

Council of Europe

1. Greco
2. Criminal Law Convention on Corruption
3. Civil Law Convention on Corruption

Greco

- Improve the capacity of its members to fight corruption by monitoring their compliance with the Council of Europe anti-corruption standards.
- Mutual evaluation and peer pressure

Standards

- Criminal Law Convention on Corruption
- Civil Law Convention on Corruption
- Additional Protocol to the Criminal Law Convention
- Twenty Guiding Principles
- Recommendation on Codes of Conduct for Public Officials
- Recommendation on Common Rules against Corruption in the Funding of Political Parties

Procedure

- Questionnaire
- On-site visit
- Draft report
- Examination of the report in Greco
- Compliance report

Topics

- Evaluation I
 - Independence, specialisation and means of national bodies
 - Extent and scope of immunities
- Evaluation II
 - Proceeds of corruption
 - Public administration and corruption
 - Legal persons and corruption

Topics

- Evaluation III
 - Incriminations
 - Transparency of party funding political parties

Questions?

Criminal Law Convention on Corruption

- Developing common standards concerning certain corruption offences
- Common definition of Corruption
- Improve international cooperation

Public official (art 1)

Shall be understood by reference to the definition of 'official', 'public officer', 'mayor', 'minister' or 'judge' in the national law of the state

Active bribery of domestic public official (art 2)

- ‘....when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.’

The components

- Intentionally
- Promising, offering or giving
- Directly or indirectly
- Undue advantage
 - Not lawfully entitled to accept or receive
- Act or refrain from acting

Passive bribery of domestic public official (art 3)

- ‘....when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.’

- ‘Perpetrator’ is public official in meaning of article 1
- Requesting or receiving
- What is an advantage?
- What about breach of duty?

Bribery of...

- Members of domestic public assemblies (art. 4)
- Foreign public officials (art. 5)
- Members of foreign public assemblies (art 6)
- Officials of international organisations (art. 9)
- Member of international parliamentary assemblies (art. 10)
- Judges and officials of international courts (art. 11)

Private Bribery (art. 7 and 8)

- Undermines values like trust, confidence or loyalty, which are necessary for the maintenance and development of social and economic relations.
- Criminalization is necessary to ensure the respect of fair competition.
- Privatization process

Trading in influence (art. 12)

- ‘....to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in articles...’

Money laundering (art. 13)

- Cross reference to an other Council of Europe Convention
- Convention on laundering, search, seizure and confiscation of the proceeds from crime
- Corruption predicate offence

Account offences (art. 14)

- Preparatory acts or acts to disguise the corruption
- Criminal or administrative sanctions
- Intentionally
 - Creation or use of invoices with false or incomplete information (fraud)
 - Omission acts

Corporate liability (art. 18)

- Liability of legal persons, criminal, administrative or civil

Conditions

- Criminal offence (corruption, trading in influence, ML)
- Benefit or behalf of the legal person
- Involvement of “any person who has a leading position”
 - Power of representation
 - An authority to take decisions
 - Exercise control

Extend corporate liability (Paragraph 2 and 3)

- In case of lack of supervision
- Corporate liability does not exclude individual liability

Jurisdiction (art. 17)

- Principle of territoriality
- Principle of nationality
- Principle of protection (of national interests) and of nationality

- Sanctions and measures (art. 19)
- Specialised authorities (art. 20)
- Cooperation between authorities (art. 21)
- Protection of collaborators of justice and witnesses (art. 22)
- Measures to facilitate the gathering of evidence and the confiscation of proceeds (art. 23)
- MLA (chapter IV)

Civil Law Convention

- Compensation for damage
 - Material damage
 - Loss of profits
 - Non-pecuniary (reputation)
- Limitations periods for damages
- Protection of the whistle blower

Thank you