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Beyond the Panama Papers. The Performance of EU Good Governance Promotion

The Anticorruption Report 4

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Barbara Budrich Publishers
Opladen • Berlin • Toronto 2017

A CIP catalogue record for this book is available from
Die Deutsche Bibliothek (The German Library)

ISBN 978-3-8474-0582-5 (Paperback)
eISBN 978-3-8474-0405-7 (e-book)

Die Deutsche Bibliothek – CIP-Einheitsaufnahme
Ein Titeldatensatz für die Publikation ist bei Der Deutschen Bibliothek erhältlich.

Verlag Barbara Budrich Barbara Budrich Publishers
Stauffenbergstr. 7. D-51379 Leverkusen Opladen, Germany

86 Delma Drive. Toronto, ON M8W 4P6 Canada
www.barbara-budrich.net

Jacket illustration by Bettina Lehfeldt, Kleinmachnow, Germany – www.lehfeldtgraphic.de

Contents

2. Spain: Roads to Good Governance? How EU Structural Funds Impact Governance across Regions

ELISKA DRAPALOVA[1]

The Southern European countries and regions have received a substantial help from the European Union to rebuild their infrastructure, modernise their productive sector, and help to develop adequate human resources. However, the economic crisis uncovered many unresolved structural problems. This chapter deals with the Spanish case, particularly with the regional variation in use and control of EU funds. Cumulatively, Spain has received a significant share of the funds since it joined the European Union. Yet, the corruption scandals point to the possibility that the funds did not have only positive effects, but were a source of "cheap" and uncontrolled money ready to be used in the corrupt network to purchase favours or to buy support from voters and businessmen.

Introduction

The Southern European countries and regions have received a substantial help from the European Regional Development Fund to rebuild their infrastructure, modernise their productive sector, and to develop adequate human resources. However, the global and the euro crisis have compromised the picture of successful cohesion and good governance within Europe. It has slowly emerged that too much cash from the structural funds has been funnelled into infrastructure construction and that too little was used to improve administrative capacity and quality of government. A large amount of mismanagement and corruption scandals that emerged in SE countries showed that the controls that EU offered were not sufficient to prevent mismanagement and waste in some cases (Quesada, Jiménez-Sánchez and Villoria 2013).

This chapter aims to evaluate the impact of European Structural and Investment funds (ESI) on the Spanish regional governance using the framework developed by Alina Mungiu-Pippidi (2013, 2015). This framework analyses the confluence between the resources available for corruption versus the legal and societal controls that would constrain them. I argue that the EU funds increased the resources for corruption disproportionally without matching them with control mechanisms and administrative capacity. The problem seems to be that EU funds relied on the complex administrative control process, the maximisation of the absorption rate, and on the presumption that high capacity and rule of law are in place equally across but also within Member States. As a result, funds might favour the emergence of increased opportunities for corruption in regions with low administrative capacity and controls.

The rest of the chapter is structured as follows. In section one, I introduce the outcome indicators and compare regional performance. In section two, I describe the theory and the third section applies the resources versus constraints framework and discusses their effect on the governance characteristics. The last section presents my conclusions.

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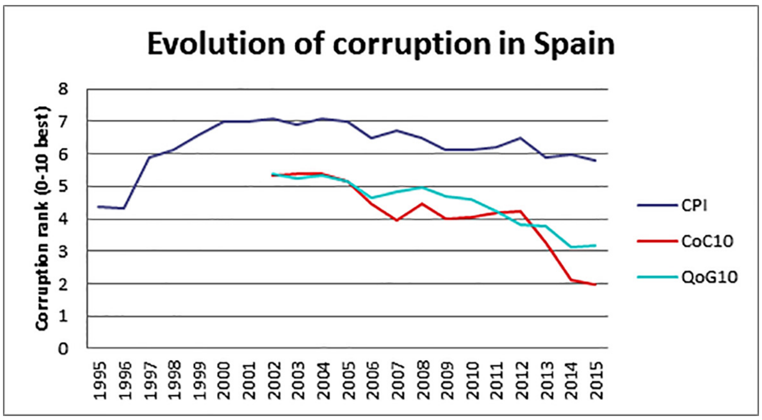
Spain

