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## **Brexit, Integrity and Corruption: Local and Global Challenges**

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### **Introduction**

Whether Brexit will happen or not, the events surrounding the referendum have already produced national and transnational effects on socio-political integrity and of anti-corruption laws and policies. An assessment of the legal and political developments that have already taken place or have been announced, however, reveals that Brexit is not bound to have a negative impact on integrity, but can become an opportunity to introduce and disseminate virtuous practices and consolidate the United Kingdom's (UK) leading role in the fight against corruption.

We will critically analyse such developments, as reported by the press, non-governmental organisations (NGOs) and national and international institutions, in the light of theoretical and empirical research findings of different disciplinary fields – mainly, law, criminology and economics. The first part of this article will consider the impact of Brexit on integrity in politics, business and finance and immigration. The second part will address the impact of Brexit on anti-corruption policies, with a specific focus on sanctions and criminogenic law-making. The last part will suggest policy recommendations. This chapter expands and integrates some of the research findings presented in the article *Seeds of corruption in the post-Brexit UK* (Pasculli, forthcoming a).

### **The impact of Brexit on integrity and corruption**

#### *Political integrity*

The leave campaign was characterised by misrepresentation and irresponsibility. As for misrepresentation, honest and thoughtful political debate was abandoned in favour of exaggeration, half-truths and untruths (Major, 2017). The insistence of the then Foreign Secretary Boris Johnson MP on the misleading figure of £350 million per week allegedly paid by the UK to the EU despite the reprimands of the Institute for Fiscal Studies (Emmerson, 2017) and the UK Statistics Authority (Full Fact Team, 2017) is one notorious example (Cohen, 2016). Other examples are the mystifications and mockeries perpetrated by certain tabloids and newspapers backed by powerful lobbyists (Cathcart, 2016) - to the extent that the Daily Mail could brand the High Court judges who issued the decision in the *Miller case*<sup>1</sup> 'enemies of the

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<sup>1</sup> *R (on the application of Miller) v Secretary of State for Exiting the European Union* [2016] EWHC 2768 (Admin).

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people' (Phipps, 2018) with impunity. As for irresponsibility, on the one hand, the government has made no serious effort to contrast the above practices and make their authors accountable; on the other hand, the Brexiteers have proposed no clear vision about the leave process and have 'abdicated all responsibilities' for the destabilisation they created (Bush and Lewis, 2016). Nigel Farage resigned as leader of the UKIP the very same day of his victory, leaving Brexit into the hands of a remain supporter, the Prime Minister Theresa May MP (May, 2016a).

Another threat to UK political integrity is posed by the lobbying expected in view of the law-making required to lead the UK out of the EU (Meager, 2017; McTague, 2018). Research shows that perfectly legal forms of lobbying, such as revolving door appointments, are considered corrupt practices by the public (Ellis and Whyte, 2016). Since the Brexit vote, former political operatives and advisers have taken up new roles in the lobbying industry or even set up their own firms (McTague, 2018). This raises questions about conflicts of interests and the ways political power can be influenced, and calls for better regulation, perhaps entailing the restriction of certain lobbying practices (Barrington, 2016a) and the expansion of the legal definition of corruption, as suggested by some commentators (Whyte, 2015; Beetham, 2015; Ellis and Whyte, 2016).

These dynamics have significant external effects as well. The success achieved by the Leave advocates might determine politicians in other countries to emulate their objectives and their campaigning methods, including the most controversial. Moreover, the referendum result corroborates nationalism, which hinders global development and marks a serious regression in the standards of civilisation and human rights protection (Major, 2017; Russell, 1949), and populism, which fosters ignorance and irrationality and diverts the attention from complex systemic problems and evidence-based solutions. The recent facts in Catalonia, for instance, while certainly not caused by Brexit, bear significant similarities with the events that led to Brexit, such as the deceptive simplification of the political discourse and the democratic semblance of the referendum as a misconceived expression of people's power (Mathieson, 2017).

At the micro-level, the Brexit vote is having serious psychological and moral effects. The uncertainty about the processes and implications of leaving the EU brings confusion, pessimism, cynicism, demotivation and mistrust towards and within institutions. In a context of weakened statecraft and without effective measures to address them, such feelings can easily escalate into erosions of individual integrity. Psychological studies maintain that trust on government institutions and the perception that the institutions act according to shared moral purposes strengthen their legitimacy and spontaneous law-abidingness (cf. Tyler, 1990; Tyler, 2001; Jackson et al., 2012). One major issue is the possible conflict between the personal moral and political views of civil servants and those of the parties or institutions they serve and represent. If expressed, such internal conflict might become an external conflict, for instance between different factions of the same party or between certain politicians and parts of the general public. The healthy conflict intrinsic to political life can thus degenerate to pathological levels, causing intolerance of opposite views (Major, 2017) and public or media condemnation of dissenters. One example is the case of a dozen conservative MPs who have been called 'rebels' or 'mutineers' by a certain press and have received death threats for having voted against their party on amending the EU Withdrawal Bill to subject the final Brexit deal to parliamentary approval (Asthana and Stewart, 2017).

