



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: Proceeds of Corruption

Provisions under evaluation

Resolution (97) 24: Guiding Principles against Corruption numbers 4 and 19
Criminal Law Convention against Corruption: Articles 13, 19 para. 3 and Article 23

GPC4: "To provide appropriate measures for the seizure and deprivation of the proceeds of corruption offences".

GPC19: "to ensure that in every aspect of the fight against corruption, the possible connections with organised crime and money laundering are taken into account"

Article 13 – Money laundering of proceeds from corruption offences

"Each party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in the Council of Europe Convention on Laundering, Search and Confiscation of the Products from Crime (ETS. No 141), Article 6 paragraphs 1 and 2, under the conditions referred to therein, when the predicate offence consists of any of the criminal offences established in accordance with Articles 2 to 12 of this Convention, to the extent that the Party has not made a reservation or a declaration with respect to these offences or does not consider such offences as serious ones for the purpose of their money laundering legislation".

Article 19 – Sanctions and measures

"(3) Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instruments and proceeds of criminal offences established in accordance with this Convention, or property the value of which corresponds to such proceeds".

Article 23 – Measures to facilitate the gathering of evidence and the confiscation of proceeds

"(1) Each Party shall adopt such legislative and other measures as may be necessary, including those permitting the use of special investigative techniques, in accordance with national law, to enable it to facilitate the gathering of evidence related to criminal offences established in accordance with Article 2 to 14 of this Convention and to identify, trace, freeze and seize instrumentalities and proceeds of corruption, or property the value of which corresponds to such proceeds, liable to measures set out in accordance with paragraph 3 of Article 19 of this Convention.

(2) Each Party shall adopt such legislative and other measures as may be necessary to empower its courts of other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the action referred to in paragraph 1 of this article

(3) Bank secrecy shall not be an obstacle to measures provided for in paragraphs 1 and 2 of this article."

1 Interim measures: freezing and seizure of instrumentalities and proceeds of crime

1.1 In general

- 1.1.1 Briefly describe the legal framework in relation to interim measures (e.g. measures for the freezing or seizure of proceeds of crime). Please provide official translations (English or French) of the relevant legal texts or case law.
- 1.1.2 If your country allows for such interim measures, can these measures be applied in relation to proceeds of corruption¹? Please explain by making reference to specific legal texts.
- 1.1.3 In your country, are there specific regulations in place for the management of proceeds of crime which have been seized or frozen?
- 1.1.4 Is a specific investigation aimed at identifying, tracing and freezing proceeds of crime systematically initiated when certain serious crimes, notably corruption, are detected?
- 1.1.5 For the last three years where information is available, please indicate the number of corruption cases in which interim measures were taken and the value of the property frozen or seized in such cases.

If you do not collect general figures for the entire country, please provide samples.

1.2 In relation to bank, financial or commercial records

- 1.2.1 Is the communication, freezing or seizure of bank, financial or commercial records possible in relation to the proceeds of corruption offences?

1.3 International co-operation

- 1.3.1 When your country is the requesting state: describe your country's legal framework and systems applicable to request for international legal assistance concerning provisional measures in relation to corruption offences.
- 1.3.2 When your country is the requested state: describe your country's legal framework and systems applicable to request for international legal assistance concerning provisional measures in relation to corruption offences.

2 Confiscation and other deprivation of instrumentalities and proceeds of crime

2.1 In general

- 2.1.1 Describe the legal framework in relation to confiscation or other deprivation mechanism (underlining whether confiscation of instrumentalities and proceeds of corruption is discretionary or mandatory); describe how it works in practice, indicating notably whether there are authorities responsible for their implementation. Please provide official translations (French or English) of the relevant legal texts or case law.

¹ Corruption offences as dealt with in the Criminal Law Convention on Corruption

2.1.2 What is the nature of the confiscation (sanction or other measure)? Has the confiscation or forfeiture to be taken into account in the determination of the sanction?

2.2 Specific questions

2.2.1 If confiscation of criminal proceeds and instrumentalities is possible, is it only possible for primary or also for secondary proceeds (= transformed or converted into other property)? May expenditures for gaining the proceeds be deducted?