Cumulatively, Spain is one of the highest recipients of EU regional funds. Spain has received more than EUR 13.696 billion since it joined the European Union in 1986 (1.27% of Spanish GNP) (European Commission 2016). Yet, the enormous socio-economic progress that Spain has made was recently compromised by a series of corruption scandals that involved EU funds. In early 2016, the European Commission requested clarifications to the regional government of Valencia whether EU money was involved in a large regional corruption scheme (*elMundo* 2016). Shortly before, the EU had stopped the absorption of funds to Andalusia because of a large corruption scandal that uncovered a scheme to embezzle ESF money for requalification courses (*País* 2016). These scandals point to the possibility that the funds did not have only a positive effect, but were a source of "cheap" and uncontrolled money ready to be used in the corrupt networks to purchase favours and support from voters and businessmen.

While all the money was pouring in over the last 25 years, Worldwide Governance Indicators and Corruption Perception Index scores on regulatory quality and corruption have remained unchanged or even have decreased (See figure 1). According to the Worldwide Governance Indicators (Kaufman et al. 2013), Spain (significantly) regressed in the Control of Corruption dimension in the period 1996–2015 (figure 1). Transparency International's Corruption Perception Index reveals a similar dynamic, as Spanish corruption improves between 1996 and 2000 (probably with the EU pressure before the single currency adoption), then stagnates and decreases in 2001, despite the Spanish economic boom.

Figure 1: The evolution of corruption in Spain, summary of indicators



Source: CPI (TI), CoC (WGI) and EQI (QoG)

This deterioration of governance culminated in mass street protests in 2011 that denounced soaring levels of political corruption. 88% of Spanish population considers corruption as widespread across all levels and institutions and 72% says that government is not effective in curbing corruption (European Commission and DG Home Affairs 2014). The survey of enterprises conveys similar results, showing that 77% of Spaniards believe corruption and connections seem to be driving profit more than market competition and innovation does (Villoria and Jiménez 2016).

The pattern, however, varies considerably at the regional level. Spain is a decentralised country; the autonomous regions account for around 35% of total general government expenditure and have legislative power in the areas set out in their statutory legislation, such as health, education and social policies. As far as good governance performance is concerned, Spain is among the five EU Member States with the largest intra-country variation (Charron and Lapuente 2013). Similarly, the components of the Index of Public Integrity[2] (Mungiu-Pippidi and Dadašov 2016), adapted by the author to the regional level, show large regional differences in corruption, transparency, business regulation, administrative effectiveness and tribunal performance (see table 1).

Regarding transparency, the difference is almost 35 points in the various scores between the most transparent Basque country (100 points) and Madrid (65 points) or Murcia (79 points) (scale ranges from 0 to 100 where 0 is least transparent and 100 the most). In regional budgets and procurement transparency, the variation is even larger. While Catalonia or Basque country reaches full transparency (100 points), Andalusia and Madrid hardly reach 53 points in the last assessment in 2014.[3] The administrative burden also differs between regions. According to subnational indicators of Ease of Doing Business by the World Bank in 2013, to start a business in Cantabria takes 7 procedures, in Galicia or Navarre it is 10 and 12 steps respectively. Even dealing with property registration does not take the same amount of time: while in Madrid and La Rioja this simple procedure takes 13 days, in Galicia and Balearic Islands one has to wait 21 days. Finally, the time to process a building permit (the most reported area for corruption) takes 100 days (10 procedures) in La Rioja, while in Galicia one must wait 295 days and undertake 17 procedures. Similarly, in Aragon, it takes 250 days and 12 procedures.

[2] The IPI components are: administrative burden, judicial independence, trade openness, budget transparency, e-citizenship and freedom of the press. The freedom of the press component is not considered here. The press freedom scores for Spain are already high. Spain ranks 28 from 133 countries.

[3] Similarly, the number of politicians that are prosecuted for corruption shows a large variation. While Rioja or Navarra did not have reports of corruption, Andalusia or Valencia reported 144 and 76 politicians prosecuted in the last years (elMundo 2014).

