



ANTI-CORRUPTION STANDARDS OF THE COUNCIL OF EUROPE

seizing and confiscating proceeds of corruption



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Overview

1. The Council of Europe's approach to the fight against corruption
2. The Group of States against Corruption (GRECO)
3. Seizing and confiscating proceeds of corruption
4. Examples of GRECO's recommendations on seizing and confiscating proceeds of corruption (SEE countries)

The Council of Europe's approach to the fight against corruption

Multidisciplinary - 3 interrelated elements:

- Standard setting:
legal instruments ("soft" & "hard law")
- Monitoring
- Technical assistance and co-operation

Council of Europe and Corruption

Results :

- The Twenty Guiding Principles for the Fight against Corruption (1997)
- The Criminal Law Convention on Corruption (1999)
- The Civil Law Convention on Corruption (1999)
- Codes of Conduct for Public Officials (2000)
- Recommendation on the Funding of Political Parties (2003)
- Additional Protocol to the Criminal Law Convention on Corruption (2003)

The 20 Guiding Principles for the Fight against Corruption

A catalogue of measures to be included in comprehensive national strategies against corruption :

- Awareness of corruption, transparency in public administration, independence and specialisation of authorities, criminalisation of corruption, proceeds of corruption, legal persons, immunity, media, research etc.

■ **Monitoring: GRECO**

Criminal Law Convention on Corruption (1999)

- Wide scope to combat corrupt practices through criminal law
- Provides for :
 - co-ordinated criminalisation of a wide range of corruption related offences, including private corruption, trading in influence and accounting offences
 - complementary criminal law measures, including corporate liability
 - international co-operation

■ Monitoring: GRECO

Civil Law Convention on Corruption (1999)

- Civil remedies, compensation for damage resulting from corruption
- Validity of contracts
- Civil law measures
- Protection of whistleblowers

■ **Monitoring: GRECO**

Model Code of Conduct for Public Officials

- Ethical climate in public administration
- Ethical conduct expected from public officials
- Information to public on expected conduct

■ **Monitoring: GRECO**



Group of States against Corruption (GRECO)

*Partial and Enlarged Agreement of
the Council of Europe*

G R E C O

GRECO

Group of States against Corruption

- International monitoring mechanism
- Established in 1999
- 47 members (46 European States and the USA)
- Open to member and non-member States of the Council of Europe

GRECO

Objective

- Monitor compliance with the Council of Europe standards
- Identify deficiencies in national anti-corruption policies
- Prompt legislative, institutional and practical reforms
- Provide for a platform to share best practice and lessons learned in the prevention and detection of corruption

GRECO Evaluations

Procedure:

- Evaluation rounds
- Specific provisions selected
- Collection of information by questionnaire
- Evaluation teams
- Country visits
- Evaluation reports
- Hearing at GRECO plenary and adoption of Recommendations
- Publication and translation into national language

Compliance Procedure

- 18 months to fulfil Recommendations
- Situation report by country concerned
- Hearing at GRECO Plenary:

- Recommendations implemented satisfactory; or

- partly implemented; or

- not implemented



Non-compliance
procedure (Rule
32 of the Rules
of

Procedure)

GRECO

First Evaluation Round

- 1 January 2000 - 31 December 2002

- Evaluation themes:

- *Principle 3* : independence and autonomy of persons in charge of the prevention, investigation, prosecution and adjudication of corruption offences

- *Principle 6* : to limit immunity from investigation, prosecution or adjudication of corruption offences

- *Principle 7* : promotion of the specialisation of persons or bodies in charge of fighting corruption

("20 Guiding Principles")

GRECO

Second Evaluation Round

- 1 January 2003 - 1 July 2005
- Evaluation themes:
 - Proceeds of Corruption
 - Public Administration and Corruption
 - Legal Persons and Corruption

("20 Guiding Principles" and Criminal Law Convention on Corruption)

GRECO

Third Evaluation Round

- 1 January 2007 – ongoing
- Evaluation themes:
 - Incriminations provided by Criminal Law Convention on Corruption
 - Transparency, supervision & enforcement of party funding



*seizure and confiscation
of
proceeds of corruption*

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GRECO - Second Evaluation Round

PROCEEDS OF CORRUPTION

- Guiding Principle 4: “to provide appropriate measures for the seizure and deprivation of the proceeds of corruption offences”
- ETS 173, Article 19, para. 3: “Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences (...), or property the value of which corresponds to such proceeds”

Other international instruments

- Article 31, UNCAC
- Article 3 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- Articles 2 & 3 of Council Framework Decision 2005/212/JHA
- *Palermo Convention (UN Transnational Organised Crime)*
- *CoE Conventions on the laundering, search, seizure and confiscation of the proceeds of crime (ETS 141 of 1990 & ETS 198 of 2005)*
- *FATF recommendation 3*

Why is seizure and confiscation important?