On a positive note, Brexit might contribute to eradicating the delusion that UK institutions are exempt from corruption (Whyte, 2015 and Beetham, 2015) and promoting awareness on the entrenched grand corruption that affects Britain and on the need to contrast it effectively (Barrington, 2016b). According to the Executive Director of Transparency International UK

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Robert Barrington, the fact the ‘faceless bureaucrats of Brussels’ cannot be scapegoats for the ills of UK politics anymore (Barrington, 2016a) could lead to a more penetrant scrutiny on the transparency, accountability and the conduct of UK politicians.

### *Financial and business integrity and transnational corruption*

The effects of Brexit might have on business and finance are related to the need for the UK to revise its commercial relations with the EU member states and explore new trade opportunities outside the EU. Any possible trade and customs arrangement between the UK and the EU carries risks for integrity in business and finance. Much will depend on how strict the conditions imposed on the UK will be. The UK might well not to engage ‘in a race to the bottom in standards and protections’ (May, 2018a), and maintain its regulatory standards protecting common values, such as free trade, fair competition, fair subsidies, consumers’ and workers’ rights ‘as high as the EU’s’. Nevertheless, new restraints or obligations for longstanding UK-EU commercial practices and partnerships might be perceived as unreasonable or unfair by UK and EU companies. This might induce attempts to circumvent them. Political and media labelling of the terms of future UK-EU trade and customs agreements as ‘punitive’ (Scotto di Santolo, 2018) and antagonistic portrayals of the EU, might contribute to motivating illegality. The ‘no deal’ scenario is not exempt from such risks. UK and EU businesses might be tempted to fraudulently avoid the WTO restrictions. The role of the UK government in listening to the voice of businesses and removing barriers to the circulation of goods and services will be fundamental to minimise these risks.

Equally relevant is the UK government’s commitment to new trade agreements outside the EU. To pursue new business opportunities, UK investors and companies might be induced to neglect compliance with anti-corruption and anti-money laundering regulations, and acquiesce or engage in corrupt practices solicited by firms or officials from more corrupt countries. This applies to both inward investment and exports and to both internal and overseas transactions (Barrington, 2016a). Indeed, some of the countries that have expressed an interest in striking trade deals with the UK, namely China, Brazil, India and the Gulf States (May, 2017), are not the most shining examples in the fight against corruption (Hough, 2017). China, India, and Brazil are ranked, respectively, 77<sup>th</sup>, 81<sup>st</sup> and 96<sup>th</sup> out of 180 positions in Transparency International’s Corruption Perceptions Index (Transparency International, 2018). With the exception of the United Arab Emirates and Qatar, Gulf States are not performing well either, with Saudi Arabia ranked 57<sup>th</sup>, Oman 68<sup>th</sup>, Kuwait 85<sup>th</sup>, Bahrain 103<sup>rd</sup>, and Iraq almost at the bottom of the list, occupying the 169<sup>th</sup> position. This contrasts with the overall better position of EU member states. Out of 27 countries other than the UK, twelve are amongst the 30 least corrupted countries in the world and five of these are amongst the first ten, with Denmark 2<sup>nd</sup>, Finland 3<sup>rd</sup> and Sweden 6<sup>th</sup>. The average of these countries’ rankings is approximately 33,4.

An increased presence of the UK in markets outside the EU, however, might be an opportunity to improve the UK’s anti-corruption strategies by studying and importing effective models from jurisdictions that are considered exemplary in preventing corruption, such as New Zealand, Australia, Canada, or Singapore. It might be also an opportunity to spread UK’s good practices in areas of the world that are struggling with corruption problems. To this end, the Commonwealth can be an extraordinary platform, as we shall see.

### *Immigration and systemic social integrity*

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Migration has been one of the most powerful points of the Leave campaign. The Prime Minister has promised a more restrictive immigration policy (May, 2017) favouring high-skilled individuals. The relationships between migration and corruption are not obvious. It is undisputed that corruption is a significant cause of emigration, as people tend to leave countries where needs and ambitions are satisfied through bribery, connections and nepotism rather than merit and qualifications. This reasoning, though, cannot be generalised. Empirical research indicates that corruption especially drives skilled migration, while its effect on average migration is less pronounced (Dimant et al., 2013). As corruption increases, the emigration rate of high-skilled migrants also increases, while beyond a certain threshold of corruption the emigration rate of medium and low-skilled individuals decreases (Cooray and Schneider, 2016). This can depend on various factors, such as the higher demand for high-skilled workforce abroad, skills-based immigration policies, or the high costs of migrating. In the light of the post-Brexit immigration policies announced by the UK government, this framework might seem to disclose optimistic scenarios. One could assume that high-skilled migrants represent a positive selection, not just because of their qualification, but also because they might be less corruptible than the average citizens of their home country.

