

A2 6: FOCUS ON CORRUPTION



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SUMMARY SHEET

Chapter approved by the
President of the GRECO



There are many ways to fight corruption, by trying to prevent it from happening to prosecuting it as a criminal offence once it has happened.



IMPORTANT POINTS FOR TOPIC : The causes of corruption and ways to fight against it

An effective fight against corruption does not just rely on prosecuting persons for corruption offences, but combines many different elements from awareness-raising, measures to prevent corruption from happening, ensuring that corruption can be detected to punitive measures. Ordinary citizens have an important role to play in fighting corruption, by reporting corruption, refusing to pay bribes for public services, holding politicians accountable. To set out what countries need to do to fight corruption, both internally and together, international standards have been developed, such as the United Nations Convention Against Corruption (UNCAC), the Criminal Law Convention on Corruption of the Council of Europe and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development (OECD), which are in turn being monitored.



TAKEAWAY MESSAGE

What causes corruption? It remains to this day difficult to pin corruption down to specific causes. Most people will mention "greed" (high rewards of engaging in a corrupt act combined with low risks of getting caught or low penalties) or "need" (e.g. when the salary of a public official is too low to provide for a decent living). However, increasing salaries alone, particularly in the public sector, will not suddenly eradicate corruption. There are various factors, which have been identified as being strongly linked to lower levels of corruption, such as economic development, political systems characterised by a strong centre and centralisation of power, and democracy. These linkages are not always straightforward however. For example, while some researchers point out that corruption diminishes with increasing levels of democracy and an increasing length of democratic history, others point out that countries going through democratic transition may in fact experience higher levels of corruption than authoritarian states (possibly because semi-democratic states lack the control mechanisms of authoritarian states and the checks and balances of consolidated democracies). Others also point to the role of culture (e.g. a culture of gift-giving, hierarchical cultures or bureaucratic cultures in which decision-makers are not challenged) and the presence of organised crime.

How to respond to corruption? There are many ways to fight corruption, by trying to prevent it from happening to prosecuting it as a criminal offence once it has happened. An effective fight against corruption combines preventive with punitive measures. Preventive measures are employed ex ante, by putting safeguards in place, removing opportunities for corruption and adopting measures to facilitate detection. Such measures may start with raising awareness, corruption risk assessments and developing anti-corruption strategies / action. It may also include legislative reform and institution building, of the civil service, the



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TAKEAWAY MESSAGE

judiciary, the police, the ombudsperson, the parliament, supreme audit institutions (which ensure the proper and effective use of public funds) and possibly specialised anti-corruption bodies (with a preventive mandate, a law-enforcement mandate, such as USKOK in Croatia, or both, such as the KNAB in Latvia). In this context, the importance of measures to increase transparency and openness also needs to be emphasised, both as this contributes to trust in public decision-making and strengthens democracy, and as increased openness facilitates oversight of the government and increases the risk of being caught.

Ex post measures to fight corruption are employed reactively, when acts of corruption are suspected or detected. Adequate legislation needs to be in place (e.g. criminal legislation on corruption, but also on money laundering, banking regulations, legislation relating to the police, accounting laws, legislation on funding of political parties and elections campaigns etc.) and effective investigations into violations of these pieces of legislation, as well as prosecution and adjudication of corruption offences, must take place. Ex post measures focus strongly on punitive measures, which may include imprisonment for corruption offences, confiscation of the proceeds of corruption, disciplinary sanctions (loss of job for a public official, for example), debarment of companies and/or compensation for damages caused by a corrupt act. Given the secretive nature of corruption, the importance of regulations on whistleblowers (i.e. persons who disclose information on a threat or harm to the public interest they have come across in the context of their work), in particular the protection of such persons against retaliation, as well - in criminal processes - the protection of witnesses.

What is internationally being done to fight corruption? Until the 1990s, paying bribes to foreign public officials to do business was relatively common and would even be tax deductible in some countries. Following a series of corruption scandals, a number of countries made this a criminal offence. These countries also led efforts for international standards on cross-order bribery, to ensure that their companies would not be disadvantaged in the world market. Among the first of such international agreements was the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the OECD, which entered into force in 1999 and focuses on the "supply side" of bribery (i.e. active bribery, the offering, promising or giving of an undue advantage to – in this case – a foreign public official). Prior to the OECD, already in 1994 Ministers of Justice of Council of Europe member states agreed that corruption should be addressed at European level, as a serious threat to the stability of democratic institutions. This agreement led to various new Council of Europe standards, among which the Criminal Law Convention on Corruption (which entered into force in July 2002), which requires the criminalisation of various bribery offences (in the public and private sector, domestically and abroad), trading in influence, money laundering and accounting offences. By harmonising the definitions of various corruption offences, this convention also facilitated cross-border legal assistance as the offences would be criminal in a similar way in the states which ratified this convention. A further important step was the Council of Europe Civil Law Convention on Corruption (which entered into force in November 2003), requiring state parties to provide for effective remedies for persons who have suffered damage as a result of acts of corruption.