- reduce the rewards of corruption ('hitting where it hurts')
- prevent conversion into 'legal' money (money laundering)
- preclude use of proceeds for future crimes (eg. criminal organisations)
- justify the cost of criminal (financial) investigations
- compensate damage of corruption

Problems ?

■ Legislative

banking secrecy; 3rd parties; indirect / secondary proceeds; proceeds of equivalent value; standard of evidence; investigative means; complexity of procedures; etc.

■ Practical

lack of inter-institutional co-ordination & co-operation (nationally & internationally); lack of specialisation, priority & resources; timing financial investigation; timing seizure / freezing order; management of seized assets; availability of information on accounts & ownership of property; standard of evidence in practice; etc.

- Examples of GRECO recommendations -

MONTENEGRO

(Evaluation Report of October 2006)

GRECO recommended that legal provisions be introduced which allow seizure of proceeds of all corruption offences at the earliest stage of the preliminary investigation, even if not committed by an organised criminal group

- Examples of GRECO recommendations -

MOLDOVA

(Evaluation Report of October 2006)

GRECO recommended to revise and harmonise existing legislation on confiscation and interim measures so that the instrumentalities of corruption and other related offences as well as the proceeds and their equivalent value can be confiscated

- Examples of GRECO recommendations -

ROMANIA

(Evaluation Report of October 2005)

GRECO recommended to introduce the possibility to confiscate the proceeds of corruption every time it is sanctioned by an administrative penalty

- Examples of GRECO recommendations -

BOSNIA AND HERZEGOVINA (Evaluation Report of December 2006)

GRECO recommended to enlarge the scope of the provisions of the Republika Srpska on confiscation of indirect proceeds of crime and with regard to situations where no conviction is possible (*in rem* confiscation)

- Examples of GRECO recommendations -

SERBIA

(Evaluation Report of June 2006)

GRECO recommended that the legal provisions regarding temporary freezing of suspicious transactions be extended in order to cover all corruption offences

- Examples of GRECO recommendations -

BULGARIA (Evaluation Report of July 2005)

GRECO recommended:

- to extend the scope of application of the provisions on forfeiture in order to cover the proceeds of crime held by legal persons;
- to provide appropriate training to prosecutors and judges on the forfeiture of proceeds of crime held by third parties

- Examples of GRECO recommendations -

**“FORMER YUGOSLAV REPUBLIC OF
MACEDONIA”**

(Evaluation Report of October 2005)

GRECO recommended to prepare a project for the implementation of the new proceeds of crime legislation (...) and to collect detailed information on the use, and failure to use, confiscation and interim measures in order to be able to evaluate how the system operates in practice

- Examples of GRECO recommendations -

ALBANIA

(Evaluation Report of March 2005)

GRECO recommended to provide appropriate training for prosecutors and judges concerning the use of interim measures (preventive attachment) and confiscation, including value confiscation (...)

- Examples of GRECO recommendations -

CROATIA

(Evaluation Report of December 2005)

GRECO recommended that cooperation on a regular basis and at appropriate levels be established between the Office for the Suppression of Corruption and Organised Crime (USKOK) and bodies specifically involved in the detection of corruption offences; and that guidelines and adequate training be developed for police, prosecutors and investigating judges concerning the tracking down of offenders' assets

Some good practices?

- Guidelines, training, specialisation and financial investigation teams
- Agency for the management of seized assets
- Register of bank accounts and property
- Asset declarations of public officials?
- Legislation on illicit enrichment of public officials?
- *In rem* confiscation or civil forfeiture? (eg. Ireland - not just public officials)
- International co-operation (informal networks)

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www.coe.int/greco