Alas, things are not so simple. Corruption is not only a direct cause of emigration, as it happens when people leave their home country because they cannot stand corruption. Corruption can also be an indirect cause of emigration. This happens when people leave their home country, not because of corruption itself, but because of the negative life conditions that characterise corrupt societies, such as poverty, inequality, unemployment, poor economic growth, etc. (Dimant et al., 2013; Cooray and Schneider, 2016; Lapshyna, 2014). These are valid reasons to emigrate for corruptible individuals as much as for honest ones (Dimant et al., 2014). In other words, high-skills immigrants are not necessarily less corrupt than medium or low-skills immigrants or than the average citizens in their home countries. Moreover, whenever corruption is systemically embedded in the social system, it becomes a cultural norm for the individual as well. Corrupt habits can persist in individuals from societies affected by systemic corruption even after they have migrated to different countries. Resistance from the citizens of the host country could be insufficient to deter immigrants from engaging in corrupt behaviours, once they have adapted to the new environment (Dimant et al., 2014).

Therefore, the problem is not migration as such, which *per se* has an insignificant effect on the corruption level of the destination country, but immigration from corruption-ridden countries (Dimant et al., 2014). Post-Brexit selective immigration policies based on the level of migrants' skills will not necessarily prevent the importation of corrupt cultural norms and practices. High-skilled children of powerful oligarchs from very corrupt countries would have no problems in migrating to the UK, especially if they are well connected with UK businesses and politicians. Once in the UK, they might foster dubious networks and practices in the UK, thus contributing to radicalising corruption.

## **The impact of Brexit on anti-corruption laws and policies**

### *UK's global standing and influence in anti-corruption*

So far, the UK has maintained an exemplary standing in the global fight against corruption. Its anti-corruption laws, first and foremost the Bribery Act 2010, and initiatives, such as the UK

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Anti-Corruption plan (2014) or the Global Anti-Corruption Summit in 2016, have been praised by various international agencies, such as the European Commission (2014), Transparency International (2017a), and the OECD (2017). Some have raised concerns about the negative impact Brexit might have on the UK's commitment and international influence in contrasting corruption (Barrington, 2016a; Hough, 2017). Two are the main reasons for concern. The first is related to the need for the post-Brexit UK to find new trade opportunities. To increase the UK's competitiveness, the government, pressured by banks and companies, might adopt policies of deregulation in various areas (Corruption Watch, 2016). The Prime Minister has pledged to maintain high regulatory standards (May, 2018a), but the risk needs to be monitored. Moreover, there is the specular risk that, to react or anticipate such manoeuvres, other EU countries adopt similar policies. France, for instance, has announced new tax initiatives to attract bankers and traders (Benedetti Valentini, 2017). The second reason for concern is that Brexit negotiations might divert the government's attention and resources away from the anti-corruption agenda (Barrington, 2016a; Hough, 2017). Some have interpreted the delay in publishing the long-promised Anti-Corruption Strategy as evidence that fighting corruption is not a priority anymore. Corruption Watch warned that a significant drop in the UK's GDP can reduce the budget of the Department for International Development, which is a major source of funding for enforcement initiatives in the UK and worldwide (Corruption Watch, 2016). The issue of resources is serious and must be addressed, but the worries that anti-corruption policies might slip down the list of the government's priorities have been dissipated by important anti-corruption instruments developed by the UK in the last few months. The Anti-Corruption Strategy 2017-2022 has finally been published (HM Government, 2017a). The launch of the International Anti-Corruption Coordination Centre (IACCC) in July 2017 has dispelled the worry that its establishment could be undermined by the UK's new isolationist position (Corruption Watch, 2016). Other than the Sanctions and Anti-Money Laundering Act 2018 – which we will examine in the next paragraph – two important pieces of regulation have been recently enacted: the Criminal Finances Act 2017 and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692). The former introduces new measures and powers against money laundering, corruption and terrorist financing, such as the unexplained wealth orders (Fisher, 2017), hailed as a most welcome weapon in the anti-corruption arsenal (Transparency International, 2017b), and two corporate offences of failure to prevent the facilitation of tax evasion. The latter implements the Funds Transfer Regulation (FTR) 2015/847/EU and the Fourth Money Laundering Directive (4MLD) 2015/849/EU, which seeks to give effect to the updated Financial Action Task Force (FATF) global standards on combating money laundering, terrorist financing and other related threats to the integrity of the international financial system (FATF, 2018). It also introduces new obligations and requirements on relevant businesses and updates the rules on information on payers and payees accompanying the transfer of funds in any currency. In January 2018, the Financial Conduct Authority has established the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) to oversee the adequacy of the anti-money laundering supervisory arrangements of more than twenty professional bodies. More is in sight, with the recent announcement of a new national economic crime centre to deal with high-profile fraud and corruption (HM Government, 2017b). These are concrete signs of continuity with respect to the previous UK's commitment to countering corruption and money laundering. They suggest that even after leaving the EU, the UK will continue aligning its regulations to the same standards adopted by the EU – such as those that will be established by the forthcoming Fifth Money Laundering Directive. Besides, these are strictly related to international standards which the UK will still be bound to implement after Brexit. Moreover,

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the UK's ambition to be a 'truly Global Britain' (May, 2017) and to maintain its leading role in the global fight against corruption (HM Government, 2017a) supports the prediction that the UK is not likely to neglect its international responsibilities in this regard, as we will see.

