

# **INTEGRITY OF PUBLIC OFFICIALS IN EU COUNTRIES: INTERNATIONAL NORMS AND STANDARDS**

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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# 1. INTRODUCTION

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“This Treaty marks a new stage in the process of creating an ever closer Union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.”<sup>1</sup>

Good governance and good administration are among the core pillars that form the foundations of the European governance system. The principles of transparency and openness along with the right of citizens to receive impartial, fair and timely administrative services are embedded in the Founding Treaty of the EU and in the EU Charter of Fundamental Rights (EU ChFR). These principles are identical to the ones stipulated in the Universal Declaration of Human Rights and the Council of Europe’s (CoE’s) Convention for the Protection of Human Rights and Fundamental Freedoms.

To support the implementation and translate the stated values into everyday practices, many international organisations such as the UN, EU, CoE, OECD and Transparency International have elaborated a number of policy and legal tools providing guidelines and detailed recommendations on integrity standards to be followed by the public officials working in the institutions of the EU and its member states.

Considering the complexity and the volume of the adopted policy and legal documents, Transparency International undertook the present research with the aim of supporting governments and civil society organisations in making informed decisions regarding the focus of national integrity policies and facilitating their monitoring and advocacy work. The research paper looks at the international anti-corruption and good governance standards, focusing on the anti-corruption norms, defining the work of public officials. The analysis is divided into three main sections: prevention, criminalisation and citizens’ rights. It looks at the standards, overlaps and loopholes in each of the selected sub-fields, thus providing an insight into the most important aspects to be considered in the process of elaboration and monitoring of integrity standards in the public sector.

Due to the enormous amount of literature available on the subject, the research focuses on a number of major policy and legal tools listed in Annex 2. It presents a snapshot of the available principles, standards and mechanisms that can serve as a basis for further studies examining particular anti-corruption solutions.

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<sup>1</sup> Article 1, Treaty on the European Union, Official Journal of the European Union, 2010/C 83/1.

## 2. LIST OF ABBREVIATIONS AND ACRONYMS

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*CoE*: Council of Europe

*CoE CGA*: [Council of Europe Code of Good Administration](#) (Appendix to Recommendation CM/Rec (2007)7 of the Committee of Ministers to Member States on Good Administration)

*CoE CLC*: [Council of Europe Criminal Law Convention on Corruption](#)

*CoE CvLC*: [Council of Europe Civil Law Convention on Corruption](#)

*CoE MCC*: [Council of Europe Model Code of Conduct for Public Officials \(Recommendation 2000/10\)](#)

*CoE RDP*: [Council of Europe Recommendation No. R \(80\) 2 of the Committee of Ministers to the Member States Concerning the Exercise of Discretionary Powers by Administrative Authorities](#)

*CoE RPL*: [Council of Europe Recommendation No. R \(84\) 15 of the Committee of Ministers to the Member States Relating to Public Liability](#)

*CoE RSPO*: [Recommendation No. R \(2000\) 6 of the Committee of Ministers to Member States on the Status of Public Officials in Europe](#)

*CoE RWB*: [Recommendation CM/Rec \(2014\)7 of the Committee of Ministers to Member States on the Protection of Whistle-blowers](#)

*EU ACC*: [EU Convention on Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union](#)

*EU CGAB*: [EU Code of Good Administrative Behaviour](#)

*EU ChFR*: [Charter of Fundamental Rights of the European Union](#)

*EU DPPD*: [Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data](#)

*EU PSP*: [Public Service Principles for EU Public Servants](#) (European Ombudsman)

*EU*: European Union

*GIFT*: Global Initiative for Fiscal Transparency

*GRECO*: Group of states against corruption

*ICCPR*: [International Covenant on Civil and Political Rights](#)

*INTOSAI*: International Standards of Supreme Audit Institutions

*NIS*: [National Integrity System](#)

*OECD RPP*: [Recommendation of the Council on Enhancing Integrity in Public Procurement](#)  
(Principles for Enhancing Integrity in Public Procurement)