Table 1. Summary of indicators of the Index of Public Integrity (adapted to regional level)

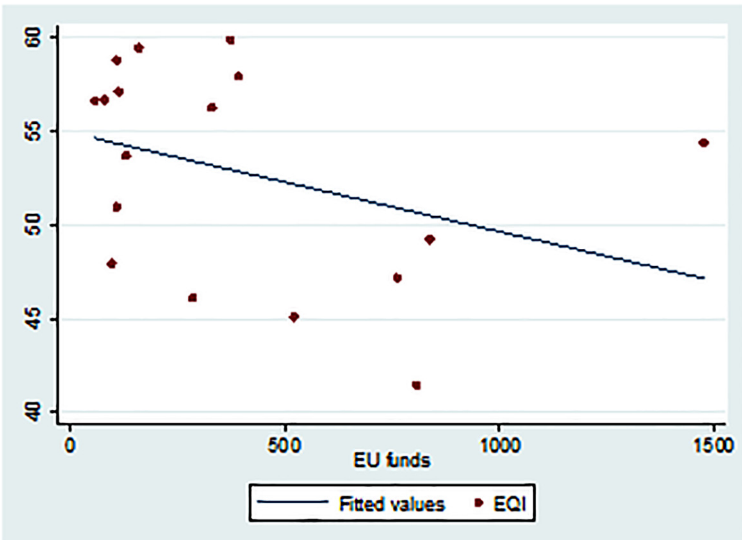
Region	Judicial Performance		Administrative burden				Transparency		E-citizen-ship	Trade open-ness
	Annul.	Congestion	Pending rate	Admin. Burden	Construction procedures	Construction permit time	Transparency Procurement	Transparency index	Internet % (2012)	Export %GNP (2014)
Spain	10	28	28	7	13	205		.	23.62	.
Galicia	7	31	30	10	17	297.5	64.7	90	23.16	33.81
Asturias	9	24	24	9	12	114	52.9	66.3	28.02	17.38
Cantabria	0	22	22	7	12	161	23.5	95	26.83	19.24
Basque Country	15	23	24	10	14	173	17.6	97.5	27.98	33.30
Navarre	25	17	17	12	12	145	58.8	91.3	23.38	46.35
La Rioja	0	35	35	9	11	101	47.1	97.5	23.50	21.43
Aragon	0	20	20	10	12	250	41.2	75	23.92	31.27
Madrid	13	26	27	7	13	205	70.6	72.5	26.54	13.85
Castile León	6	25	25	10	12	133	41.2	90	21.58	27.64
Castile -La Mancha	15	39	37	10	11	153	35.3	58.8	20.14	15.90
Extremadura	0	25	23	9	10	147	52.9	87.5	16.11	9.78
Catalonia	18	26	27	10	15	153.5	58.8	78.8	23.63	31.19
Valencia	12	32	32	9	11	121	29.4	63.8	22.56	28.11
Balearic Islands	0	27	28	9	14	203	41.2	83.8	28.82	4.04
Andalusia	4	27	28	7	13	162	82.4	92.5	20.82	17.22
Murcia	12	38	37	10	12	247	82.4	55	21.16	33.22
Canary Islands	30	25	26	10	11	142	29.4	63.8	30.07	5.76

Source: own elaboration with the data from Transparency international, Ease of Doing Business, CGPJ 2015Table 1. Summary of indicators of the Index of Public Integrity (adapted to regional level)

Moreover, the data show a similar variation in performance of regional tribunals. Due to unavailability of judicial independence indicators at the regional level, I substituted these with alternative measures of judicial performance using the pending and elevation rates which are the standard measures of quality of judiciary used by the Spanish Ministry of Justice. While one has to wait for a sentence on average 30 months in Galicia and 38 in Castile La Mancha, it is only 17 months in Navarre and 23 months in Basque Country. Similarly, the elevation rate of regional tribunals varies greatly. The elevation rate of tribunals in Cantabria or Castile-Leon is 11 and 13, while in Baleares or Madrid reach 28 and 33 points (Consejo General de Poder Judicial 2015).