### *Sanctions and constitutional integrity*

Amongst the instruments to fight corruption, sanctions deserve special attention in view of Brexit. Sanctions are restrictions of different kinds, such as asset freeze, travel bans and other prohibitions or requirements concerning financial services, immigration, trade etc., imposed on designated individuals for foreign policy or national security objectives concerning various situations involving violations of human rights and criminal activities. As such, they lend themselves to be employed against individuals involved in grand corruption (O'Kane, forthcoming). The EU is already using sanctions against those responsible for the misappropriation of state funds, and natural or legal persons associated with them, with a view to promoting sustainable development, democracy, the rule of law and human rights. This is the case, for instance, of the sanction regimes for Ukraine<sup>2</sup>, Egypt<sup>3</sup>, Tunisia<sup>4</sup>. Sanctions can be imposed at different levels. The UN can impose sanctions through Resolutions of the Security Council. The EU, on the one hand, ensures that UN sanctions are uniformly implemented through regulations of the Council and, on the other hand, can adopt its own sanctions to achieve the objectives of the Common Foreign and Security Policy<sup>5</sup>. The UK, in turn, is responsible to enforce internally both the UN and the EU sanctions. Additionally, it can impose its own autonomous sanctions in the specific circumstances described by (mainly counter-terrorism) legislation. Sanctions are highly problematic. First, their effectiveness is only apparent, as, while having an incapacitating effect, do not address the causes of those violations, which are often rooted in complex socio-cultural and political global developments, and require specific intervention. Second, they are in tension with individual rights and liberties and the rule of law. The prominent role of executive powers in the introduction, imposition and implementation of sanctions is a clear departure from the separation of power. Moreover, while being as much invasive as criminal penalties, they fall short of the standards of safeguards required by the principles of criminal law, such as legality, harm, culpability, and of fair and adversarial trial, such as the presumption of innocence, the equality of arms or the criminal standards of evidence (Pasculli, 2012).

After Brexit, the UK will still be bound to implement UN sanctions, but it will not have to do so within the EU legal framework and it will not be obliged to impose EU autonomous sanctions. The Sanctions and Anti-Money Laundering Act (SAML) 2018 provides for the necessary powers for the UK to replace those flowing from the European Communities Act 1972, and preserve and update sanctions in relation to both the EU and the UN sanction regimes. In addition, it introduces sweeping executive powers to impose a wide range of autonomous sanctions for purposes defined so broadly that they might well include the prevention of corruption. The Act raises issues of constitutional integrity. It would allow one

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<sup>2</sup> Council Regulation 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [2014] OJ L66/1.

<sup>3</sup> Council Regulation 270/2011 of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt [2011] OJ L76/4.

<sup>4</sup> Council Regulation 101/2011 of 4 February 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia [2011] OJ L31/1.

<sup>5</sup> Consolidated Version of the Treaty on the Functioning of the European Union [2008] OJ C326/1, art 215.

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Minister to become legislator, judge and enforcer. The same Minister who introduces and regulates sanctions also designates the people to whom they apply [ss. 10(2)(a) and (b), 11 and 12], determines the ways to enforce them (including creating criminal offences) (s. 17), and is responsible for reviewing, varying and revoking designations (ss. 22-25). Judicial review would only operate *ex post*, after a person has already suffered the restrictive effects of sanctions, and according to very limited procedural safeguards. Section 40 subjects judicial review to rules of court according to sections 66 to 68 of the Counter-Terrorism Act 2008, which allow for the proceedings to be determined without a hearing or in the absence of a party and to take place without full particulars of the reasons and evidence for the decisions to which the proceedings relate being given to a party. The withdrawal of the UK from the jurisdiction of the European Court of Justice, which has proved a committed guardian of individual rights and liberties against sanctions<sup>6</sup>, will deprive designated persons of a further judicial remedy. The concentration of power in the executive is remarkable and arguably necessary. The purposes for which, according to the Act, the appropriate Minister can make sanctions regulations concern areas of public policy which fall within the ordinary remit of the Parliament. There is no apparent reason to delegate to the executive such a considerable portion of law-making. It is true that in certain international crises the Parliament might be slower to intervene compared to the executive, but the Act does not limit the new ministerial powers to emergency or exceptional circumstances. The fact that the review period of sanctions regulations is set by the Act to three years [s. 24(4)] proves that they might well apply to long-lasting situations – a clear example of the ongoing normalisation of emergency powers to contrast ordinary forms of globalised crime, which we have criticised elsewhere (Pasculli, 2015).