2.2.2 Is value confiscation possible? If yes, how is the exact economic advantage assessed?

2.2.3 Can you confiscate proceeds of crime without obtaining the conviction of the perpetrator (*in rem* confiscation)? If not, is the introduction of such a system being envisaged?

2.2.4 Confiscation of property owned by a third party: Is it possible to confiscate property, acquired by a third party or close relatives (spouse, cohabitee etc.) in order to avoid confiscation?

2.2.5 Does the system in place in your country provide for possibilities to reverse the burden of proof for the purpose of confiscating proceeds of corruption? Please specify.

2.2.6 Does the system in your country provide for possibilities to use the confiscated property in satisfaction of the claim of damages from a person who has claim to damages on account of the offence?

2.2.7 Are there mechanisms in place – whether civil, administrative or penal – allowing to remove the advantage obtained through active corruption offences (e.g. a company reimbursing the excessive benefit deriving from a public procurement transaction influenced by corruption, the compensation of the public entity in exchange for non-prosecution etc.)? If yes, please provide some figures² illustrating the importance of such mechanisms in practice.

2.2.8 For the last three years, please provide statistical data³ on:

- (i) the number of cases in which confiscation was adjudicated;
- (ii) the number of corruption cases in which confiscation was adjudicated.

If you do not collect general figures for the entire country, please provide samples.

2.3 International co-operation

2.3.1 When your country is the requesting state: describe your country's legal framework and systems applicable to request for international legal assistance concerning confiscation measures in relation to corruption offences.

2.3.2 When your country is the requested state: describe your country's legal framework and systems applicable to request for international legal assistance concerning confiscation measures in relation to corruption offences.

² Insofar as these figures are available.

³ Information already provided to the FATF can be provided here too.

3 Money laundering

- 3.1 Describe your legal provisions pertaining to the criminal offence of money laundering and indicate which of the corruption offences listed below are predicate offences for money laundering purposes. Please provide the specific legislation or case law (in English or French).

| Offences | Yes / No |
|--|----------|
| Active bribery of domestic public officials | |
| Passive bribery of domestic public officials | |
| Bribery of members of domestic public assemblies | |
| Bribery of foreign public officials | |
| Bribery of members foreign public assemblies | |
| Active bribery in the private sector | |
| Passive bribery in the private sector | |
| Bribery of officials of international organisations | |
| Bribery of members of international parliamentary assemblies | |
| Bribery of judges and officials of international courts | |
| Trading in influence | |
| Other corruption offences (please, specify) | |

- 3.2 Are these offences also predicate offences if they are committed outside your jurisdiction?
- 3.3 Please, list the institutions compelled to report suspicious transactions and describe relations between the Financial Intelligence Unit (FIU) and law enforcement authorities, indicating in particular whether the former is obliged to transmit to the latter information or suspicions on possible corruption cases.
- 3.4 For the last three years where information is available, please indicate how many money laundering (i) investigations, (ii) prosecutions and (iii) convictions have been made in relation to the predicate offence of corruption.

If you do not collect general figures for the entire country, please provide samples.

Part II: Public administration and corruption

Provisions under evaluation

Resolution (97) 24: Guiding Principles against Corruption numbers 9 and 10

GPC9: "to ensure that the organisation, functioning and decision-making processes of public administrations take into account the need to combat corruption, in particular by ensuring as much transparency as is consistent with the need to achieve effectiveness";

GPC10: "to ensure that the rules relating to the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and effective disciplinary measures; promote further specification of the behaviour expected from public officials by appropriate means, such as codes of conduct".

This section is not intended to cover general anti-corruption provisions, but aims to highlight particular administrative provisions, which are applicable specifically to those exercising public office and thus supplement national legislation.

1 Anti-corruption policy

- 1.1 Does the constitutional/legal system set basic or general principles regulating the functioning of public administrations?
- 1.2 Has your country an anti-corruption strategy targeting public administration, at national or sub-national level (federated states, regional, local etc.)? If possible, please provide official translations (English or French) of the main relevant documents.
- 1.3 Please indicate the scope of the concept of "public administration" in your country. Is there a legal or constitutional definition?
- 1.4 How does your country assess the effectiveness of anti-corruption measures targeting public administration?

