

Strasbourg, 15 April 2020

Greco(2020)4

## **Corruption Risks and Useful Legal References in the context of COVID-19**

*Issued by Mr Marin Mrčela, GRECO President*

### *Introduction*

As countries face undeniable emergencies, concentration of powers, derogations from fundamental rights and freedoms, and as large amounts of money are infused into the economy to alleviate the crisis (now and in the near future), corruption risks should not be underestimated. It is therefore most important that anti-corruption is streamlined in all COVID-19, and more generally, pandemic-related processes.

GRECO has consistently recommended specific anti-corruption and governance tools. These include transparency, oversight and accountability. In a time of extraordinary circumstances because of the pandemic, those tools are more important than ever. They are relevant for the central level, but also the local level in the context of any form of devolution of powers.

The Council of Europe Criminal Law<sup>1</sup> and Civil Law<sup>2</sup> Conventions on Corruption are particularly relevant in this context, as are the Twenty Guiding Principles for the Fight against Corruption and other anti-corruption standards of the Council of Europe. GRECO's evaluations in respect of corruption prevention in the legislative, executive and judiciary branches should also be taken into account. Transparency in the public sector is one of the most important means for preventing corruption, whatever form it takes. The need for regular and reliable information from public institutions is crucial in times of emergency.

Bribery in the health care sector makes medical services more expensive and of a lower quality. It leads to unequal access to medical care especially by the more vulnerable. It also undermines patients' trust in the health services and may cause serious harm to individuals (e.g., through the use of substandard medical products). In addition, it distorts competition and has serious financial consequences for public health care insurers, and thus for the state budget.

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<sup>1</sup> See <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173>

<sup>2</sup> See <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/174>. Countries which have not yet done so are encouraged to sign and/or ratify this Convention as soon as possible.

The COVID-19 outbreak increases corruption risks. The health sector is particularly exposed, because of the immediate need for medical supplies (and hence simplification of procurement rules), overcrowded medical facilities and overburdened medical staff.

Various typologies of corruption in the health sector include, but are not limited to, the procurement system, bribery in medical-related services, corruption in new product research and development (R&D), including conflicts of interest and the role of lobbying, COVID-19-related fraud. An issue of relevance is oversight and, relatedly, the protection of whistleblowers in the health sector. Finally, the private sector is also exposed to considerable corruption risks. This document addresses in turn the above issues.

*(i) Procurement systems*

Guiding Principle 14 of the Twenty Guiding Principles for the Fight against Corruption<sup>3</sup> calls on GRECO member States “to adopt appropriately transparent procedures for public procurement that promote fair competition and deter corruptors”. The Council of Europe Civil Law Convention on Corruption requires States Parties to provide for effective remedies for persons, both natural and legal persons, who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage.

Governments around the world enact legislation to respond to COVID-19 by ensuring that their health systems are properly equipped. However, while emergency legislation is time-efficient to procure critical medical supplies, it may soften the necessary “checks and balances” on public spending. Procurement systems can also become vulnerable targets for lobbyists.

GRECO had identified the need for a more systematic analysis of the sectors exposed to corruption. This includes public procurement in the health care sector. Greater transparency is key to preventing corruption. Procurement officials should be prohibited from being employed by any businesses with contracts with the officials exercising supervision or control.

*(ii) Bribery in medical-related services*

Corruption risks can be a major concern for hospitals and other medical or medicalised structures struggling to cope with COVID-19, since they face shortages in staff and equipment. Confronted with competing needs and emergencies, corruption may become part of the equation, damaging the individuals concerned and society as a whole. It should be recalled that the Council of Europe Criminal Law Convention on Corruption requires States Parties to criminalise active and passive bribery in the private sector (Articles 7-8) and covers also private healthcare providers. Furthermore, this Convention inspired the provisions criminalising bribery of healthcare professionals and persons working for the private sector in the context of trafficking in human organs.<sup>4</sup>

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<sup>3</sup> Committee of Ministers Resolution CM/Res(97)24 on the Twenty Guiding Principles for the Fights against Corruption, adopted on 6 November 1997.

<sup>4</sup> Article 7, paragraphs 2 and 3 of the Council of Europe Convention against Trafficking in Human Organs (CETS No. 216). See <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/216>

Petty bribery is also an issue that has emerged again in the pandemic context (for access or priority access to medical services, tests and equipment, body collection and burial procedures, circumventing quarantine rules, etc.) even in countries where this was very uncommon. In this context, countries are reminded of the relevant provisions of the Criminal Law Convention on Corruption, Guiding Principle 2 on criminalisation of national and international corruption, and the findings of GRECO's 3<sup>rd</sup> Evaluation Round on incrimination of corruption which are particularly relevant.

Finally, it should also be recalled that Council of Europe Parliamentary Assembly Resolution 1946 (2013) on "Equal access to health care" calls on member States to "introduce measures to combat corruption in the health sector, in close co-operation with the Group of States against Corruption (GRECO)".<sup>5</sup> GRECO stands ready to support its members in this regard, including through its recently developed advisory tools.

*(iii) Corruption in new product research and development (R&D)*

Another process vulnerable to corruption is the investment in research and development of drugs and vaccination against COVID-19. Researchers and scientists are preparing to develop drugs and vaccines against COVID-19. Huge amounts of money are being invested in research and development (R&D).

Therefore, it would be necessary to increase the capacity, authority and public accountability of State institutions entrusted with regulatory and control functions in relation to the management of public resources.

The same can be said of greater risks of conflicts of interest, when health or economic interests are at major stake, e.g. preferential treatment in delivery of services for friends or family members, cronyism, nepotism and favouritism in the recruitment, and more generally, the management of the health care workforce. GRECO recommendations on merit-based recruitment and promotion, working conditions and means, codes of conduct and conflict of interest prevention/integrity enhancing mechanisms are relevant here.