From a different perspective, Brexit might undermine the political influence of the UK on the EU sanction policies (House of Lords EU Committee, 2017) and, as a consequence, on the fight against corruption. After leaving the EU, like Norway or Switzerland, the UK might not be allowed to participate in the discussions amongst EU member states on sanctions. Without the UK's political influence, the consensus amongst such states on sanctions policies might be more difficult to reach. Moreover, the fact that the UK will not be legally bound to follow such policies anymore might expose the UK to pressures from political and business allies that are investing in the UK which might see this an opportunity to have some influence on UK sanction policies. Recent examples demonstrate a certain political cohesion between the UK and the EU on different sanctions regimes, but there is no guarantee that such cohesion will remain the same in the future. The UK responded to the Salisbury attack with new autonomous sanctions against Russia and with an investigation on Russian corruption in the UK (House of Commons Foreign Affairs Committee, 2015), which – in turn – might prompt additional sanctions. After the European Council manifested its support to the UK (European Council, 2018), the Prime Minister, speaking to the House of Commons, sounded confident that 'the UK will continue to play a leading role in our future partnership with the EU after we have left' on this and other issues (May, 2018b). But there is no way to predict how the EU will react to the introduction of new UK sanctions to contrast Russian corruption and whether it will align its sanction regime to the UK's. Indeed, the situation following the withdrawal of the United States (US) from the 2015 nuclear deal with Iran proves that sanction policies and the interests that determine them

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<sup>6</sup> See the joined cases C-402/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities* [2008] ECR I-06351 and the joined cases C-584/10 P, C-593/10 P and C-595/10 P *European Commission and Others v Yassin Abdullah Kadi* [2013] ECLI:EU:C:2013:518.

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can diverge considerably even between old allies. The revival of US sanctions on Iran threatens diplomatic and trade relations between EU and Iran. The EU has promptly responded with countermeasures to protect European companies (BBC, 2018). In this instance, the UK is supporting the EU, but after Brexit and in other situations there is no way to prevent it from siding with the US (or other Countries), particularly if new trade deals will be struck, as suggested both by the US President Donald Trump and the UK Prime Minister Theresa May (May, 2017).

### *The unintended corrupting effects of law-making*

A considerable effect of leaving the EU concerns the corrupting impact of law-making. The law can inadvertently contribute to creating crime (Albrecht and Kilchling, 2002; Savona et al., 2006a) and corruption (Hoppe, 2014; Kotchegura, 2018). This applies not only to legislation but also to administrative regulations, customs and judicial decisions (Pasculli, 2017; Pasculli, forthcoming b). Scholars have identified some typical regulatory situations (so-called ‘risk indicators’) which carry crime and corruption risks: (1) the introduction of burdensome obligations; (2) the introduction of concessions on taxes, fees or obligations; (3) the introduction of grants, subsidies, or compensation schemes; (4) the introduction or increase of costs of legal goods; (5) the prohibition, restriction or reduction of the availability of demanded products or services; (6) the introduction, removal of or other changes to a law enforcement capacity; (7) the attribution of regulatory powers to public officials (Morgan and Clarke, 2006).

The impact of Brexit on law-making is going to be considerable. On the short term, the UK will need new legislation to address the immediate regulatory consequences of withdrawal. The European Union (Withdrawal) Act (so-called ‘Great Repeal Act’) plays an important role in this respect. On a longer term, the UK will need new regulations to shape the relationships with the EU and new international allies. Both these law-making processes entail corruption risks. Sections 8 and 9 of the EU (Withdrawal) Act give ministers the power to make regulations to deal with deficiencies arising from withdrawal, comply with international obligations and implementing the withdrawal agreement. Such regulations may make any provision that could be made by an act of Parliament. In other words, the Act contains powers to make changes – with some exceptions<sup>7</sup> – to current primary and secondary legislation by statutory instruments which do not require the full scrutiny of Parliament (so-called Henry VIII clauses) (Barnard, 2017). Some of these are likely to realise normative situations identified by literature as crime/corruption risk indicators. The Act clearly states that the regulations can provide for new functions and new authorities, which might entail attributing new regulatory powers to public officials (indicator n. 7), as well as variously affecting law enforcement capacities (n. 6). They might well introduce new or more burdensome obligations (n. 1), as well as new concessions (n. 3) or restrictions to the access to goods and services (n. 5). The fact that such regulations are drafted by ministers, rather than the Parliament and are subtracted to parliamentary scrutiny, enhances the risks of poor law-making and undermines the public perception of the fairness and legitimation of such regulations. The legislation and regulations required, on a longer term, to shape the UK’s relationships with the EU and other countries will entail similar risks on a larger scale.

