

Countering corruption and promoting integrity: the role of the Council of Europe's Group of States against Corruption (GRECO)¹

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Basic Facts

“GRECO” is the acronym for “Group of States against Corruption”. It is the anti-corruption monitoring body of the Council of Europe with its headquarters in Strasbourg (France). Membership in the Group is open on an equal footing to all 47 member states of the Organisation and to non-member states, particularly those who participated in GRECO's establishment. This explains why the United States and Belarus are members and why Canada, the Holy See, Japan and Mexico are welcome to join if they wish. GRECO started with 10 members in 1999 – and now has 49.

GRECO was set up to complement the Council of Europe's six anti-corruption instruments² with a suitable and sustainable monitoring mechanism. There have been four evaluation rounds so far. Each coun-

¹ All views expressed are personal.

² Criminal Law Convention on Corruption (ETS 173); Civil Law Convention on Corruption (ETS 174); Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); Twenty Guiding Principles for the Fight against Corruption (Resolution (97) 24); Recommendation on Codes of Conduct for Public Officials (Recommendation No. R (2000) 10); Recommendation on common rules against corruption in the funding of political parties and electoral campaigns (Rec (2013)4).

try evaluation is conducted by a team of expert evaluators nominated by member states. There is an initial examination of information supplied by the state under review which is then tested and completed during an in-country visit and meetings with a range of relevant actors from both inside and outside government. The resulting report and recommendations is then thoroughly examined by all GRECO members in the Plenary prior to adoption and before it is addressed to the member state concerned for action. A mix of scrupulous review, carefully constructed recommendations and peer pressure is deployed by the mechanism. It is standing practice for members to authorise the publication of the report. This point is important and adds to the value of the Group's work. The evaluation report and the subsequent compliance reviews which examine the steps taken to fulfil the recommendations ("impact assessment"), also provide very pertinent reference sources for outside stakeholders and observers, including the business community.

The current Fourth Evaluation Round is devoted to the prevention of corruption in respect of parliamentarians, judges and prosecutors. In its previous three rounds, GRECO dealt with a wide range of issues, such as anti-corruption bodies, immunities of public officials as possible obstacles in the fight against corruption, reporting suspicions of corruption and whistle-blower protection, the confiscation of corruption proceeds and – the two focal points of the Third Evaluation Round: the criminal law of corruption (incriminations) and the transparency of political financing.

The difference between GRECO and other monitoring mechanisms lies in both the scope and process of monitoring. GRECO assesses member states' compliance with the anti-corruption instruments of the Council of Europe, which represent a comprehensive arsenal of standards and principles. In comparison, the OECD's anti-bribery working group focuses on compliance with its convention³ in the very specific

³ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

field of bribery of foreign public officials in international business transactions. As concerns the review process established under the United Nations Convention against Corruption (UNCAC), it engages countries with substantially different political and legal systems, as opposed to the relatively tighter GRECO grouping. Unlike the GRECO process, the UNCAC review mechanism does not as yet entail a systematic appraisal of its impact on domestic policy or law.

Challenges Regarding Bribery Legislation and Political Financing

To date, the Criminal Law Convention – the implementation of which is one of the key questions of GRECO's Third Evaluation Round – has been ratified by 46 member states. The three which have not as yet ratified this important instrument are Germany, Liechtenstein, and the United States. Austria and Italy ratified in 2013 and Liechtenstein, the last in the series, only in August 2016. The Group's experience shows that the ratification of the Convention did not automatically, nor in all cases, lead to a satisfactory level of alignment of domestic legislation with the letter and the spirit of the treaty.

