ZERO CORRUPTION MORE INTEGRITY

Thematic guide

CODES OF CONDUCT

Group of States against Corruption (GRECO)

An overview of GRECO's findings in the Fifth Evaluation Round

Prepared by the GRECO Secretariat

GRECO
Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Introduction

1. This thematic guide provides an overview of GRECO's approach to Codes of Conduct and related implementation measures (counselling and awareness-raising) within the framework of the Fifth Evaluation Round, which focuses on preventing corruption and promoting integrity in central governments and law enforcement agencies.

2. This thematic guide is based on the Fifth-Round evaluation reports and selected compliance reports. It presents guiding principles and key points developed by GRECO in the 5th Evaluation Round.

3. The importance of ethical rules has long been recognised in Council of Europe legal instruments. In 2000 the Committee of Ministers adopted Recommendation No. R (2000) 10 on Codes of Conduct for Public Officials.

4. Integrity framework is a particularly important part of the work of GRECO, the Council of Europe's anti-corruption body. Since the Second Evaluation Round, questions on codes of conduct and the applicable integrity framework have been included in the evaluation questionnaires. The Second-Round evaluation reports contained recommendations regarding codes of conduct for public officials. GRECO's Fourth Evaluation Round reports contained similar recommendations regarding Members of Parliament, judges, and prosecutors[1].

5. The importance of codes of conduct has grown during GRECO's Fifth Evaluation Round, which has focused on preventing corruption in central governments (top executive functions) and law enforcement agencies. Sections 2, 8, 10 and 16 of the Questionnaire included questions specifically addressing codes of conduct, confidential counselling and awareness-raising.

6. Based on the responses of the member states to the

[1] Leonardo S. Borlini. Codes of Conduct for Public Officials. GRECO findings and recommendations. March 2019.

questionnaire, GRECO's Fifth-Round evaluation reports dedicate specific sections to these matters, outlining the current situation in each country. To date, all member states have received recommendations in this respect.

7. GRECO's work in this area will continue in the Sixth Evaluation Round, which focuses on preventing corruption and promoting integrity at the subnational level. Accordingly, Section 6 of the Sixth Round Questionnaire covers integrity rules, codes of conduct/ethics, training and confidential counselling.

SUBSTANTIVE MATTERS

Personal scope of application

8. The personal scope of a code of conduct should be comprehensive. It should apply to *all* persons in the relevant target group (for example, all persons with top executive functions - PTEFs). For example, GRECO found it problematic when ministers or political advisers were exempted from the remit of a Code of Conduct applicable to all the other PTEFs. GRECO has recommended that all persons from the relevant target group should be subject to a uniform system of ethical rules. Specific integrity measures applicable to a Head of State may, however, be required to guide him/her and to make his/her activity more transparent.

9. The absence of well-articulated integrity standards for some persons belonging to the target group might lead to public perceptions of their vulnerability to corruption and prompt an over-reliance by them on their personal conscience which is not conducive to mitigating corruption-related risks. This is especially true of the top executive functionaries who must lead by example and enjoy and maintain not only legal but also high moral authority for setting integrity standards for the rest of the public sector.

Temporal scope of application

10. A code of conduct should apply for the entire duration of its addressee's term of office.

11. GRECO criticised the revocation of ethics pledges and recommended that integrity rules be permanent in nature.

Material scope of application

12. A code of conduct should comprise the following integrity matters:

a. preventing and managing conflicts of interest;

b. declaration requirements;

c. incompatibilities and ancillary activities;

d. gifts;

e. post-employment restrictions;

f. contacts with third parties and lobbying; and

g. handling of confidential information.

Qualitative features

13. In its recommendations relating to Codes of Conduct, GRECO has highlighted the importance of the following features.

Format

14. The instrument does not have to take the usual form of a code of conduct, as long as it serves an equivalent purpose (by compiling *all* relevant rules in *one single* document containing detailed guidance).

15. What is important is not so much whether the relevant instruments containing integrity rules are called codes of conduct or guidelines. What matters is that the instruments are transparent and functional.

16. At the same time, codification may prove to be an asset in terms of clarity.

Comprehensiveness

17. A code of conduct should encompass *all* relevant integrity matters and rules (see material scope above). GRECO assesses, in particular, whether there are gaps in a given Code of Ethics.

18. GRECO sees merit in consolidating all integrity related matters and standards into *one single* document. When information is scattered, the likelihood of it being ignored is high, creating a possible knowledge gap.