2 Transparency in public administration

- 2.1 Please, specify the ways the persons concerned and the public in general have at their disposal for accessing administrative information, as well as the legislative framework applicable. Is there a charging regime? If so, please provide details.
- 2.2 What is the practice of public authorities (national, regional or local government level) regarding public consultation when taking decisions? What are the mechanisms used?

3 Control of the public administration

- 3.1 Do appeal systems exist to challenge administrative decisions (application to the same authority, appeal to the higher authority, appeal before a court), and if yes, how are they applicable to the various layers described?

3.2 If you have the institution of an ombudsman, what are his/her competences in relation to the prevention and detection of corruption?

4 Recruitment, career and preventive measures

4.1 Are there specific procedures for the selection and recruitment of public officials, e.g. screening of personal (criminal) records? Are such procedures standard or are they only used for public functions susceptible to corruption?

4.2 Are public officials trained and informed regarding fundamental principles inherent to, and the ethics of public service? Please, indicate how and at which stage (university, public servants' school, ongoing training etc.)

4.3 Do provisions establishing a system of regular, periodical rotation of staff employed within public administrations considered vulnerable to corruption exist?

4.4 What are the measures in place to prevent conflicts of interests and incompatibilities between functions, in particular between the public and private sectors.

4.5 Are any measures in place to limit the phenomenon of public officials who move to the private sector where they can abuse their contact networks and knowledge of administrative mechanisms and decision-making processes?

5 Codes of conduct / ethics

5.1 Are there codes of conduct / ethics/ in your country for public functions? Or are these matters dealt with by other means?

5.2 Describe the sanctions which the code(s) of conduct carry? Is there a right of appeal against the imposition of such sanctions?

5.3 Does your country collect centrally information on breaches of codes, on penalties, on enforcement actions? If available, please provide statistics.

5.4 How is the code inculcated into management practice?

6 Gifts

6.1 Are there any rules applicable to the receiving of gifts or other advantages that public officials must comply with in the course of their duties? Please describe.

6.2 If any rules and/or limits exist, are sanctions foreseen in case of infringements? If yes, please provide details.

7 Reporting on corruption

7.1 Are public officials subject to an obligation to report misconduct/suspected corruption/breaches of duties or code of ethics, which they would come across in the course of their duties? What procedures are in place to regulate such reports? Are these procedures defined in legal provisions or in internal rules?

| 7.2 Are any measures in place to protect public officials who make such reports?

8 Disciplinary procedures

8.1 What bodies are in place to carry out disciplinary investigations on misconduct/corruption of public officials? Please specify the jurisdiction (e.g. jurisdiction over the whole public administration, or over one or a defined range of public administration organisations) of the investigative bodies, to whom they are accountable, the factors ensuring their independence in investigation.

8.2 What is the relationship between disciplinary and criminal procedures?

Part III: Legal persons and corruption

Provisions under evaluation

Resolution (97) 24: Guiding Principles against Corruption numbers 5 and 8
Criminal Law Convention against Corruption : Articles 14, 18 and 19 para. 2

GPC5: *“to provide appropriate measures to prevent legal persons being used to shield corruption offences”.*

GPC8: *“to ensure that the fiscal legislation and the authorities in charge of implementing it contribute to combating corruption in an effective and co-ordinated manner, in particular by denying tax deductibility, under the law or in practice, for bribes or other expenses linked to corruption offences”.*

Article 14 – Account offences

“Each Party shall adopt such legislative and other measures as may be necessary to establish as offences liable to criminal or other sanctions under its domestic law the following acts or omissions, when committed intentionally, in order to commit, conceal or disguise the offences referred to in Articles 2 to 12, to the extent the Party has not made a reservation or a declaration:

- a) creating or using an invoice or any other accounting document or record containing false or incomplete information;*
- b) unlawfully omitting to make a record of a payment.”*

Article 18 – Corporate liability

“(1) Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of active bribery, trading in influence and money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as a part of an organ of the legal person, who has a leading position within the legal person, based on:

- a power of representation of the legal person; or*
- an authority to take decisions on behalf of the legal person; or*
- an authority exercise control within the legal person;*

as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

(2) Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by natural person referred to paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.

(3) Liability of a legal person under paragraph 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to, the criminal offences mentioned in paragraph 1”

Article 19 – Sanctions and measures

“(2) Each Party shall ensure that legal persons held liable in accordance with Article 18, paragraphs 1 and 2, shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.”

