



Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL I – LEGAL AFFAIRS
DEPARTMENT OF CRIME PROBLEMS

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PART I

GLOBAL FRAMEWORK FOR THE FIGHT AGAINST CORRUPTION (LEGISLATION, INSTITUTIONS, MECHANISMS, PREVENTION)

NB : In their replies to this part of the questionnaire, the States are invited to indicate the draft reforms regarding the themes concerned which are currently being examined by their legislative authorities.

1. GENERAL APPROACH

1.1. Please describe the characteristic features of the corruption phenomenon in your country, indicating notably its extent, its most common forms and the functions of those persons involved.¹

1.2. Please describe your country's policy with regard to the means put in place to fight corruption, indicating the principal components of this policy and the priorities defined within its framework.

1.3. Is there reason to believe that there is a connection between corruption and organised crime in your country?

2. OFFENCES AND SANCTIONS

NB: Regarding questions 2.1. to 2.7., please supply the text of the relevant legal provisions in your language and with a translation into English or French. Concerning offences, please also specify, for each of them, the sanctions foreseen and the rules regarding limitation.

2.1. Please describe the various offences under which corruption may be sanctioned in your country (notably, active and passive bribery of domestic and foreign public officials, bribery of members of domestic and foreign public assemblies, active and passive bribery in the private sector, bribery of officials of international organisations, bribery of members of international parliamentary assemblies, bribery of judges, officials of international courts and trading in influence).

¹ In order to clarify the information submitted in response to this question, please provide any statistics that are available in the fields concerned.

2.2. When corruption, as envisaged in question 2.1., is committed in an organised manner (for example, in a systematic and long-term manner, notably as the result of a conspiracy or through a network), is it punished as a separate offence, an aggravating circumstance or through other offences?

2.3. Are the following facts criminal or administrative offences in your country: creating or using an invoice or any other accounting document or record containing false or incomplete information, or unlawfully omitting to make a record of a payment in order to commit, conceal or disguise the offences of corruption?

2.4. Has money laundering been established in your country as a separate criminal offence different from the receiving of stolen goods? If so, please describe the elements of this offence and indicate notably if corruption, as envisaged in question 2.1., is a predicate offence for money laundering purposes.

2.5. Are the establishment, the management and participation in a criminal organisation established as criminal offences in your country? Are such actions punished by other means, for example through conspiracy? Please indicate the criteria used to determine the existence of a criminal organisation (for example: permanence of the organisation, number of persons involved, degree of hierarchy).

2.6. Please indicate whether legal persons can be held responsible for offences of corruption, as envisaged in question 2.1, and money-laundering related corruption? Please indicate the conditions for the implementation of this form of liability and notably if it is a criminal or another form of liability. To what extent can legal persons be held responsible for offences of corruption and laundering of the proceeds from corruption committed abroad?

2.7. Please specify the rules applicable to determine whether your country's judicial authorities have territorial jurisdiction over a corruption case. Does the legislation of your country criminalise corruption committed abroad by nationals or even by foreigners? If so, please indicate the criteria used.

3. PROCEDURE AND ORGANISATION

3.1. Please describe briefly, the organisation, the role and the powers of the various institutions involved in the prevention, detection and repression of corruption at a national and at decentralised level.

3.2. Is your national criminal system based on the principle of discretionary prosecution or the principle of mandatory prosecution or a mixed system? Please describe your national system. What control mechanisms have been established to ensure that prosecution is not discontinued as a result of undue pressure or undue considerations? Are there other possibilities (actio popularis, actions brought by victims, by taxpayers) that can be used in corruption cases?

Additional questions on this topic: please see Part II.

4. INTERNATIONAL CO-OPERATION

4.1 If your country has signed but not yet ratified the Council of Europe's Criminal and Civil Law Conventions on Corruption, please indicate for each of them if specific difficulties prevent their ratification and, if possible, indicate the date foreseen for their ratification. If these conventions have not been signed, please indicate the reasons for this and the date foreseen for their signature and ratification

4.2 Please indicate the multilateral and bilateral agreements, other than those concluded within the Council of Europe, signed and/or ratified by your country allowing for judicial and/or police co-operation notably with respect to corruption cases. If possible include a copy of such bilateral agreements.