*OECD CPP*: [OECD Checklist for Enhancing Integrity in Public Procurement](#)

*OECD PME*: [Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service](#)

*OECD RAD*: [OECD Policy Principles and Recommendations for Public Official Asset Declarations](#)

*OECD RCI*: [Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service](#), C (2003)107

*OECD*: Organisation for Economic Co-operation and Development

*SIGMA standards*: [SIGMA Administrative Law Principles and Civil Service Standards](#)

*TFEU*: [Treaty on the Functioning of the European Union](#)

*TI RWB*: [Transparency International Principles for Whistle-blower Legislation](#)

*UN*: United Nations

*UNCAC*: [United Nations Convention against Corruption](#)

*UNCITRAL*: United Nations Commission on International Trade Law

*UDHR*: [Universal Declaration on Human Rights](#)

# 3. FINDINGS

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The areas of corruption prevention, criminalisation and citizens' rights generating the rights and obligations of public officials are densely regulated by legislative and policy tools adopted by major international organisations such as the UN, EU, CoE and OECD. No inconsistencies have been found among their principles and standards. Differences are found mainly in the level of detail provided. The consistency of the texts results from the fact that some of the major legal tools such as the United Nations Convention against Corruption (UNCAC, 2003) and the EU Public Service Principles (2012) are relatively new and drew on principles already embedded in previously agreed instruments such as the CoE Civil and Criminal Law Conventions on Corruption (1999) and the CoE Recommendation on Good Administration (2007). The following section discusses findings with regard to the instruments selected for review.

- **Measures for prevention of corruption among public officials**

By examining a broader perspective it is important to point out there is no *acquis communautaire* that would set for EU member states a requirement of having an impartial, accountable, honest and transparent public sector. There are a great number of anti-corruption provisions in EU law, but these do not add up to a comprehensive framework. The only binding legal tool extensively regulating prevention of corruption among public officials is UNCAC. The stipulations of the convention are, however, at a very broad policy level. The possible mechanisms for their implementation described in the UNCAC Technical Guide<sup>2</sup>, which has only an advisory function. In this area, the EU, CoE and OECD have adopted soft policy instruments such as codes of conduct, principles, recommendations and guidelines. These leave the individual member states with discretionary power to decide on *how* and *if* to implement the standards in practice. The constantly rising levels of corruption perceptions<sup>3</sup> in some EU member states raise the question of whether this approach is the most effective one.

If we go more into details it is visible that despite the abundance of policy tools, some prevention aspects remain relatively underexplored. One example is the special responsibilities of supervisors for demonstrating and promoting integrity. Although relevant principles are clearly outlined in the CoE Model Code of Conduct for Public Officials (MCC) and in the OECD Principles for Managing Ethics in Public Service (OECD PME), the specific obligations and accountability of managers, are not described. Another example concerns declarations of property and assets of high-level public officials. The guidelines do not specify which family and household members should also file declarations. This leaves a wide discretionary power to members of national parliaments (who are also subject to the regulation) to limit the scope, thus weakening the possibilities for public scrutiny and undermining principles of transparency. Another issue that needs additional attention and where the policy tools are ambiguous is which reporting channel is to be used first by the whistleblower, the internal organisational framework or the external whistleblower channels.

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<sup>2</sup> Technical Guide to the United Nations Convention Against Corruption, available at [www.unodc.org/unodc/en/treaties/CAC/technical-guide.html](http://www.unodc.org/unodc/en/treaties/CAC/technical-guide.html)

<sup>3</sup> See the Transparency International Corruption Perception Index, available at [www.transparency.org/research/cpi/overview](http://www.transparency.org/research/cpi/overview)

- **Criminalisation of corrupt activities of public officials**

This area is covered by three major conventions: UNCAC, the CoE Criminal Law Convention on Corruption (CoE CLC) and the EU Convention on Fight against Corruption (EU ACC). The stipulations of the EU ACC, of the CoE CLC and the mandatory provisions of UNCAC have an obligatory character for all EU member states (see Annex 1). UNCAC has the broadest scope, including non-mandatory offences not included in the EU and CoE conventions such as illicit enrichment abuse of functions and concealment. On the topic of lifting of immunities, the conventions do not create a specific framework but refer to the procedures established in national legislation and other international norms. This approach may hinder the investigation and prosecution of high-level corruption cases.