1 Legal persons

1.1 In general

- 1.1.1 Please provide a typology and definitions of the main legal persons in your country's legal system. Indicate if different legal capabilities result from the form of the legal person.
- 1.1.2 What are the requirements for the establishment of legal persons (e.g.: minimum shares, minimum number of applicants, condition of nationality, etc)?
- 1.1.3 Describe the registration system in place for legal persons.
- 1.1.4 What kind of other measures are in place to ensure transparency (e.g. : restrictions on legal persons to hold interests in another legal person, restrictions on the number of accounts a company can hold in your country, etc)?
- 1.1.5 Is there a possibility in your country to disqualify persons found guilty of offences from acting in a leading position in legal persons?

1.2. Liability of legal persons

- 1.2.1 Has your country undertaken measures to establish the civil, criminal or administrative liability of legal persons for criminal offences, in particular corruption related offences? Please specify and provide official translations (French or English) of the relevant legal documents.
- 1.2.2 Please indicate the conditions under which a legal person can be held liable in your country for corruption offences, and specify whether these measures are applicable to the offences of (i) active bribery (ii) trading in influence and (iii) money laundering committed for the benefit or on behalf of the legal person.
- 1.2.3 Please, indicate whether the liability regime is also applicable when lack of supervision or control by a natural person, who has a leading position within the legal person, has facilitated the commission of the offences mentioned under the previous question.
- 1.2.4 Please indicate whether the benefit could only be potential or should it be effectively realised.
- 1.2.5 Is it possible to assign liability to the legal person when no natural person has been convicted or identified?
- 1.2.6 Is the liability of a legal person determined within the framework of the same proceedings as those against the physical perpetrator or as a consequence of the proceedings against the physical perpetrator?
- 1.2.7 Does the liability of legal persons exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to (i) active bribery, (ii) trading in influence and (iii) money laundering?
- 1.2.8 For the last three years, please provide available statistics and details on the proceedings instituted against legal persons for corruption and trading in influence. If possible, please

provide details on cases involving natural persons holding managerial functions within legal persons.

If you do not collect general figures for the entire country, please provide samples

1.3. Sanctions and measures for legal persons

1.3.1 What sanctions or measures are foreseen in the case a legal person is held liable for (a) active bribery, (b) trading in influence and (c) money laundering?

1.3.2 How does your legal system ensure the effective application of sanctions, in particular how is it avoided that institutional changes (e.g.: setting up of new company, take over, etc) circumvent the application of sanctions imposed?

1.3.3 Is there in your country any records of companies found liable for acts of corruption?

2 Tax deductibility and fiscal authorities

2.1 Has your country prohibited the deductibility for "facilitation" payments⁴, bribes or other expenses linked to corruption offences?

2.2 Are tax authorities involved in the detection and reporting of offences criminalized under penal law, such as corruption and money laundering? If yes, what are the cooperation mechanisms in place and how do they report suspicions to law enforcement bodies?

2.3 What are the mechanisms in place concerning the access of law enforcement bodies to tax records?

3 Account offences

3.1 Is there any obligation to keep accounting records or books for a certain period of time? Please specify.

3.2 Are certain legal persons (associations, companies, foundations etc.) exempted from the obligation to keep accounting records or books? Please specify.

3.3 Has your country undertaken measures to incriminate the use of invoices or any other accounting documents or records containing false or incomplete information or double invoices? Please specify.

3.4 Is the destruction or hiding of accounting records or books subject to sanctions? Please specify.

⁴"Facilitation" payments do not constitute payments made to obtain or retain business or other improper advantage; such payments are made to induce public officials to perform their functions, such as issuing licenses or permits (see the OECD anti-bribery Convention)

4 Role of accountants, auditors and legal professions

- 4.1 Are accountants, auditors and/or other advising professions obliged to report suspicions of offences to law enforcement authorities? Please provide details and relevant legal texts in English or French.
- 4.2 Please, indicate whether in your country, steps have been taken (for instance by your Government or professional organisations) to involve accountants, auditors and other advising professions in any policies aimed at detecting/reporting accounting offences and the dissimulation of crimes, in particular corruption and money laundering.