Combining the total amount of funds received in the 2007-2013 period with the quality of government (EQI2013) indicator, we see (Figure 2) those regions that were receiving larger stock of money are those with worse quality of government. Taken together, the data suggest that the regional funds do not seem to help to improve governance in the least developed regions. *What does limit the impact of EU funds on the quality of government in Spanish regions?* I focus on this question in the next sections.

Figure 2: Relation between Regional quality of government (EQI2013) and EU funds (billions of Euros), OLS regression



Theory and literature

In the years 2014–2020, the EU envisages the enhancement of quality of institutions and administrative capacity as one of the keystones for European cohesion (Dijkstra 2013). For the pursuit of this objective, the European Commission has implemented anticorruption reports, reforms of procurement and administrative capacity. Using its leverage and conditionality rule, especially during the accession period, the EU has promoted a large number of institutional reforms and guidelines that led to alignment in administrative rules and laws (Meyer-Sahling 2011). Yet, the unequal implementation of these rules and laws across and within countries casts doubts on the effectiveness of this approach (Mungiu-Pipidi 2007).

At the regional level, the bulk of literature on the EU regional funds has proliferated considerably, as has the budget dedicated to these funds. Research to date has looked mostly at the effects of structural funds allocation in delivering economic cohesion, measured as GDP convergence (Becker, Egger and von Ehrlich 2010, Tosun 2014) and at the determinants of the regional distribution of funds depending on government ideology, number of veto players or government quality (Charron 2016). However, apart from few studies (Dimulescu, Pop and Doroftei 2013, Fazekas et al. 2014), very little work has been done and the literature remains divided on whether and how regional funds can contribute to good governance.

EU representatives argue that funds are responsible for successfully narrowing the gap between countries and that additional monitoring and planning mechanisms provide enough guarantees to minimise the opportunities for mismanagement and corruption. Nevertheless, Fazekas et al. (2014) indicate that EU funding considerably increases corruption risk in procurement in countries that they have studied. It happens by "making a large number of funds available for rent extraction and by failing to implement sufficient controls of corruption to counterbalance this source of resources" ibid., 71). Yet, this effect is not uniform across regions. Therefore, we have to ask what components are responsible for more or less effective control of corruption.

Control of corruption refers to "society's capacity to constrain corrupt behaviour in order to enforce the norm of individual integrity in administration and politics to prevent state capture by particular interests, and thus promote the social welfare" (Mungiu-Pippidi 2015). Control of corruption is an equilibrium reached when opportunities for corruption are checked by constraints imposed by the state and the society. In this model, the resources for corruption includes both material resources and discretionary power, such as privileged access of reduced groups of actors, intentionally poor regulation or its excess and lack of transparency. Alina Mungiu-Pippidi (2015) distinguishes two types of restrictions. On the one hand, we have the dissuasive legal measures administered by the state, effective autonomous judicial power and audit institutions that are capable of enforcing legislation that deal with conflicts of interest, and the application of a clear separation of public and private spheres. On the other hand, normative dissuasive measures include both the existence of social norms that promote government impartiality as well as societal monitoring through the active role of the media and civil society.

This framework is suitable to assess the impact of the EU funds on subnational governance as it could be easily adapted to the regional level. Especially in federal countries, regions enjoy the autonomy that enables them to create different governance configurations. Secondly, although several institutions such as tribunals are administrated centrally, the regional approach can elucidate the gap between *de jure* and *de facto* performance. Finally, each region has slightly different approach regarding how to organise the administration of the EU funds.

Analysis of resources and constraints

This chapter maps the evolution of resources and institutional and societal controls in Spanish regions. I argue that the funds increased disproportionally the resources for corruption without effective implementation of control mechanisms. The unconstrained resources, along with the lack of consideration of different regional administrative capacities and governance conditions increased the opportunities for corruption.