4.3 If no treaties are applicable or applied, does your national legislation provide for the possibility of giving effect to requests for mutual legal assistance in criminal matters? Does your national legislation enable the making of legal assistance requests in criminal matters? Please explain the legislative and other provisions concerned and specify notably the conditions under which your country would be able to give effect to mutual legal assistance requests.

4.4 Please indicate specific factors (material, legal, political or others) which prevent or hinder mutual legal assistance in corruption cases.

4.5 Please provide available statistics on mutual legal assistance in corruption matters, for the last five years.

4.6 Does your country allow for extradition of nationals in corruption cases? If not, under which conditions do the competent authorities of your country prosecute them?

5. PREVENTIVE AND OTHER MEASURES

5.1 Has your country adopted statutory rules, codes of conduct or similar instruments governing the behaviour of elected representatives and/or public officials, including measures aimed at preventing undue influence from being exercised on them? If yes, please attach, if possible, a summary and a translation into French or English of the most significant provisions dealing with prevention of corruption. Please indicate whether procedures have been established for ensuring respect of such statutory rules, codes of conduct or similar instruments and whether a body has been established with effective powers to impose sanctions, disciplinary measures or other measures.

5.2 Has your country adopted statutory rules, codes of conduct or similar instruments that members of professions especially exposed to corruption (e.g. lawyers, accountants) must observe?

5.3 What mechanisms are in place in your country to prevent the unlawful use of public finances?

5.4 Apart from taxation requirements, are there rules in your country imposing upon elected representatives and/or public officials the obligation to declare their assets or income? If yes, when? Are there other forms of control?

5.5 Are there special rules ensuring transparency and equality in the tendering of public contracts? Is there an appeal procedure? Please describe them briefly.

5.6 What actions can victims of corruption bring in order to obtain compensation? If the contents of a contract have been influenced by corruption, for instance by the payment of a bribe, is it possible to annul the contract? If so, specify the procedure to be followed and notably who is empowered to file a claim for the voiding of the contract.

5.7 Is the financing of political parties regulated? If so, please describe the applicable regulations.²

5.8 In the light of your reply to question 2.4, please outline the main measures, which have been introduced in your country, to prevent and detect money laundering (e.g. customer identification, identification of beneficial owners of accounts, mechanisms for reporting suspicious transactions)³.

5.9 Does the legislation of your country allow for the tax deductibility of commissions paid in order to commit an act of corruption within the meaning of the Criminal Convention?

5.10 Please describe the other measures which could be applied in your country to prevent, deter, detect and sanction corruption (for example, provisions in administrative law, or unfair competition law).

5.11 How is public awareness about the threat that corruption represents for society as a whole developed in your country (are there programmes to promote ethical values in public life)?

5.12 Please describe briefly the means available to citizens and the media to have access to information held by local and state authorities, as well as the conditions and restrictions applied to such access (including, if you so wish, regarding confidential information and official secrets).

² Members having replied to the Council of Europe questionnaire on the funding of political parties are not required to reply to this question, unless changes have occurred since September 1999

³ Members having submitted information to the PC-R-EV Committee and accepting that this information be disclosed to GRECO evaluators, are not required to answer this question, unless changes have occurred since the PC-R-EV evaluations.

PART II**SPECIFIC QUESTIONS RELATING TO THE FUNCTIONING OF THE BODIES AND INSTITUTIONS IN CHARGE OF THE FIGHT AGAINST CORRUPTION ON THE BASIS OF GUIDING PRINCIPLES N° 3,6 AND 7 OF RECOMMENDATION 97(24)****SECTION A
GUIDING PRINCIPLES 3 AND 7**

**Independence, autonomy and powers of persons or bodies in charge of preventing, investigating, prosecuting, and adjudicating corruption offences.
Specialisation, means and training of persons or bodies in charge of fighting corruption**

GPC3: "to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations";

GPC7: "to promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks";

1.1 Are there specific bodies specialised in the fight against corruption in your country? If so, please specify when these institutions were created, their legal basis, composition, functions and/or powers. If such institutions do not exist, please indicate why⁴.