- **Citizens' rights (obligations of public officials)**

This area is covered by major legal tools such as the Treaty on the Functioning of the European Union (TFEU), the Universal Declaration on Human Rights (UDHR), [International Covenant on Civil and Political Rights](#) (ICCPR), the European Convention for Protection of Human Rights and Fundamental Freedoms, and the EU ChFR. The rights to good administration, privacy/personal data protection, information, fair trial and appeal, along with the rights to remedies and to petition, are fundamental human rights and as such enjoy the highest legal protection. Any violation of these rights can be the subject of a petition to the European Court of Human Rights, Court of Justice of the European Union, European Parliament and European Ombudsman.

- **Monitoring and compliance**

Compliance with the above standards is subject to intergovernmental monitoring arrangements in the form of the UNCAC review mechanism, the Group of states against corruption (GRECO) (monitoring the Twenty Guiding Principles for the Fight against Corruption, CoE Civil and Criminal Law Conventions on Corruption, the MCC and other soft policy tools); and the EU anti-corruption report (looking at the overall anti-corruption efforts in every member state). In addition, Transparency International has developed and applied a National Integrity System (NIS) monitoring tool. NIS monitoring assesses the key governance institutions and determines the discrepancies between the legal framework for those institutions and the actual practice. Although the NIS mainly remains on institutional level there are some indicators that are relevant for the examination of the integrity standards to be followed by the public officials.

Although there are many instruments that set out integrity standards for public officials, given that UNCAC is the latest major international instrument adopted by all member states, it encompasses the principles already stated in other policy tools. The UNCAC Technical Guide therefore can be used as a quick and easy reference for public sector integrity policies, providing useful explanations and recommendations. The assessment framework provided by the Transparency International NIS<sup>4</sup> can also be used as a reference point for evaluating the integrity standards applied at national level.

As is shown in Annex 1, the topic of the second evaluation cycle of UNCAC (2015-2020) will be prevention and asset recovery, while the fourth evaluation round of GRECO focuses on prevention of corruption in respect of members of parliament, judges and prosecutors.

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<sup>4</sup> Available at [www.transparency.org/files/content/nis/NISIndicatorsFoundations\\_EN.pdf](http://www.transparency.org/files/content/nis/NISIndicatorsFoundations_EN.pdf)



# 4. GENERAL PRINCIPLES, DEFINITIONS AND APPROACHES

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## 4.1 PRINCIPLES

The fight against corruption is preconditioned on the existence of and adherence to the following main principles of governance:

- principles of rule of law and of representative government
- principles of integrity, transparency, accountability and independence
- principle of public participation

The link between those principles and the fight against corruption is explicitly stated in the preambles of the major anti-corruption conventions. The CoE CLC highlights that corruption “threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society”. To overcome this threat, UNCAC underscores that the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law should be reinforced.

The integrity of public officials in executing governance functions plays an important role in upholding the above principles. The main elements that form integrity in personal performance are fairness, objectivity, political neutrality, honesty, non-discrimination, transparency, accountability, responsiveness, reasonable use of public resources, and appropriate conduct towards the public. These elements are commonly accepted and should be followed by all public officials irrespective of their position, type of recruitment (elected or appointed) or type of agency they represent (executive, legislative or judiciary). Yet some variations may apply depending on the branch of government, the specialisation of the institution and the position held. For example:

- Special rules in terms of *disclosure of property and income* apply to holders of public offices, their family and household members (high-level officials from the executive, legislature and judiciary).
- *Special vetting procedures* (integrity checks, lifestyle monitoring, preliminary employment vetting) may apply to public officers working in law enforcement bodies and bodies highly exposed to corruption risks (public procurement, customs, etc.).
- Requirements for *political neutrality and non-participation* in political parties’ activities apply for officials working within the public administration, external oversight bodies, law enforcement and judiciary branches.
- *Functional immunity* related to the work in the judiciary and legislature can be applied.
- *Higher sanctions for misconduct* (corruption crimes) may apply to representatives of the judiciary (judges, prosecutors and investigators), law enforcement (police, military, etc.), legislature (members of the parliament) and executive (ministers, heads of agencies, etc.).
- *Protection from civil litigation* for activities executed within the competences and authority of the organisation may apply to officials working in anti-corruption specialised bodies.
- Rules may prohibit convicted corruption offenders from running for elected positions or holding high-level positions in the executive.

## 4.2 MAIN DEFINITIONS

For the purposes of the current research, the following definitions contained in the Transparency International Anti-corruption Plain Language Guide (2009) are used:

- **accountability:** the concept that individuals, agencies and organisations (public, private and civil society) are held responsible for executing their powers properly
- **code of conduct:** statement of principles and values that establishes a set of expectations and standards for how an organisation, government body, company, affiliated group or individual will behave, including minimal levels of compliance and disciplinary actions for the organisation, its staff and its volunteers
- **conflict of interest:** situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests
- **corruption:** the abuse of entrusted power for private gain
- **ethics:** based on core values, a set of standards for conduct in government, companies and society that guides decisions, choices and actions
- **governance:** a concept that goes beyond the traditional notion of government to focus on the relationships among leaders, public institutions and citizens, including the processes by which they make and implement decisions
- **integrity:** behaviours and actions consistent with a set of moral or ethical principles and standards, embraced by individuals as well as institutions, that create a barrier to corruption
- **rule of law:** legal and political systems, structures and practices that condition a government's actions to protect citizens' rights and liberties, maintain law and order, and encourage the effective functioning of the country
- **transparency:** characteristic of governments, companies, organisations and individuals of being open in the clear disclosure of information, rules, plans, processes and actions
- **whistleblowing:** the sounding of an alarm by an employee, director, or external person, in an attempt to reveal neglect or abuses within the activities of an organisation, government body or company (or one of its business partners) that threaten public interest, its integrity and its reputation

## 4.3 RESEARCH APPROACH AND RESERVATIONS

The next three sections look at the rights and obligations of public officials in some of the most significant areas of prevention and criminalisation of corruption. The analysis is built on a comprehensive review of the major legal and policy anti-corruption tools elaborated by the UN, CoE, OECD, EU and Transparency International. The documents referred to below contain the most significant principles and standards to be followed by public officials in each of the selected sub-areas. Nonetheless, the following reservations apply:

- The scope of the analysis is limited to a pool of documents preselected by Transparency International (see Annex 2).
- Although the analysis presents the standards applicable to public officials in general, it should be noted that the different policy/legal tools adopt different definitions of a public official. In many cases they exclude the elected representatives and certain categories of staff (e.g. members of the government and holders of judicial office).<sup>5</sup> Having this in mind, the tables below aim to give a comparative overview of the main applicable

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<sup>5</sup> CoE MCC, CoE RSPO and EU PSP for example have a narrower scope compared to UNCAC.

standards and principles. **Where applicable, the light grey shading shows that the principles embedded in the legal and policy tools promote similar standards while dark grey signals that the principle is promoted in a single document.** It should be noted however that due to the different nature and objectives of the documents (legal and policy tools) full comparison is not possible.

# 5. PREVENTION MEASURES FOR PUBLIC OFFICIALS

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Prevention is key for achieving a long, sustainable-term impact in the fight against corruption. Moreover, effective prevention ensures diminishes the need for law enforcement measures.

The current section looks at the elements of prevention that are applicable to public officials, and form part of the public sector integrity system requirements. The main principles and standards in this area are provided by UNCAC, the CoE Civil and Criminal Law Conventions on Corruption, the Public Service Principles for EU Civil Servants (EU PSP), as well as various recommendations of the CoE, OECD and Transparency International. In addition, public procurement standards are covered by the UNCITRAL Model Law Standards and EU directives on public procurement, while standards for public financial management have been developed by INTOSAI and the International Monetary Fund.