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<sup>7</sup> These regulations cannot make retrospective provision, create criminal offences, or amend, repeal or revoke the Human Rights Act 1998.

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A crime risk assessment mechanism (CRAM) to crime-proof legislation (Savona et al., 2006a; Savona et al., 2006b) has been tested within EU law-making processes (Calderoni et al., 2012; Caneppele et al., 2013). Similar ‘corruption-proofing’ mechanisms have been adopted by various Countries, particularly in Eastern Europe, to make legislation immune from corruption risks (Hoppe, 2014). Despite inevitable differences, all these mechanisms consist of a corruption risk assessment of draft legislation. As such, they are but a specialised form of regulatory impact assessment (RIA). The assessment is generally carried out by legislators or external agencies and experts against indicators, often set out by national law, similar to those we have cited before. Recommendations to amend the proposed legislation and remove any ‘corruptogenic factors’ follow the assessment stage. As we will see, Brexit provides an opportunity for the UK to gain awareness of the corruption risks inadvertently entailed by law-making and to incorporate specific remedies in its law-making processes.

## **Recommendations**

None of the possible effects of Brexit on integrity we have outlined so far seems to be irreversible. Much will depend on the outcome of the Brexit negotiations and on the ability and willingness of policy and law-makers to appropriately address such effects. Below we will trace some possible lines of intervention, which should be integrated into a comprehensive strategy reflecting the complexity of the problems at stake.

### *Research, interdisciplinarity and evidence-based policies*

The government should promote research on the implications of Brexit on integrity and corruption and base its future strategies and policies on its findings. It is essential that such research be as much inter-disciplinary and participative as possible. Recruiting specialists and consultants to advise on specific matters might be not enough. A more choral and overarching effort is required. A continuing dialogue must be established amongst public bodies and servants, academics from the most disparate disciplines, relevant professionals and private stakeholders, NGOs and grassroots movements. Perhaps, this could be facilitated through the establishment of a government-run research network. The government could set specific research objectives and organise events to promote the transfer of knowledge amongst different fields and participants and to disseminate the findings to the public. The importance of interdisciplinary research is evident in at least two of the risk factors we have considered: immigration policies and criminogenic law-making. In both cases, research demonstrates that common intuitions or perceptions of certain phenomena might be misled and points the way towards possible solutions.

As for immigration, economic research has debunked the assumptions that immigration, as such, generates corruption and that high-skilled migrants might be less corruptible. Focusing on high skills is not enough. Prohibiting migration from corrupt countries is not a solution either. This would prevent honest and otherwise eligible migrants to escape the corrupt conditions of their home countries. Preliminary individual checks on prospective migrants are insufficient. Previous convictions for corruption offences might be a possible ground for refusal, but not all corrupted individuals are convicted, particularly in corrupt countries. On the other hand, honest individuals associated with corrupt environments, such as the relatives or colleagues of someone convicted for corruption offences, might want to migrate to have a fresh

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new start in a non-corrupt environment. A more complex strategy is needed, on the one hand, to ‘immunize’ the domestic population against corrupt attitudes that might be imported by migrants (Dimant et al., 2013) and, on the other hand, to encourage migrants to abandon corrupt habits and mentalities. Such a strategy, in turn, should be part of a broader plan of education and moral training (see next paragraph). Moreover, the UK must continue supporting other countries in their efforts to curb corruption (see below).

As for criminogenic law-making, criminological research has demonstrated that law is not always a remedy for corruption, but it can unintendedly become a cause of corruption. Post-Brexit policies and legislation should keep into account these findings. The UK has excellent legislative processes that can easily incorporate mechanisms to assess and avert the unintended risks of corruption entailed by legislation. Regulatory impact assessments can provide a valid model for a more specialised regulatory corruption risk assessment. Consultations could include specific questions on the corruption risks entailed by proposed policies and regulations. More comparative research is required to evaluate the effectiveness of the corruption proofing methods adopted in Eastern Europe and to study the ways to improve them and export them to the UK and, possibly, to Western and Commonwealth countries, where they are less common (Hoppe, 2014). Moreover, more research is required to assess the unintended corruptogenic effects of sources of law different than written regulations, such as administrative and judicial decisions. As the mother of all common law systems (Darbyshire, 2017), the UK could be a pioneer in studying the issue and proposing effective solutions.