In some jurisdictions lacunae were found regarding the criminalisation of members of domestic public assemblies for acts of corruption and trading in influence. Moreover, in a number of cases, GRECO has established that sanctions provided for private sector bribery (i.e. active bribery) were significantly lower than those for bribery in the public sector, thus suggesting that paying bribes in connection with business deals is not considered as being seriously problematic (and is perhaps even seen as an acceptable practice among "gentlemen"). The drafters of the Convention clearly did not intend to support that misconception. In this connection the evidence collected by GRECO and other international players (including the European Commission and the United Nations Office on Drugs and Crime) strongly suggests that both the transposition of the relevant international standards and their practical implementation lag behind endeavours concerning bribery in the public sector. Regarding the Group's own work, it is noteworthy in this context that only a very small number of evaluated members were

able to refer to case-law in this field. Only about half were in a position to supply statistics covering prosecutions brought and/or convictions secured. In nearly all cases the figures were rather low.

An issue which is of relevance to the cross-border prosecution of corruption offences is the dual criminality requirement for corruption offences committed abroad by citizens or residents of a given State. GRECO has taken the view in a number of cases that this requirement should be abolished as it can be an obstacle to efficient law-enforcement, especially where the offence has been committed in a country which has not yet aligned its domestic law with the relevant international anti-corruption treaties.

Regarding the funding of political parties and electoral campaigns, this issue remains a highly contentious matter in numerous countries. Two areas merit particular attention, namely the monitoring of party and campaign accounts and enforcement of the relevant financing rules (if there are any).

It is now widely accepted – not least owing to the monitoring work of the Group – that transparency requirements regarding the books and accounts of political parties and candidates can only be effective when supervised by a truly independent monitoring body (or bodies), examples of which are only found in a limited number of countries. Furthermore, GRECO has stressed in many cases that the requirement for political parties to have their accounts verified by auditors is an effective tool to reinforce financial discipline and decrease possibilities for corruption. It is essential that auditors remain independent – and are seen to be independent – of the political parties they audit. This fundamental requirement was often not fulfilled.

Turning to the issue of enforcement of funding rules, GRECO has frequently been led to conclude that infringements are rarely brought to light and, if they are brought to light, they often do not lead to any meaningful reaction by the supervisory authorities – where such authorities exist – and/or by the law enforcement authorities. In this connection, the Group has insisted many times on the need to introduce more flexible sanctions to supplement criminal sanctions, including

administrative (e.g. withdrawal of public funding, ineligibility for future funding) and possibly civil sanctions (e.g. deregistration).

Corruption in Parliaments and in the Justice System

GRECO's 4th Evaluation Round (launched in January 2012) focuses on corruption prevention with respect to members of parliament, judges and prosecutors. Each of these groups works within a national institution that is key in the fight against corruption. Their effectiveness and integrity help determine whether the seeds of corruption grow and flourish in a country or not.

The reports processed to date⁴ have engendered often tough but constructive discussions within the Plenary. These discussions have demonstrated beyond doubt that political parties and elected representatives are among the least trusted public institutions – this appears to be a generalised trend across Europe. The picture is more mixed however when it comes to judges and prosecutors. To mention just a few examples, judges enjoy high levels of public trust in the United Kingdom, and lower than European average levels of trust in Slovakia, Slovenia and in Estonia. Some of this may be due to specific cases of corruption involving judges or, as indicated in some of GRECO's reports, a combination of such cases, a weak legal system and a lack of public awareness of the steps already taken to strengthen the institutional independence of the judiciary.

That said, it goes without saying that any corruption scandal involving a judge has a negative impact on public confidence in the judiciary as a whole. In a number of reports GRECO has made recommendations to strengthen the capacity of the judiciary to address corruption prevention: for example, to limit political interference in judicial appointments in Slovenia and to ensure security of tenure in the United Kingdom and to encourage judicial capacity to self-govern, for example, by strengthening the role of independent judicial bodies in

⁴ All Evaluation and related Compliance Reports can be found on GRECO's homepage. http://www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp

the appointment and career progression of judges in Estonia.

The reports also highlight a lack of proactivity on the part of MPs when it comes to the need to demonstrate their commitment to corruption prevention as a matter of individual conduct as well as public duty and to ensure that an ethos of prevention prevails within national parliaments themselves.