Regional policy is implemented through three main funds: the European Regional Development Fund (ERDF), the Cohesion Fund (CF) and the European Social Fund (ESF). Additionally, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF) make up altogether the Structural Funds and European Investment Funds (Becker, Egger and von Ehrlich 2010). The institutionalisation of European cohesion policy was given impetus in the late 1980s in the context of the accession of poorer Mediterranean countries – Greece (1982), Spain and Portugal (1986) – and an ambitious drive to adopt the single market. The type, the sector and the amount of funding were targeted depending on the socio-economic conditions of each region. For Objective 1 (lagging regions), eligibility was based on regions having an average GDP per capita of less than 75% of the Community average. Cohesion Fund (CF) was intended for countries whose per capita GDP is below 90% of the EU average. The eligibility of Objective 2 and 5b regions (industrial areas in decline and rural areas) were selected on the basis of unemployment rates and percentage of industrial and agriculture employment and income (Bodenstein and Kemmerling 2012, 3). In 2000–2006, eleven Spanish regions were classified as Objective 1: Galicia, Asturias, Castile-Leon, Castile-La Mancha, Extremadura, Valencia, Andalusia, Region of Murcia, Ceuta, Melilla and Canarias. Since then, however, just four of the regions (Galicia, Castile-La Mancha, Extremadura and Andalusia) remained in that category in 2007–2013 and only one (Extremadura) in 2014–2020.

Resources for corruption

The regional funds, due to the "additionality principle", constitute by definition extra source of assets. Although ESI funds are not comparable in amount or in purpose to Official Development Assistance, the ERDF and Cohesion Fund available for the 2007–2013 period amounted to EUR 26.6 billion, equivalent to 0.4% of GDP and around 7% of government capital expenditure. Funding allocated to Convergence regions was nearly three times greater than that going to Competitiveness and Employment ones, equivalent to an average of EUR 163 per capita per year over the period (European Commission 2016, 10). Especially during the economic crisis, the EU funds were frequently the principal component for continuation of regional investment. The purpose of the funds varies according to the EU targets, the relative development of regions' and Member States' strategies. In the Spanish case, the central government has given a high priority to the development of economic infrastructure.

After a close look at indicators from the first section, we observe mixed evidence on the relation between higher resources availability and corruption. We see that, although most regions with a low quality of government are also those with the most resources available for misappropriation, some wealthier regions that perform well on the EQI index have also high resource availability. Regarding transparency, Murcia, Andalusia, Galicia and Valencia are among the least transparent regions (especially the financial transparency component) and they also received a greater amount of EU funds. The administrative burden, frequently measured by the number of procedures that businesses and citizens face, shows that Galicia and Murcia are regions where new businesses and citizens have to undergo a greater number of steps, higher payments and longer waiting time. Nevertheless, some traditionally well-governed regions – Basque Country and La Rioja – also have low score on transparency (17.6 and 47) and high administrative burden (10 and 9 procedures).

Another component of resources that increases the potential for corruption, the power discretion, also seems to influence the effect of funds on the government quality. Most of the regions with low performance are governed historically by one dominant party. Andalusia and Extremadura are strongholds of the Spanish Socialist Workers' Party (PSOE); while Galicia, Murcia and Valencia are governed by the People's Party (PP), although previously these were governed by the PSOE with again ample majorities. The lack of competition and alternation contributed to clientelism, the politicisation of public administration and to the discretionary power of narrow political elite over the distribution and role of EU funds in their respective regions. These strong regional political actors, known as *caciques*, have gained influence with political decentralisation and control over distribution of EU funds (Bukowski, Piattoni and Smyrl 2003). Spain has many of these "personal" political projects co-financed by the EU. Perhaps the most notorious is the unused airport in Castellón in Valencia, which was promoted by regional politician and *cacique* Carlos Fabra and paid for by the EU (*elDiario* 2015), the airport in Murcia or the Palma Arena velodrome in Balearic Islands (*lainformacion* 2013).

The shared implementation between subnational bodies and civil society was left to the discretion of Member States and regions (Cazorla Perez 1995, European Commission 1995). Its application and quality, thus, depended on domestic administrative traditions and regional settings. Altogether, the rivalry between central government and regions with growing powers, the relative weakness of local governments and civil society in some regions have impinged upon the application of partnership. Given their discretion, every region had a different arrangement that ranged from fairly open, participative and institutionalised process in Catalonia (with the association of municipalities, associations and unions participating in decision and management) to informal and regional-government-led process in Aragon or Valencia (Aja 2001).

