, precisely the areas most vulnerable to white collar abuse (Kochenov, 2015). The Union cannot exceed what is necessary to achieve the goals of the treaties. The supranational system functions based on the primacy of EU law and on sincere cooperation between the States and the Union.

In the area of corruption, the competences are divided between Member States and the EU. To make matters even more complicated, corruption is also regulated under both the European Community (EC) and EU treaties. The EC has very limited powers, while the EU regulates judicial and police cooperation through political willpower, rather than legal elements (Szarek-Mason, 2010, pp. 43–45).

Corruption includes areas of criminal law, immunity, transparency in public administration, regulations regarding public servants, anti-corruption organizations, legislation regarding judicial independence and freedom of the media (Szarek-Mason, 2010, pp. 44–46). These areas are regulated by individual States, which are undoubtedly reluctant to give up control in these matters to the EU, even though corruption permeates these exact areas and it affects the security and well-being of the entire Union.

The controversial 2002 ICJ decision in Arrest Warrant of 11 April 2000 afforded immunity to Heads of State and Government and senior State officials from prosecution in foreign national courts for international crimes and grave breaches of the Geneva Convention (Szarek-Mason, 2010, pp. 44–46). While the decision affirms immunity for high-level officials before foreign courts, it also leaves open the possibility for future international tribunals to claim jurisdiction over corruption-related offenses, should such a body be created under treaty law (ICJ, 2002; Szarek-Mason, 2010, pp. 44–46). Even though the decision was specific to those crimes and didn't include transnational crimes, it became a precedent for foreign involvement in national matters. However, the decision did not affect the jurisdiction of international courts or tribunals, so even though foreign national courts don't have jurisdiction to prosecute, an international court, based on its status and mandate, can.

Another obstacle exists internationally for the prosecution of State officials in foreign jurisdictions. The Vienna Convention on Diplomatic Relations (VCDR) grants diplomatic immunity to government representatives in foreign territory (Vienna Convention on Diplomatic Relations, 1961). Proposals for reforming the Vienna Convention have been debated within international legal scholarship, including the possibility of limiting immunity in cases involving serious economic or human rights violations. However, no consensus has been reached due to fears of politicizing diplomacy (Denza, 2016).

While the intention of the VCDR is not to protect the individual, but instead to promote friendly relations during diplomatic discourse, instances of immunity abuse exist. For instance, in the case of Teodoro Nguema Obiang Mangue (Equatorial Guinea), courts in France and the U.S. struggled with issues of immunity while investigating extensive embezzlement and money laundering tied to luxury assets abroad. The VCDR lacks sanctions for cases of abuse and there's also no enforcement mechanism; therefore, diplomats receive impunity. Because politics is often involved, prosecutions by the host State are very rare. The host State may declare the diplomat *persona non grata* and expel them, which may not be enough to satisfy justice or the victim. Breaking diplomatic relations with the sending State may be too drastic and still not satisfy justice or the victim. Prosecutions by the victim are possible if the victim wishes to pursue the case in the sending State in accordance with their legal system. This process can be long and expensive, and it's not guaranteed that their legal system and decisions will satisfy justice or the victim; therefore, these cases are very rare as well. Many host States have tried implementing certain measures of accountability for diplomats located in their territory, but all efforts are dependent on the cooperation of the diplomats (Farhangi, 1986; Bergmar, 2014).

Because of the unique position of corruption offenders, it is easy for them to enact self-serving legislations, influence political and economic outcomes and shield themselves and allies from outside scrutiny. Without an overarching independent organization to investigate and prosecute all corrupt

individuals, regardless of their nationality, their status and influence, the corruption phenomenon will continue as long as power and greed permeate politics and business.

These examples highlight a structural failure of the current international legal order to adequately address high-level corruption. In the absence of a specialized tribunal with cross-border jurisdiction and independence from state interests, white collar crime committed by elites will likely continue unchecked.

4.5 Accountability Gaps in EU Member States

Despite being party to numerous international and European anti-corruption instruments, several EU Member States have faced persistent challenges in upholding the principles of accountability and integrity within their public institutions. Corruption at the legislative, executive, and judicial levels continues to affect both older and newer Member States, undermining the legitimacy of democratic governance and eroding trust in the rule of law.

One of the most well-known examples of the systemic challenges of fighting high-level corruption is the case of Liviu Dragnea, former President of the Chamber of Deputies and leader of the Social Democratic Party of Romania. In May 2019, he was sentenced to three years and six months in prison for incitement to abuse of office (High Court of Cassation and Justice, 2019), in a case concerning the fictitious employment of two people at a local public institution. Although his conviction was considered a milestone for Romanian justice, his conditional release after only two years in prison and the lack of clear progress in recovering damages fueled public perceptions of the limited effectiveness of sanctions.