### *Education and moral training*

Education is the best way to prevent the systematisation of corruption by countering the insurgence of sub-cultures of illegality which spread in several areas of society. Successful ethical education cannot just consist in telling people what is right and what is wrong. Instead, it should provide learners with the intellectual and moral instruments to support their daily choices and develop the habit to think morally (Topal, 2017). Moral learning should be included in primary, secondary and higher education programmes, through the introduction of specific courses and activities. Research centres and groups across the Country can play a crucial role to support such development. More than this, moral learning should be introduced through dedicated programmes throughout the public and private sectors. With regard to the public service, there are already virtuous examples of this in the UK. Just to name one, the Westminster Abbey Institute has established the Fellows’ Programme to provide young public servants from the most different backgrounds with an integrated understanding of the role of moral values in public life, character formation and career development. Private companies offering this kind of moral training are emerging around the world. The UK government has all the potential and the resources needed to set up an excellent public system of moral training for civil servants. People are the first resource: public servants of proven moral standing should serve as an example and disseminate their experience and good practices to younger colleagues, so to corroborate integrity in the public sphere. Similar programmes should be offered also to the private sector, to contrast the rationalisation of corrupt practices in the profit-driven ethos of businesses.

### *Responsibilisation of politics, the press and lobbies*

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Education alone is not enough. Effective rules and sanctions are also necessary to responsabilise the actors of the political scene to prevent and respond to political and press misrepresentation, as well as doubtful forms of lobbying.

A transparent and impartial disciplinary system should be in place in order to hold politicians accountable for deliberately releasing false statements or disseminating wrong information. The least consequence for such behaviours should be the immediate resignation from any public appointment. For some serious instances of misrepresentation, criminalisation could be justified. Besides, political misrepresentation is an overt abuse of citizens' trust and can cause considerable harm to society (think, for instance, to distorted electoral results). Select Committees can play an important role to exercise a diffused control on political integrity in the most disparate areas of public service.

Related to this is the issue of press and media misinformation. The press is a double-edged sword for political integrity. A free, honest and responsible press is a precious instrument for political accountability and democracy. A dishonest and unaccountable press have detrimental effects on politics, society and virtuous journalism. The press must acknowledge its social responsibility and act accordingly. The UK must continue working towards a more effective regulation of the press. Despite the progress made after the first Leveson inquiry in 2011-12, there is still work to be done to raise the ethical and professional standards of a certain press. Recently, the government halted a second Leveson inquiry in a much-debated decision currently under judicial review (Waterson, 2018), and the House of Commons voted twice against a second inquiry (see Cathcart, chapter 5 in this volume). Yet, the appropriateness and permissibility of defamatory or misinforming practices must be questioned and a thorough democratic review of the effectiveness of press regulations and the bodies, such as IPSO, responsible for their enforcement is now urgent. Extensive comparative research on press regulation in other democratic countries can reveal good practices to be imported in the UK.

There is also an urgent need to rethink lobbying. It is time to take into account the evidence about the public perception of debatable practices (Ellis and Whyte, 2016), such as revolving door appointments and reconsider their legality. Lobbying rules should be strengthened and improved to increase transparency and accountability and draw clear lines between acceptable and lawful lobbying and corrupt practices. An independent body to enforce these rules should be established, as suggested by Transparency International (2015; 2017c). Such a body should be provided with appropriate resources and the power to impose adequate penalties for irregular behaviours. Moreover, in the UK trading in influence, that is the abuse of real or supposed influence on political decision-making in exchange for undue advantages (so-called 'peddling'), is not a criminal offence in itself, despite its criminalisation is imposed by both the UN Convention against Corruption (UNCAC) and the Council of Europe's (CoE) Criminal Law Convention on Corruption. Some forms of trading in influence can be prosecuted as bribery offences under the Bribery Act 2010. Other forms fall within the scope of the 112 offences relating to political donations established by the Political Parties, Elections and Referendums Act 2000. Clearly, this framework is not the ideal. The fragmentation of one internationally recognised and defined corrupt behaviour in more than a hundred offences scattered throughout the legislation can undermine the effectiveness of prosecution. Some behaviours which would satisfy the international definition of trading in influence can fall short of the requirements of more specific UK offences. Transparency International reported significant gaps in the UK legislative framework for trading in influence, particularly with regard to political contributions, lobbying and the revolving door (Transparency International, 2016). The explicit criminalisation of trading in influence as defined by the UN and the CoE conventions would solve these problems and would also have an important symbolic value.

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These are all important steps towards acknowledging the corrupt nature of certain public and private behaviours and rationalising and broadening the legal definition of corruption accordingly. But non-punitive solutions should be explored too. The UK should consider using positive sanctions to prevent corruption. Positive sanctions are rewards or advantages promised by the law as a consequence of lawful behaviour (Kelsen, 1945). Positive sanctions presuppose a conception of the law as a means of promotion, other than mere protection, to say it with Norberto Bobbio (Bobbio, 1969). In such a conception, other than repressing unlawful behaviours through restrictions and penalties, the law seeks to encourage and support legality through a broad range of measures aimed at strengthening of social values and responsibilities. A positive model of corruption prevention is clearly supported by the UNCAC (Pasculli, 2012). To an extent, the UK Deferred Prosecution Agreements (DPAs)<sup>8</sup> are a way of rewarding compliant behaviour after an offence has been already committed. However, although there is potential to expand, in the future, their positive contents (Ryder and Palmer, 2016; Grasso, 2016), UK DPAs are still too focused on the penalty element to be considered purely positive sanctions. Moreover, they only operate *ex post facto*, thus having a limited preventive effect. A pre-crime system of positive sanctions should be in place to acknowledge and incentivise abidance by the values of integrity, transparency and accountability. An example could be the institution of a public mechanism for ranking companies (including newspapers) and political parties according to their standards of compliance and/or their recorded history of corrupt behaviours. Future research, based also on the findings of economic psychology, should assess the feasibility and effectiveness of positive sanctions in contrasting corruption and devise possible solutions.