Interestingly a number of reports indicate that one reason fueling parliamentarians' inaction in this area may be a lack of understanding of what is expected, particularly as regards conflicts *beyond* those related to financial interests. This state of affairs prompted recommendations from GRECO, for example, to Iceland, Sweden and Poland as well as many other countries to promote a system of ad hoc declarations to deal with the broad range of interests that may impact on the impartiality of a parliamentarian's involvement in a particular legislative initiative.

Impact

Achieving sustainable results is in the hands of the Group's member states. Despite the fact that the Council of Europe in general – and in this case GRECO – cannot impose genuine “sanctions” on those member states which show little willingness or capacity to fully implement its recommendations, the mechanism ultimately produces positive results in a large number of cases by working in close partnership with the national authorities and allowing frank, open discussion on site and among peers in the plenary. GRECO recommendations are not imposed “from above” but are the result of a process that ensures a sense of ownership.

Those who have seen GRECO at work – as I had the privilege to do for the last twelve years and for a total of altogether fifty-five plenary sessions – will concur that there is a keen sense of fairness among GRECO delegations which largely precludes back-patting, coalition-building and other political manoeuvres, thereby increasing commitment to obtaining concrete, long-term results.

GRECO's Annual Report for 2012⁵ presented for the first time statistics on the overall levels of compliance by 45 of its 49 member states with recommendations issued in the first two evaluation rounds. These show that some three years after they were first evaluated, member states had fully complied with 78% of the recommendations. This is impressive and demonstrates a strong commitment by member states to the process of reflection and reform advocated by GRECO.

That said, the current picture is not quite that rosy. While some countries have made noticeable progress in certain areas, others have not and in some cases there are clear signs of regression. One issue that remains a concern is the number of public officials and elected representatives who still enjoy immunity from prosecution in some member states. Another is the rather slow progress made across Europe towards effectively protecting workplace whistle-blowers who can sound the alarm about corruption issues early enough for swift and effective action to be taken.

The prime area of concern, however, remains the funding of political life. Party and campaign funding has turned out to be much more than a purely technical issue. Political parties perform a vital democratic function but their legitimacy depends on the trust and confidence of citizens and this is called into question when politicians and party officials across Europe flout the standards of conduct expected of them – whether to gain the upper hand against their political opponents or to further their personal interests or those of their affiliates.

It is important to address the issues that give rise to such dissatisfaction across Europe. The values and principles underpinning democracies in Europe need to be reaffirmed in concrete ways if we want to counteract low voter turnout and ever growing populist political movements and parties whose democratic credentials are highly questionable.

⁵ GRECO, 'Thirteenth General Activity Report' (2012), pp 16–19. [http://www.coe.int/t/dghl/monitoring/greco/documents/2013/Greco\(2013\)1_Gen.Act.Report2012_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/2013/Greco(2013)1_Gen.Act.Report2012_EN.pdf)

In this connection, the performance of quite a number of member states in implementing GRECO's recommendations relating to political financing has had to be categorised as "globally unsatisfactory". Luckily, it is not all gloom that surrounds this issue. There are many success stories of countries that have made progress as a consequence of being placed under closer scrutiny by GRECO. There are encouraging signs that the catalogue of such attainments will continue to grow.

All those involved in GRECO and the international anti-corruption community know that too many people in Europe still face corruption as they go about their daily lives and too many have to put up with corruption scandals involving those in positions of national trust. Responsible leaders will understand that in such circumstances it is not easy to build and maintain confidence in systems, institutions and decision-makers – but that it is work they must do.

Designing new programmes of action, setting up a plethora of reflection groups or enacting one piece of legislation after the other alone will not be enough to achieve lasting success. It is essential that more is done, at both international and domestic levels, to generate the requisite political will to prevent and fight corruption and – above all – to build a culture of integrity. Political leaders must be prepared to take up this challenge.