The most comprehensive document to cover all prevention aspects is UNCAC. The convention was adopted in 2003, following a broad discussion that surveyed the standards in all existing international tools. It reiterates and broadens most of the principles already embedded in the CoE Civil and Criminal Law Conventions on Corruption, CoE recommendations and EU established practices. Further, the practical steps for the implementation of UNCAC are spelled out in the UNCAC Technical Guide.

## 5.1. NATIONAL ANTI-CORRUPTION STRATEGIES AND PLANS

- According to UNCAC, each party should “develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability” (Article 5 paragraph 1).
  - The UNCAC Technical Guide advises States Parties to base their strategies and action plans on a well-developed corruption risk assessment. Such an assessment helps to: 1) build an evidence-based approach to anti-corruption efforts;<sup>6</sup> 2) direct the resources to the areas that are most critical for the respective country; and 3) ensure that sufficient attention is given to public sector jobs, activities or sectors that are particularly vulnerable to corruption.
- When it comes to elaboration of anti-corruption strategies, the Kuala Lumpur Statement on Anticorruption strategies<sup>7</sup> recommends that the focus of the strategy is mainly put on

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<sup>6</sup> The evidence based approach is underpinned by Article 61 of UNCAC, which prescribes that “each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed” and “each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.”

<sup>7</sup> United Nations Office on Drugs and Crimes, 2013, Kuala Lumpur Statement on Anticorruption strategies, 2013, Asia Regional Meeting on Anti-Corruption Strategies, available at

the process of development (evidence based, involving all stakeholders), design and content (SMART (Specific, Measurable, Achievable, Realistic and Timely) objectives, proper prioritisation, institutional and financial sustainability), and monitoring and evaluation. Thus the rights and obligations that may apply to public officials in relation to the national anti-corruption strategies are dependent on the particular actions and directions undertaken at the national level.

## 5.2 DEFINITION OF PUBLIC OFFICIAL

The UN Convention provides a broad definition of “public official” that encompasses all officials identified as public officials in the domestic laws of the States Parties. The UNCAC definition also covers any other officials working in the public sector including elected officials and officials working in the legislature irrespective of how they came into the position (appointed or elected) and the type of employment (permanent or temporary, paid or unpaid). The CoE CLC follows a similar approach, including in the definition any person who holds the position of “official”, “public officer”, “mayor”, “minister” or “judge” under domestic criminal law. The EU ACC covering officials of the European Community or officials of member states of the EU includes in its scope all Community and national officials.

The definitions of public officials provided are largely similar. Since all EU member states adhere to UNCAC and the EU ACC and almost all member states have ratified the CoE CLC (see Annex 1), the broadest definition of public official (the UNCAC definition) must be applied under domestic law.

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[http://www.unodc.org/documents/southeastasiaandpacific/2013/10/corruption/Kuala\\_Lumpur\\_Statement\\_on\\_Anti-Corruption\\_Strategies\\_Final\\_21-22\\_October\\_2013.pdf](http://www.unodc.org/documents/southeastasiaandpacific/2013/10/corruption/Kuala_Lumpur_Statement_on_Anti-Corruption_Strategies_Final_21-22_October_2013.pdf)