Finally, the purpose of the funds contributed indirectly to higher corruption risks. Especially in the early stages and in the poorest regions, funds were invested in large infrastructure projects, urban renovation and other discretionary investments that are associated with larger corruption risks (Aguilera and Naredo 2009). This risk was high due to strong political incentives, the high political visibility of projects, and business pressure in public procurement. Regions classified under Objective 2 had a different situation in which the funds were to go to non-discretionary investment projects, such as research in innovation and education. Although the EU stipulates how funds should be spent, the stipulations tend to be rather vague, giving freedom to Member States to diverge from the original purpose. In Galicia, journals reported the clientelistic and partisan use of regional funds for road construction for pork-barrel projects by regional political leaders (C. M. Dudek 2005). Carolyn Dudek found that "party affiliation and personal connections mattered for the distribution of EU funded projects as municipalities and associations that were ideologically close to the ruling party received more funds (ibid., p. 127)". She argues that funds were used to perpetuate clientelistic networks and relations that siphoned off EU funds for partisan purposes (C. M. Dudek 2003, 123).

The role of restrictions

European funds increased considerably the pool of resources available for investment and redistribution but also for mismanagement. However, it may be that at the same time the EU funds were complemented with strict controls and constraints over these resources. Legal and societal constraints indeed seem to be the crucial component in the puzzle. Regions with a low quality of government and high corruption have consistently high availability of resources but also the lowest constraints. On the contrary, the regions that score high on the quality of government index also have the highest constraints, especially on the social accountability indicator.

(a) Legal and institutional controls

The evaluation and control mechanisms of funds only grew more important with the volume of resources poured into regional convergence (Bachtler and Mendez 2007). As the result, the EU has devised a complex and detailed audit system of fund tracking, ex-ante evaluations and early warning systems combined with national and sub-national audits. On paper, the EU control system indeed seems bullet proof, however, findings by Fazekas et al. (2014) show that the risk of EU funds being misplaced is higher than for the national funds – even despite this detailed screening process.

One of the reasons behind the low effectiveness of the EU control system is its decentralisation, which especially complicates ex-ante accountability. The EU audit office has devolved much of the oversight responsibility to the Member States and regions. These, however, tend to implement a highly diverse system of control with various levels of quality that frequently overlap and contribute to the ineffectiveness of audit mechanisms (Dellmuth 2011). The Spanish central government implements separate mechanisms for an audit of European and national funds. These are combined with the regional controls and committees. Consequently, the management of funds has created additional bodies and procedures that were difficult to assess (Milio 2010).

The effectiveness of audit institutions (ex-post controls) is limited while the regional tribunals' performance varies largely among regions. The national audit tribunal is understaffed and overburdened. Its controls are generally ex-post and are focused only on the correct application of rules without searching for or preventing fraud. Regional tribunals perform well in regions like Navarre, Cantabria or Basque Country, while their capacity (pending rate) and performance (annulment rate) are much lower in those regions that manage most of the funds like Galicia, Extremadura, Murcia or Castile-La Mancha (Table 1).

Moreover, Spain lacks lobby regulation and comprehensive legislation against conflict of interest among politicians (TI 2014). Only Catalonia has created an antifraud office. Politicisation of administration further decreases the effectiveness of institutional controls. In Galicia, Andalusia and Valencia the politicisation of administration is considered to be high (Jordana, Mota and Noferini 2012, Mota and Noferini 2010). In other regions, like Basque Country, these tendencies were limited. Unlike other regions, the Basque Country has its *Instituto Vasco de Adminstración Pública* (Basque Institute of Public Administration), which is responsible for the recruitment and formation and overview of Basque civil servants.

(b) The societal accountability

Although the EU recommends that regions involve civil society and economic actors in the drafting of the regional strategies and operational programmes. However, as already mentioned it is in full discretion of the regions. Their involvement and the openness of the process are low and vary across the territory.