1.2 Are there special departments, services, units or persons within the police, the prosecution service, the judiciary or other State authorities (e.g. intelligence services) which have been assigned specific functions and/or powers in the prevention, control, investigation and enforcement of measures to combat corruption? If so, please indicate since when such departments, services units or persons are in place and describe their organisation and powers⁵.

⁴ The institutions referred to in this question are those dealing exclusively or predominantly with the fight against corruption, with a multidisciplinary character. For instance, a Commission against corruption where representatives of different ministries or departments work together.

⁵ The entities referred to in this question are those that function as separate/specialised branches within a larger authority, police, prosecution services, the courts or others

1.3 Are there special units, inspection bodies or persons responsible for preventing and investigating internal corruption cases in selected branches of public administration (for instance, within the law-enforcement bodies or other government institutions)? If so, please specify when they were established, their organisation and their powers⁶. Are public officials required to inform these units, inspection bodies or persons of corruption cases that come to their knowledge while performing their functions ?

1.4 Are public officials required to inform their superiors of corruption cases that come to their knowledge while performing their functions?

1.5 Describe the measures taken by your country to provide the institutions referred to in questions 1.1, 1.2 and 1.3 with appropriate means to perform their tasks.⁷

1.6 What specific knowledge and experience is required from the different categories of officials performing their duties within the bodies referred to in questions 1.1, 1.2 and 1.3? How is it ensured that the multidisciplinary expertise necessary to fight corruption is available (expertise in the legal, auditing, financial fields) to these bodies?

1.7 What special training is provided for officials involved in the prevention, control, investigation and enforcement of measures to combat corruption? What mechanisms are in place to evaluate the effectiveness of the training?

1.8 Are officials or employees of public sector bodies other than those referred to in questions 1.1, 1.2 and 1.3, or of private sector bodies exercising public functions, under an obligation to report to law-enforcement or judicial authorities (prosecutor, police, judge), possible cases of corruption that come to their knowledge while performing their functions? Are public institutions required to meet the same obligation?

1.9 How do the institutions referred to in questions 1.1, 1.2 and 1.3 co-operate with each other? How do they co-operate with other public bodies? Is there an authority responsible for co-ordinating their action?

1.10 In the absence of specialised institutions or services, have specific rules been developed between the police and the prosecution services or investigating judges when dealing with corruption cases?

1.11 Do specialised services in the fight against corruption co-operate with those fighting organised crime? If yes, please indicate how.

⁶ The entities referred to in this question are those services or persons dealing with internal inspection and ensuring control over corruption cases that may occur within the law-enforcement or other government authorities

⁷ Means to perform their tasks refer to legal, financial and material means as well as staff resources.

1.12 What measures are in place to ensure that persons or bodies in charge of preventing, investigating, prosecuting, and adjudicating corruption offences enjoy the necessary independence and autonomy to perform their functions; notably in order to avoid undue pressure from superiors or the political power? Are there safeguards for officials reporting such pressure to their superior, to the police, to the prosecutor, to other authorities or to the public?

1.13 Has your country adopted rules applicable to officials employed in the services, units and bodies referred to in questions 1.1 to 1.3 above in order to avoid conflicts of interests? If so, please explain them.

1.14 Please explain the rules applicable in your country to the confidentiality of investigations (notably, relations between the investigators and the defence lawyers or lawyers of parties claiming damages regarding access to the file, disclosure or transmission of elements from the file, need of a judicial authorisation, applicable sanctions; relations between the investigators and the public; restrictions imposed to the press –e.g. prohibition to publish certain procedural documents relating to a criminal case before it is read in public hearing)?

1.15 Please indicate which special investigative techniques⁸ can be used in your country in cases of corruption. Please explain what they consist of as well as the legal conditions that may apply to their use (notably, if they may only be applied to suspects, if they may only be applied if approved by the court, the period during which they may be used, etc.).