GRECO has often recommended developing a strategy to improve integrity and the management of conflicts of interest with respect to persons entrusted with top executive functions, including through responsive advisory, monitoring and compliance mechanisms. Committee of Ministers Recommendation No. R (2000) 10 on Codes of conduct for public officials is also of relevance.

As regards lobbying, countries should be guided by Committee of Ministers Recommendation No. R (2017) 2 on the legal regulation of lobbying activities in the context of public decision making, and the extensive volume of GRECO recommendations in this area<sup>6</sup>. GRECO also recommends ensuring that all contacts of persons entrusted with top executive functions with lobbyists and other third parties who seek to influence government decision-making are duly reported, including contacts with the legal and authorised representatives of companies and interest groups, and made public. Lobbying transparency is important in relation to both

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<sup>5</sup> See <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=19991&lang=EN>

<sup>6</sup> Summarised here : <https://rm.coe.int/corruption-prevention-members-of-parliament-judges-and-prosecutors-con/16807638e7>

the decisions taken by public authorities and the dissemination of information linked to the pandemic.

Insider trading is also an area of risk and is particularly important for those who, because of their position, have access to privileged information. GRECO's recommendations on declaration of assets, income, liabilities and interests are particularly relevant here, including the need for declarations to be comprehensive, timely and accessible in order to help identify dubious operations, e.g. off-loading stocks, investments in emerging industries during the pandemic) or prevent undue influence on public decision making.

*(iv) Risks of COVID-19-related fraud*

Several international (such as Interpol and the Financial Action Task Force (FATF)) and national (such as FinCen) bodies have issued warnings concerning financial scams related to COVID-19,<sup>7</sup> including in relation to falsified medical products. With masks and other medical supplies in high demand yet difficult to acquire as a result of the COVID-19 pandemic, the offer from fake shops, websites, social media accounts and email addresses claiming to sell these items has grown exponentially online. Unsuspecting victims have seen their money disappear into the hands of the criminals involved. This money is thereafter laundered.

The Council of Europe MEDICRIME Convention<sup>8</sup> requires States to criminalise:

- manufacturing of counterfeit medical products;
- supplying or offering to supply, and trafficking of counterfeit medical products;
- falsification of documents;
- manufacturing, the keeping in stock for supply, importing, exporting, supplying, offering to supply or placing on the market of medicinal products without authorisation and medical devices without being in compliance with the conformity requirements.

In addition, the Council of Europe National AML/CFT Risk Assessment Methodology offers a unique tool to mitigate money laundering risks, including when linked to corruption in the health sector.

*(v) Oversight and the protection of whistleblowers in the health sector*

As emergency legislation shifts power towards the executive, the oversight role of the other branches of power (legislative, judiciary), institutions (ombudsman, anticorruption agencies and other specialised bodies dealing with corruption) and civil society (e.g. community-based responses, information sharing and tracking measures systems, establishment of hotlines for public reporting, etc.) is key. Media have a particular role to play and a specific responsibility. In this regard, I wish to draw attention to the guidance to governments on respecting human

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<sup>7</sup> See, in particular, a Statement by the FATF President: COVID-19 and measures to combat illicit financing, accessible via the following link: <http://www.fatf-gafi.org/publications/fatfgeneral/documents/statement-covid-19.html>

<sup>8</sup> <https://www.coe.int/en/web/medicrime/home>

rights, democracy and the rule of law issued by the Council of Europe's Secretary General on 8 April 2020.<sup>9</sup>

Of particular importance is the need to ensure the protection of persons (whistleblowers) reporting suspicions of corruption, irrespective of the reporting lines they choose to pursue (e.g. directly to law enforcement, other designated public bodies, or the media, without first informing their immediate superiors, or administrative hierarchy they are part of).

Whistleblowing can be key in the fight against corruption and tackling gross mismanagement in the public and private sectors, including the health sector. The Council of Europe recognises the value of whistleblowing in deterring and preventing wrongdoing, and in strengthening democratic accountability and transparency. States should be guided by Committee of Ministers Recommendation CM/Rec(2014)7 on the Protection of Whistleblowers<sup>10</sup>, as well as by GRECO's recommendations in this area, in order to create a favourable environment for whistle-blowers in such critical times.

*(vi) The private sector*

The private sector faces increased corruption risks during this crisis. These risks include facilitation payments/bribes to push ahead processes that may have stalled due to shortages of staff or closure of public offices, falsification of documents to meet the conditions of State aid schemes for pandemic relief measures, bypassing product certification requirements, non-certification of alternative supply chains, donations, lack of resources to supervise misconduct by individual employees, etc.

For this sector, reference should be made to the relevant provisions of the Criminal Law Convention on Corruption<sup>11</sup>, Guiding Principle 5 on the need to prevent the misuse of legal persons to shield corruption, and GRECO's recommendations to the private sector during its 2<sup>nd</sup> Evaluation Round, e.g. on accounting and auditing, corporate liability and compliance programmes, and due diligence obligations.

We are facing extraordinary circumstances during the COVID-19 crises. These are not and should not be a justification to circumvent or abandoning anti-corruption standards. Quite the opposite. Now more than ever we must do our best to maintain and increase measures aiming at preventing corruption and any other unethical behaviour. The key tool is transparency. We owe that to our citizens in order to make our fight against COVID-19 credible and trustworthy.

Link: [www.coe.int/greco](http://www.coe.int/greco)

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<sup>9</sup> <https://www.coe.int/en/web/human-rights-rule-of-law/-/coronavirus-guidance-to-governments-on-respecting-human-rights-democracy-and-the-rule-of-law>

<sup>10</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c5ea5](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c5ea5)

<sup>11</sup> See Articles 7 and 8 in particular.