Tailored guidance and specialisation

19. Every organisation, every State body, is unique in its nature and competency. Particular rights of different State bodies diverge and thus the possibilities of unethical behaviour of persons executing these powers are also distinct and present their very own characteristics and challenges.

20. A code of conduct should therefore be adapted to the specific needs of its addressees and provide guidance relevant to their daily work, that is, in respect of various situations linked to the exercise of their functions.

21. GRECO welcomes the adoption of specialised codes of conduct. For example, the law enforcement functions are very specific in terms of organisation, profile of the employees, areas where they operate, etc, and therefore need a dedicated Code of Conduct. Also, a Code of Conduct for Civil Servants may not always be entirely suitable for PTEFs who carry out political functions and, unlike civil servants, are not expected to remain politically neutral.

22. GRECO further recommended developing an appropriate document on conduct adapted for a Head of State.

23. To provide tailored and useful guidance, a code should be prepared via an inclusive process, in close cooperation between all interested parties.

24. The adoption process must be conducted in such a way as to ensure active internal ethical discussions and the necessary support and ownership by those to whom it is addressed.

25. A code should be developed drawing on the results of comprehensive integrity risk assessments for the addressee category concerned. It should be targeted to the corruption risks and integrity issues most pertinent to the addressees' positions.

26. As for the degree of specialisation, GRECO does not question the authorities' choices, but recommends, for the purposes of consistency, that sectoral codes also contain general rules applicable to all persons of the relevant category, in addition to specialised rules.

27. In any event, a multiplicity of applicable codes should be avoided.

Practical and detailed guidance

28. The content presented as a set of general guiding principles cannot be considered as a fully-fledged code of ethics in the sense recognised by GRECO.

29. A code should be user-friendly and accompanied by further explanatory material (ex. a manual, guidelines etc). Such material should be consolidated in one document rather than in sporadic explanations.

30. Explanatory material should include:

a. relevant definitions;

b. concrete practical (real-time and real-life) examples:

(i) based on experience in the State and the institutions concerned;

(ii) drawing upon the real cases of breaches committed (in an anonymised way), as such cases are likely to point to issues where corruption risks are higher; and

(iii) illustrating

(1) *all* relevant integrity issues;

(2) specific risk areas;

(3) the complexity of the situations covered, and

(4) steps to be taken to avoid or defuse corruption threats.

Clear guidance

31. Where more than one instrument is applicable, it should be explained which code applies in which case and in respect of whom.

32. The internal consistency of the rules should be verified.

33. Rules unrelated to ethics should preferably be removed.

Up to date guidance

34. The value of any code of conduct lies partly in its open-ended nature and its ability to adapt. Revising and supplementing a Code of Ethics is an absolutely crucial exercise to ensure that the principles enshrined therein find true resonance in the day-to-day work of its addressees.

35. Such updating should therefore:

a. be regular;

b. follow regular evaluation of the effects and impact of the Code;

c. go hand-in-hand with the identification of risk areas (for example, the updating process could be

connected to a mechanism analysing and mitigating particular risk of conflicting interests and corruption);

d. ensure that the Code is:

(i) consistent with the relevant domestic legislation and regulatory instruments;

(ii) a *living instrument* that takes into account

(1) recent developments in corruption prevention;

(2) societal changes and new emerging issues (for example, in relation to the use of social media and other modern-day tools and phenomena).

Binding nature

36. It is important for rules of conduct to be effective that that there is a clear requirement to comply with them. GRECO takes issue with the ethical guidelines not being formally binding. GRECO is of the view that binding ethical principles would not only appear more effective as regards compliance but would also offer criteria against which the efficiency of the integrity system could be measured. The fact that the Code is binding further sends an important signal to those to whom it applies and to the public at large.

37. In order to ensure its effective implementation, a Code of Conduct should expressly make reference to a system of sanctions provided either in the Code itself or other sources of domestic law, as appropriate.

PRACTICAL MEASURES OF IMPLEMENTATION

Publication and dissemination

38. Publication of the Code of Conduct is important to increase accountability towards the public. Indeed, the Code of conduct has the dual role of providing an ethical framework for the activities of the officials concerned while at the same time clarifying in the public mind what citizens are entitled to expect from the officials in whom they place their trust.

39. This implies the following measures that will contribute to reducing corruption risks:

a. publication of the Code;

b. making the Code easily accessible to its addressees and the public;

c. Information of the public by taking *active* steps to give the Code *broad* publicity.