Spain was a centralised and semi-authoritarian country until 1975. Due to its authoritarian past, Spanish civil society is considered weak and more politicised in relation to most other Western European countries (Verge 2012). Despite the general popular outcry against corruption (according to 2014 Special Eurobarometer on corruption, 84% believe that bribery and connections are the easiest were to obtain public services), civil society's role in monitoring EU funds and regional implementation of European programmes is almost non-existent (Jimenez and Villoria 2014). At least until 2011, there were very few civil society organisations engaged in the fight against corruption or dedicated to monitoring public spending. Institutionalised civil society organisations are few and poorly organised; consequently, they have little impact and limited influence. Attending to the number of NGOs per thousand inhabitants and by the autonomous community, we find that Castillas, Rioja, Aragon and Navarra are the regions that present the highest values of this indicator. On the other hand, the autonomous communities with smaller values are Madrid, Baleares and Valencia (Pérez-Grueso, Servós and Abadía 2007, 84).

According to recent research, the strength of civil society and spread of the Internet in regions are correlated positively with the quality of government (Mungiu-Pippidi and Dadašov

2016). According to the data on Spanish regional Internet subscription, Spain has low Internet penetration. On average, only 23% of the population had Internet access as of 2012. In accordance with previous indicators, this average value hides an interesting variation among regions. Once more, stronger and more connected citizens are concentrated in the historical communities of Catalonia and Basque Country where Internet subscription reaches 28%. On the opposite end, we can find Extremadura with only 16% and Andalusia with 20%.

This chapter has aimed to evaluate the role of European Structural and Cohesion Funds and their impact on governance in the various Spanish regions. From the exploratory empirical analysis, it seems that despite EU membership the quality of governance varies considerably within countries. Indeed, the numerous corruption scandals in regional government and the empirical evidence show that EU funds, despite the control mechanisms, seem not to improve regional institutions but rather increase the temptation for rent seeking. I have argued that the way funds were distributed (increased discretionary power of politicians versus open participatory processes) and to which purpose they were committed (infrastructure and large investment projects as opposed to projects dedicated to education and SMEs) has augmented the resources for corruption. This increase in resources was not matched with effective control by the Commission, by regional government and by societal accountability from civil society. Moreover, the shared management between the EU and Member States, together with the complexity and frequent reforms of supervisory mechanisms, added a burden to regions with low administrative capacity and further limited the control capacity of these regions. This contributed to variations of governance quality between different regions.

Within the last three years, quite a few new laws and regulations intended to fight and prevent corruption and fraud have come into force in Spain. Although it is important to create effective institutional deterrents for corrupt behaviour, legal constraints alone are not likely to work without societal support. Civil society monitoring and stakeholder engagement is weak and regions with more problems with corruption are the same regions with low transparency, low political participation and low Internet connectivity. To end on a brighter note, after 2011, Spanish civil society has been showing signs of mobilisation and a stronger will to oversee public funds and to participate in political decisions. Many new civil society activities (like open data and budgetary control of local governments) and new political parties with anticorruption platforms give hope for more control of political wrongdoing.

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Acknowledgments

This project is co-funded by the Seventh Framework Programme
for Research and Technological Development of the European Union

This policy report, The Anticorruption Report 4: Beyond Panama Papers, is the fourth volume of the policy series "The Anticorruption Report" produced in the framework of the EU FP7 ANTICORRP Project. The report was edited by Prof. Dr. Alina Mungiu-Pippidi from the Hertie School of Governance, head of the policy pillar of the project.

ANTICORRP was a large-scale research project funded by the European Commission's Seventh Framework Programme. The full name of the project was "Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption". The project started in March 2012 and lasted for five years. The research was conducted by 21 research groups in sixteen countries.

The fundamental purpose of ANTICORRP was to investigate and explain the factors that promote or hinder the development of effective anti-corruption policies and impartial government institutions. A central issue was how policy responses can be tailored to deal effectively with various forms of corruption. Through this approach ANTICORRP advanced the knowledge on how corruption can be curbed in Europe and elsewhere. Special emphasis was laid on the agency of different state and non-state actors to contribute to building good governance.

Project acronym: ANTICORRP

Project full title: Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption

Project duration: March 2012 – February 2017

EU funding: Approx.8 million Euros

Theme: FP7-SSH.2011.5.1-1

Grant agreement number: 290529

Project website: http://anticorrp.eu/

All these contributions were given as part of the European Union Seventh Framework Research Project ANTICORRP (Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption). The views expressed in this report are solely those of the authors and the European Union is not liable for any use that may be made of the information contained therein.