### *International scrutiny and partnerships*

External scrutiny is an important drive for responsabilisation. Brexit might put an end to the formal membership of the UK to the EU, but it will not end the growing politico-legal interconnectedness between States pushed by globalisation. Although it will not be directly accountable to the EU for the implementation of EU norms (Young, 2016), the UK will remain under the ‘global spotlight’ of international organisations, agencies, NGOs and of the world political community (Barrington, 2016b). Moreover, the rhetoric supporting Brexit is largely based on the leading role of the UK in the world and the government has repeatedly confirmed the pledge to ‘forge a bold new positive role for [the UK] in the world’ (May, 2018a). After such statements, the UK has assumed the international political responsibility of maintaining and improving its integrity standards. The political consequences for not honouring such commitment would be considerable. But the UK has also legal obligations in this regard. Even after leaving the EU, the UK will remain a party to international bodies and conventions which are at the forefront of the fight against corruption, such as FATF, the UNCAC, the CoE’s civil and criminal law conventions on corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, just to mention a few. The proposal by the Prime Minister of an associate membership to relevant EU agencies and of maintaining standards ‘at least as high as the EU’s’ in several areas of trade shows the political will to honour the UK’s legal and political commitments and to uphold its leading example in the fight against corrupt practices. Leaving the EU might also become an opportunity for the UK to set up new initiatives and partnerships with jurisdictions outside the EU and to

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<sup>8</sup> Crime and Courts Act 2013, schedule 17.

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disseminate good practices in other regions of the world, starting from Commonwealth jurisdictions. Some of the least corrupt countries in the world, including the UK, are Commonwealth member states. Their good practices should be studied, compared, improved and exported, first of all, to corruption-ridden Commonwealth jurisdictions, such as Pakistan or Nigeria. The fact that most Commonwealth jurisdictions are common law systems facilitates the circulation of legal models and instruments.

Continuing engagement with the international community is also an effective way to monitor the development of sanctions and to ensure their compliance with the rule of law. Although formally subtracted to its jurisdiction, the UK courts will still have to consider the decisions of the European Court of Justice, at least to interpret UK regulation which is identical or very close to European law, as suggested by the Prime Minister (May, 2018a). On the other hand, it is also essential that the UK maintains its political influence on EU sanction policies. With its longstanding commitment to preserving and promoting the rule of law, the UK should become a powerful advocate of a minimal and liberal use of sanctions, limited to the cases where these are strictly necessary and, however, in respect of all the individual safeguards prescribed by international human rights law. Associate membership to relevant EU agencies, also suggested by the Prime Minister, is a possible way to channel such influence. The authoritativeness of the UK Supreme Court should complement this political influence by setting high standards of protection of human rights in the internal application of sanctions, which might inspire the decisions of the European Court of Justice.

## Conclusions

Brexit presents many challenges to integrity and anti-corruption in several areas of social and political life. At this stage of the leave process, however, none of the risks we have foreshadowed appears to be inevitable and none of the breaches of integrity which might have already happened seems to be irreparable. It is still possible to take appropriate steps to identify and tackle such risks effectively. A comprehensive strategy of education and responsabilisation, based on the results of sound interdisciplinary research, and developed in a constant dialogue with international bodies and in compliance with international obligations, is necessary. This should include more effective regulations and a broadening of the legal definition of corruption.

The UK can already rely on extraordinary resources to implement such a strategy. First, although UK institutions are not immune from corruption threats, integrity and honest commitment to the public interest are still solid across the public service and sustained by virtuous practices (cf. Foster-Gilbert, 2017). Secondly, the UK's international political standing is both an asset and a responsibility to strengthen anti-corruption measures both internally and globally. The many anti-corruption measures adopted so far by the UK should motivate further improvement and dissemination of good practices all over the world. The Commonwealth is a (perhaps still underused) resource to promote such dissemination in many corruption-ridden member countries. The UK government should invest in all these assets to promote increasingly higher standards and minimise the risks of corruption after Brexit.

In such a perspective, Brexit can become a precious opportunity for the UK to perform a thorough assessment not only of its weaknesses but also of its strengths, with a view to turning even the most challenging developments into sources for new opportunities for the UK, the EU and the rest of the world.

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