1.16 Does banking secrecy constitute an obstacle for judicial or law enforcement authorities to gather evidence? Please describe applicable provisions.

1.17 Are courts or other competent authorities of your country authorised to order communication, disclosure or seizure of banking, financial or trading files in order to gather evidence in the framework of investigations on corruption cases? Please describe the applicable provisions. Are there difficulties to apply them in practice?

1.18 (a). Has your country taken measures to protect vulnerable targets in the framework of cases of corruption (protection of victims, of collaborators of justice, of witnesses, judges and prosecutors)? Please describe how this protection is ensured. Is protection based on a specific legal text? How is the notion of intimidation defined? Are acts of intimidation punishable under a separate legal offence? Through which other offences can these acts be punished? Are protective measures taken before, during and following the proceedings? Which protective measures are used? Are individuals who are closely related or connected to the person directly concerned (victim, witness, collaborator of justice, etc) also protected?

(b). Has your country established a witness protection programme? Can this be used in corruption cases? If so, please outline how the admission procedure is organised. What are the essential criteria for admission of a witness to the protection programme. What measures are the most frequently taken (for example: physical protection, change of residence, monthly allowance, change of identity)?

⁸ For example, bugging in private or public premises; telephone tapping; other interceptions of communications (mail, fax, e-mail); electronic surveillance; observation; under-cover operations ; controlled delivery ; "pseudo-purchases" or other "pseudo-offences"; anonymous informants ; searches ; cross-border pursuits (including hot pursuits); agent provocateurs

(c). Does your country have a witness protection agency? Please specify the way it is organised, indicating, notably, the number of people who work there, the way in which personnel is trained, if it is established at regional level, as well as mechanisms in place to ensure co-ordination with law enforcement bodies?

1.19 Can statements made before the legal authorities during preliminary hearings be used as evidence in court if the presence of the witness in court is impossible? Can evidence given during preliminary hearings be recorded using audio-visual equipment? Is it possible for anonymous witnesses to give evidence? Please specify the conditions for accepting anonymity (for example: presence of a serious threat to the witness, in order to allow the presentation of an essential testimony for the court case, condemnation based not solely on the evidence provided by this witness, verification by the judge of the reliability of the witness)?

1.20 What privileges or arrangements can be proposed to suspects or to sentenced persons who agree to co-operate with the police and the judiciary in corruption cases (e.g. plea bargaining, reduced sentences, special protection)?

1.21 Please specify the draft reforms, regarding the themes dealt with in this part of the questionnaire, which are currently being examined by the legislative authorities.

SECTION B

GUIDING PRINCIPLE 6

Immunities from investigation, prosecution or adjudication of corruption offences

GPC6: *"to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society"*;

2.1 (a) Under the law of your country, do certain persons benefit from specific immunities allowing them to avoid being charged with offences relating to corruption?⁹

(b) If so, please specify the categories of persons concerned and the scope of the immunity granted.

(c) How and when are these immunities lifted and what criteria are used?

2.2 (a) Does your country's legislation provide the possibility for some persons, in corruption cases, to benefit from specific privileges allowing them to be prosecuted or tried in accordance with a procedure constituting an exception to general law?

(b) If so, please specify the categories of persons concerned and the scope of the privileges granted

(c) How and when are these privileges lifted and what criteria are used?

⁹ This question does not concern diplomatic immunity.

2.3 (a) When there are strong presumptions that a diplomat of your country has committed acts of corruption in the country in which he benefits from diplomatic immunity, by virtue of the Vienna Convention, do the competent authorities of your country lift this immunity? Please specify the procedure foreseen to this effect, if such a situation has already arisen and if the immunity was lifted.

(b) When the immunity is not lifted, can the competent authorities of your country prosecute the diplomat concerned? Please specify the legal grounds allowing such prosecution.

2.4 Please also specify for each category of persons concerned why it is justified to maintain such immunity (with the exception of diplomatic immunity).

2.5 Please specify the draft reforms regarding the themes dealt with in this part of the questionnaire, which are currently being examined by the legislative authorities

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