## Public official

UNCAC	COE CLC	EU ACC
<p>“Public official shall mean:            (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or <b>elected</b>, whether <b>permanent or temporary</b>, whether paid or unpaid, irrespective of that person’s seniority;            (ii) <b>any other person who performs a public function, including for a public agency or public enterprise</b>, or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) <b>any other person defined as a “public official” in the domestic law of a State Party</b>. However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.” (Article 2, <i>[emphasis added]</i>)</p>	<p>“Any person that holds the position of <b>‘official’, ‘public officer’, ‘mayor’, ‘minister’ or ‘judge’</b> under the domestic law of contracting party.” (Article 1, <i>[emphasis added]</i>)</p>	<p>“‘Official’ shall mean any Community or national official, including any national official of another Member State;            (b) ‘Community official’ shall mean:            - any person who is an <b>official or other contracted employee</b> within the meaning of the Staff Regulations of officials <b>of the European Communities</b> or the Conditions of Employment of other servants of the European Communities,            - any <b>person seconded to the European Communities</b> by the Member States or by any public or private body, who carries out functions equivalent to those performed by European Community officials or other servants. Members of bodies set up in accordance with the Treaties establishing the European Communities and the staff of such bodies shall be treated as Community officials, inasmuch as the Staff Regulations of officials of the European Communities or the Conditions of Employment of other servants of the European Communities do not apply to them;            (c) ‘national official’ shall be understood by reference to the definition of <b>‘official’ or ‘public officer’ in the national law</b> of the Member State in which the person in question performs that function for the purposes of application of the criminal law of that Member State.” (Article 1, <i>[emphasis added]</i>)</p>

## 5.3. CONDITIONS OF SERVICE (RECRUITMENT, HIRING, RETENTION, PROMOTION, ROTATION AND RETIREMENT; REMUNERATION)

The establishment and maintenance of high integrity within the public sector is a priority area for anti-corruption prevention. The CoE Recommendation No. R (2000) 6 of the Committee of Ministers to Member States on the Status of Public Officials in Europe (CoE RSPO) and UNCAC provide the most comprehensive standards applicable to the conditions of service. Their stipulations are further reinforced by the SIGMA Administrative Law Principles and Civil Service Standards (SIGMA standards), OECD Principles for Managing Ethics in Public Service (OECD PME) and Council of Europe Model Code of Conduct for Public Officials (CoE MCC). The following standards apply under this policy framework:

- The systems for **recruitment, retention, promotion and retirement** of public officials and other non-elected officials should be based on the principles of **efficiency, effectiveness, merit, equity and aptitude** (UNCAC, CoE RSPO, OECD PME, SIGMA standards).
- Public officials should be provided with **adequate remuneration and pay scales** (UNCAC, CoE RSPO, SIGMA standards).
- Special measures should be applied for corruption-prone positions. These include: rotation and pre-screening; integrity training and specific checks and audits; lifestyle monitoring; and application of the four eyes principle (UNCAC, CoE MCC).
- **Permanent training** for career development, including ethics training, should be provided to public officials (UNCAC, CoE RSPO, SIGMA standards).
- **Individual accountability** for the decisions made and actions undertaken should be promoted. Failure to properly execute the functions allocated to the position may result in **disciplinary sanctions** (UNCAC, SIGMA standards, CoE RSPO, OECD PME).
- Promotion of **participation or consultation of staff in decision-making processes** concerning the organisation, structure and principles governing the exercise of public functions should be encouraged (CoE RSPO).

The UNCAC Technical Guide provides further guidelines by promoting: the elaboration of job profiles with clearly stated requirements, qualifications and responsibilities; transparency in advertisement and selection of the candidates for the position; job contracts containing duties, rights and remuneration; unbiased systems for promotion; effective performance appraisal systems; rotation and pre-screening; integrity training and specific checks and audits; lifestyle monitoring; and training for career development including ethics training.

The CoE MCC puts a special emphasis on the responsibilities of the supervisors in promoting ethics, preventing corruption and leading by example.

Whether an integrity framework is effective and how it is applied can be assessed by using the NIS<sup>8</sup>, which provides a comprehensive list of questions, providing a snapshot of the implementation level of the above mentioned standards.

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<sup>8</sup> The National Integrity System evaluates key 'pillars' in a country's governance system, both in terms of their internal corruption risks and their contribution to fighting corruption in society at large. When all the pillars in a National Integrity System are functioning well, corruption remains in check. If some or all of the pillars wobble, these weaknesses can allow corruption to thrive and damage a society. A National Integrity System assessment examines both the formal framework of each pillar and the actual institutional practice. The analysis highlights discrepancies between the formal provisions and reality on the ground, making it clear where there is room for improvement.