The case also attracted attention at the European level, being investigated by the European Anti-Fraud Office (OLAF) (European Anti-Fraud Office, 2017), which reported possible irregularities in the use of European funds, estimated at approximately 21 million euros. International journalistic investigations also brought to light suspicions of money laundering and acquisitions of real estate abroad. However, some of the transnational charges have not been followed by final judicial solutions.

From an analytical perspective, this case reveals both the capacity of the national justice system to act in the face of political pressures and the structural limits of effective and complete law enforcement. The persistence of the political figure in the public space and the absence of real institutional reform after the sentence was pronounced raise questions about the effectiveness of domestic accountability and prevention mechanisms. Such situations strengthen the argument for the need for a supranational judicial framework capable of intervening when national systems are vulnerable to political interference or institutional capture (RISE Project & Folha de São Paulo, 2018).

While this case resulted in a rare conviction of a high-ranking political figure, many critics noted that the sanctions were relatively lenient, and asset recovery was limited. Moreover, the persistence of such figures in national politics, even post-conviction, raises questions about the efficacy of legal and institutional deterrents.

Romania is not an isolated example. In France, former President Nicolas Sarkozy was convicted in 2021 for influence peddling and corruption, receiving a three-year sentence, two of which were

suspended (Le Monde, 2021). He was also found guilty in a separate case regarding illegal campaign financing (EPRS, 2022). In Italy, former Prime Minister Silvio Berlusconi faced multiple charges, including tax fraud and bribery, resulting in a definitive conviction for tax evasion in 2013, though his sentence was partially suspended due to age and health (BBC, 2013). Slovenia provides another illustrative example of the challenges in prosecuting high-level corruption. The Janša v. Slovenia (Patria Case) highlights political interference and judicial difficulties impacting the integrity of the anti-corruption process (Baeckman, 2011). This case underscores systemic vulnerabilities within Member States that can undermine enforcement efforts at the EU level.

These cases, although diverse in legal outcomes, demonstrate a broader pattern of vulnerability within national systems when confronting high-level corruption. Political interference in judicial appointments, limited mandates of anti-corruption bodies, lack of whistleblower protection, and insufficient asset forfeiture frameworks continue to undermine deterrence across the EU.

While EU instruments such as the Rule of Law Reports, the EU Justice Scoreboard, and the Mechanism for Cooperation and Verification (CVM) have played a role in monitoring, they lack direct enforcement powers. The 2023 Rule of Law Report published by the European Commission confirms that in several Member States, persistent concerns regarding judicial independence, corruption, and limited media freedom remain unaddressed (European Commission, 2023). This underscores the disconnect between observation and effective intervention in cases of systemic breaches. It is noteworthy that, despite the efforts of both national and EU institutions, the prosecution and punishment of high-level corruption remain rare exceptions rather than the norm.

Despite the breadth of legal instruments and institutions, white-collar crimes involving high-level officials continue to challenge the coherence and credibility of the EU legal order. The evidence outlined in this section supports the argument that current national and EU mechanisms are insufficient. Thus, the legal and political feasibility of a supranational judicial body deserves closer examination.

5 RESEARCH LIMITATIONS

This study is primarily grounded in doctrinal legal analysis and qualitative case examination, relying on publicly accessible legal sources, case law, academic commentary, and institutional reports (Hutchinson and Duncan, 2012). While this framework allows for a structured legal-normative and comparative approach, the research does not include empirical data such as interviews with judicial actors, prosecutors, or EU officials, nor does it perform quantitative analysis of national enforcement outcomes or asset recovery efficiency.

The focus remains centered on the European Union and a limited number of illustrative Member States, without engaging in broader global or regional comparisons beyond brief references to international frameworks like UNCAC or the Rome Statute. Consequently, both the legal arguments and institutional proposals advanced here are tailored to the specific legal and constitutional architecture of the European Union.

Future research could complement this study by incorporating empirical fieldwork, comparative datasets on prosecution outcomes, or structured stakeholder consultations at both national and supranational levels. Such additions would help to refine the practical feasibility and political

acceptability of the European Court of White-Collar Crime and assess its potential role within the evolving landscape of EU judicial cooperation.

6 SYNTHESIS AND CONCLUDING REMARKS

The analysis carried out throughout this paper leads to two core dimensions: identifying systemic limitations and proposing a viable institutional solution.