Another important international convention is the UN Convention Against Corruption (UNCAC), which entered into force in 2005 and currently has 186 state parties. UNCAC represents an important milestone, not only for its worldwide coverage but also for the scope of its provisions, recognising the importance of both preventive and punitive measures. It also includes provisions on asset recovery (providing for a possibility to return assets illegally transferred abroad by former political elites of a country).

Other important anti-corruption standards include the European Union Directive on the fight against fraud to the Union's financial interests by means of criminal law (2017), the Convention of the European Union on the fight against corruption involving officials of the European Communities or officials of Member States (1997), the Inter-American Convention against Corruption (1996) and the African Union Convention on Preventing and Combating Corruption (2003).

To ensure that governments put the promise they have made by ratified these conventions into practice, efforts to implement these standards are in many cases being monitored (for example, in case of the Council of Europe by the Group of States against Corruption, GRECO).



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TEST YOURSELF: 10-QUESTION QUIZ

1. Why do some authors regard semi-democratic countries as more corruption-prone than authoritarian countries?

- a. Because authoritarian countries are characterised by greater control and clearer rules;
- b. Because authoritarian countries see corruption as a threat to economic development;
- c. Because authoritarian countries are characterised by strong ex ante anti-corruption measures.

2. What does the term "ex ante anti-corruption measures" refer to?

- a. Measures focusing on increasing the autonomy of anti-corruption agencies;
- b. Preventive anti-corruption measures, undertaken before corruption occurs;
- c. Protection of whistle-blowers before retaliation occurs.

3. What does the term "ex post anti-corruption measures" refer to?

- a. Measures undertaken reactively, after corruption has occurred;
- b. Anti-corruption campaigns and other awareness-raising activities;
- c. The prevention of conflict of interest in public authorities.

4. Why are supreme audit institutions important actors in the fight against corruption?

- a. They raise awareness of corruption;
- b. They ensure the proper and effective use of public funds;
- c. They represent the interests of the public, including reviewing and addressing complaints.

5. Why are whistleblowers important in the fight against corruption?

- a. They "blow the whistle" by disclosing information on a threat or harm to the public interest (such as corruption) they come across in their work, which because of its hidden nature would otherwise not come to light;
- b. They "blow the whistle" by disclosing where the proceeds of corruption can be found;
- c. They "blow the whistle" by disclosing that there are not enough prosecutions regarding corruption.

6. How has the Council of Europe's Criminal Law Convention on Corruption facilitated cross-border legal assistance?

- a. It requires states party to this Convention to set up a body for international cooperation in investigating and prosecuting corruption offences;
- b. It ensures that various forms of corruption are criminal offences in a similar way in all states party to the Convention;
- c. It requires states party to the Convention to arrest suspects of corruption offences, which have been committed in a different country.

7. Which body monitors implementation of the Council of Europe's anti-corruption standards?

- a. The Group of States against Corruption / GRECO;
- b. The Council of Europe Anti-Corruption Experts;
- c. The European Court of Human Rights.

8. What is a feature of the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development?

- a. It requires states party to criminalise foreign public officials accepting or requesting a bribe;
- b. Almost all countries in the world are party to this Convention;
- c. It focuses on active bribery of foreign public officials.

9. Why does the UNCAC represent an important milestone in the international fight against corruption?

- a. It has worldwide coverage and it includes both preventive and punitive measures;
- b. It was the first ever convention on corruption;
- c. It has led to many successful prosecutions for corruption. nancial country, which makes it unclear in which country to measure corruption.

10. What is the importance of asset recovery in corruption cases?

- a. It allows persons harmed by corruption to be compensated;
- b. It allows the return of the proceeds of corruption to its country of origin;
- c. It allows persons to get their bribe back if they have not been given the service they required.



BIBLIOGRAPHY

- Basic anti-corruption concepts: a training manual, Council of Europe (2015) <https://rm.coe.int/basic-anti-corruption-concepts-a-training-manual/16806eed9d> [Also available in French, Russian and Serbian].



USEFUL WEBSITES

You can access the sites directly by clicking on the links.

- Council of Europe's GRECO, www.coe.int/greco
- OECD, <http://www.oecd.org/corruption/anti-bribery/>
- Transparency International, which has national chapters in many countries with separate websites with country-specific information, www.transparency.org
- U4 anti-corruption resource centre, www.u4.no
- UNCAC, <https://www.unodc.org/unodc/en/treaties/CAC/>
- UNODC, UN anti-corruption toolkit, https://www.unodc.org/documents/corruption/Toolkit_ed2.pdf.



You can find the answers and explanations on the answers sheet.



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