Awareness-raising

40. Awareness-raising activities are an important means of strengthening integrity by providing information on how to deal with ethical dilemmas in everyday activities and functions, thus avoiding a large degree of discretion in practice as to whether and how to act when faced with such dilemmas.

41. Awareness-raising needs to be:

a. comprehensive in its scope:

(i) covering all relevant integrity standards;

(ii) being available to all persons of the target group.

b. proactive

It cannot be replaced by various guidelines and materials on ethics;

c. effective

Effective communication is a critical component in contributing to organisational learning and reaffirming expected standards of behaviour by employees. To be effective, information must be:

(i) clear,

(ii) sufficiently detailed and

(iii) accessible;

d. practice-oriented

For example, both the consequences of unacceptable behaviour as well as commendable behaviour need to be better publicized, as personal examples may be more powerful in maintaining and reinforcing organisational values of ethics and integrity than written rules.

Breaches of the code should prompt an open debate within the institution concerned.

42. Awareness-raising takes the form of:

a. internal ethical discussions within a given institution;

b. a regular communication strategy;

c. individual confidential counselling;

d. training.

Confidential counselling

43. In its recommendations relating to the provision of integrity advice, GRECO has underlined the importance of the following features.

a. Individual nature of the counselling;

b. Confidentiality

Ideally, the confidentiality of counselling should be embedded in law.

c. Institutionalisation

A dedicated mechanism should be:

i) formalised (the possibility to seek individual advice during training sessions cannot replace a dedicated, formalised mechanism);

ii) easily accessible;

iii) appropriately communicated to its addressees.

d. Expertise

Advice should be provided:

i) by persons of trust who were adequately trained for this purpose, or
ii) by an expert body.

e. Neutrality and independence

(i) Advice should be provided by persons with no daily contact with the addressees and outside the chain of command or supervision, so as not to inhibit any requests for advice.

(ii) It is not appropriate to attribute counselling function to a body responsible for enforcing the rules of conduct or receiving complaints, as this may have a chilling effect. Indeed, the counselling and enforcement (supervisory/disciplinary) functions need to be entrusted to different institutions.

(iii) The presence of a member of the government in the composition of a body advising ministers and other persons with tope executive functions is considered to undermine its effective functioning, as well as its independence and impartiality from the executive.

f. Consistency

(i) It would be sensible for a Code of Conduct to be implemented via a single mechanism bestowed with interpretation, advisory and counselling powers.

(ii) Where advisory roles are spread across various institutions, an effective mechanism should be developed to ensure consistency. GRECO has voiced concerns that such a situation may jeopardise consistent and efficient application of integrity rules across the line.

g. Knowledge-sharing

(i) GRECO has recommended developing a database/knowledgebase of the questions received and the topics addressed by the institution providing advice. Such a database should be made available for the whole organisation. This could serve as a corporate vehicle to communicate organisational learning to staff on issues of ethics and integrity and the practical import of anti-corruption policies, practices, and procedures.

(ii) GRECO has also emphasised the importance of consolidating institutional memory.

(iii) GRECO has also recommended that statistics on confidential counselling be duly kept.

Training

Timing

44. GRECO has recommended that the integrity training be provided:

a. at the start of the term of office of the persons concerned (induction course);
and
b. at regular intervals throughout their term of office (refresher course), notably to take account of any legislative or other developments.

Form

45. GRECO has recommended that the integrity training:

a. be either mandatory, or take the form of a systematic briefing (notably for ministers and some other PTEFs);

b. be tailored to the specificity of the duties, corruption risks and vulnerabilities of the persons concerned; for example:

   (i) a special ethics leadership course should be envisaged for senior managers;

   (ii) a human rights-based approach should be used in the training for the police forces, in order to underline how corrupt behaviour impacts directly on the public's enjoyment of their human rights.

c. be practice-oriented, for instance, using a scenario-based approach, practical discussions, workshops and case studies.

Supervision and enforcement

46. GRECO has consistently insisted on the need for rules of conduct to be enforceable and recommended that a code of conduct be coupled with an adequate mechanism of supervision and enforcement.

47. Supervision should be ensured by appropriate, independent bodies. Preferably, a single administrative body should be responsible for implementing, reviewing and updating ethical rules for a given target group.

48. In this context, GRECO has also underlined the relevance of measures promoting and encouraging ethical behaviour, such as acknowledgements or recognitions.

For further information,

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