Based on the analysis presented, several systemic weaknesses can be identified. First, the current EU legal and institutional framework lacks effective coercive mechanisms to ensure accountability in high-level corruption cases. Instruments such as the European Public Prosecutor's Office (EPPO), OLAF, the Rule of Law Reports, and the CVM mechanism primarily focus on monitoring and coordination rather than enforcement. Second, political interference in national judicial systems, weak protection for whistleblowers, limited asset recovery procedures, and selective application of immunity continue to obstruct meaningful legal action in many Member States (Transparency International, 2023a). Despite repeated findings in the EU's Rule of Law Reports, persistent failures in ensuring judicial independence and transparency remain largely unaddressed (European Commission, 2023a). It is noteworthy that, despite the efforts made, the actual sanctioning of high-level corruption remains exceptional. This persistent lack of effective enforcement highlights the limitations of current national and EU-level mechanisms and strengthens the argument for a more robust institutional response.

Considering these deficiencies, this paper proposes the creation of a European Court of White-Collar Crime, built on the principle of complementarity. Such a court would intervene only when national systems fail to act, ensuring that serious economic offenses do not go unpunished due to institutional inertia or political obstruction. By providing a neutral and independent forum, it would reduce domestic political interference, promote uniform legal standards across the Union, and close existing loopholes that allow high-level offenders to escape accountability. Its potential deterrent effect, combined with a focus on cross-border cooperation and asset recovery, would reinforce the EU's commitment to the rule of law and restore public trust in the integrity of its institutions.

High-level white-collar crime, particularly when committed by politically connected individuals or powerful economic actors, remains one of the most difficult categories of offenses to prosecute effectively within the European Union (Transparency International, 2023). Despite the existence of legal instruments and institutional mechanisms at both the national and supranational levels, the persistent failure to ensure accountability, especially in high-level corruption cases, exposes significant systemic weaknesses. National judicial systems often face political interference, a lack of independence, or legislative obstacles that prevent impartial investigations and sanctions. While institutions like the European Public Prosecutor's Office (EPPO), OLAF, and the Rule of Law Mechanism were created to address cross-border financial crimes and systemic deficiencies, their operational impact remains limited. Recent academic analyses underline both the promising potential and current institutional constraints of EPPO, particularly about cooperation with national judicial authorities and uneven case prioritization (Luchtman and Vervaele, 2022)

(Luchtman and Vervaele, 2022). Moreover, the absence of binding enforcement powers makes these mechanisms insufficient for addressing entrenched corruption or political interference in national

prosecutions. Although EPPO marks a step forward in supranational prosecution, its fragmented mandate and the discretionary engagement of Member States still pose significant obstacles to consistent enforcement (Luchtman and Vervaele, 2022).

The analysis carried out highlights the fact that the lack of a unitary coercive framework at the level of the European Union, corroborated with the persistence of immunity regimes and the reluctance of the Member States to transfer competences in the criminal field, generates a dangerous vacuum of responsibility. In this context, the proposal to establish a European Court for Combating Economic Crime can no longer be seen as a theoretical option, but as an institutional necessity. Inspired by the principle of complementarity – enshrined in the Rome Statute – such a court would have the mission of intervening in cases where national courts fail. Thus, the balance between respect for the sovereignty of states and the imperative need to effectively combat high-level corruption would be ensured.

Adapting the principle of complementarity to the EU legal context would represent a natural evolution in the Union's efforts to ensure transnational accountability, without infringing upon the core competences of the Member States in criminal justice.

By providing a neutral and independent forum, the proposed court could help insulate corrupt investigations from domestic political influence, promote the uniform application of legal standards across the Union, and close existing loopholes that allow powerful actors to exploit legal technicalities or procedural delays. Its potential deterrent effect, coupled with enhanced asset recovery capabilities, would significantly strengthen the EU's integrity as a rule-of-law-based community.

While this court would not replace national judicial systems, it would offer a vital safety net where state-level enforcement fails. The success of the European Union in defending its founding values, including democracy, equality, and justice, depends on its ability to respond to systemic corruption with credible, enforceable mechanisms.

Despite its legal coherence and normative appeal, the political feasibility of establishing a European Court for White-Collar Crime remains uncertain. Institutional resistance, concerns over sovereignty, and divergent national interests could hinder treaty reform or delay consensus among Member States. Some governments may perceive such a court as a threat to their discretionary control over criminal justice or as a supranational intrusion into politically sensitive matters. However, the strategic advantages of such an institution, namely, restoring public confidence, enhancing the credibility of EU enforcement mechanisms, and ensuring equal accountability across Member States—could gradually shift political will. In the long term, the court's potential deterrent effect and contribution to legal harmonization may outweigh initial reluctance, especially if public pressure, media scrutiny, and civil society advocacy continue to expose the limitations of the status quo.

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