## Conditions of service

	UNCAC AND ITS TECHNICAL GUIDE (ARTICLE 7)	COE RECOMMENDATIONS/ INSTRUMENTS	OECD PRINCIPLES FOR MANAGING ETHICS IN PUBLIC SERVICE	ADMINISTRATIVE LAW PRINCIPLES AND CIVIL SERVICE STANDARDS (SIGMA)
<b>Recruitment-transparency</b>	<b>Job profiles with clearly stated</b> requirements and qualifications Job contracts should contain <b>duties, rights and remuneration</b>	<b>Recruitment systems</b> and procedures should be <b>open and transparent</b> , and their rules should be <b>clear</b> . (CoE RSPO)	Public service employment conditions, such as <b>career prospects, personal development, adequate remuneration and human resource management policies</b> should create an environment conducive to <b>ethical behaviour</b> . Using basic principles, such as <b>merit, consistently</b> in the daily process of <b>recruitment and promotion</b> helps operationalise integrity in the public service	The legal framework should ensure that the principles of <b>merit-based recruitment and promotion, fair salary treatment, and equal rights and duties</b> , are homogeneously disseminated, understood and upheld throughout the public administration as a whole. There should be sufficient <b>job protection, stability, and level of pay</b> , and <b>clearly defined rights and duties of civil servants</b>
<b>Recruitment-merit</b>	<b>The advertisement and selection</b> of the candidates for the position should be <b>transparent</b>	<b>Recruitment</b> of public officials should be defined by equality of access to public posts and be <b>based on merit, fair and open competition</b> and in the <b>absence of discrimination</b> . (CoE RSPO)		
<b>Promotion</b>	<b>Unbiased systems of promotion</b> should be set in place	<b>Promotion based on merit</b> (CoE RSPO)		
<b>Remuneration</b>	<b>Adequate remuneration</b> and pay scales should be ensured	Public officials should have <b>adequate remuneration</b> commensurate with their responsibilities and function. (CoE RSPO)		
<b>Performance appraisal</b>	<b>Effective performance appraisal systems</b> to determine effectiveness, career progression, training needs and promotion		<b>Effective performance assessment systems</b> as an additional incentive for ethical conduct	



	UNCAC AND ITS TECHNICAL GUIDE (ARTICLE 7)	COE RECOMMENDATIONS/ INSTRUMENTS	OECD PRINCIPLES FOR MANAGING ETHICS IN PUBLIC SERVICE	ADMINISTRATIVE LAW PRINCIPLES AND CIVIL SERVICE STANDARDS (SIGMA)
<b>Measures of corruption-prone positions</b>	<b>Rotation and pre-screening; integrity training, specific checks and audits; lifestyle monitoring</b>	The Human resource departments are responsible for conducting <b>pre-appointment integrity checks</b> . (Article 24 of CoE MCC)		
<b>Training</b>	<b>Training for career development</b> including ethics (specialised training for officials in vulnerable positions)	Public officials have <b>the right and the duty to undergo relevant training</b> without discrimination. (CoE RSPO)	Training that <b>facilitates ethics awareness</b>	<b>Regular training for career development</b> and ensuring quality of services
<b>Accountability</b>	Public servants should be held <b>accountable for their actions</b> .	Public officers are <b>accountable to their immediate supervisor</b> unless otherwise prescribed by the law. (CoE MCC) <b>Failure</b> by public officials to <b>fulfil their duties</b> , whether intentionally or through negligence, may lead to the institution of <b>disciplinary proceedings</b> . (CoE RSPO)	Mechanisms promoting <b>accountability</b> can be <b>designed to provide adequate controls</b> while allowing for appropriately flexible management.	Each public official should be <b>held individually to account</b> for the decisions made and actions undertaken. This implies that responsibilities and competencies within public administration are clearly defined.
<b>Supervisory accountability for preventing corruption</b>		Emphasising and enforcing rules and regulations, <b>providing appropriate education</b> or training, <b>being alert to signs of financial or other difficulties</b> of his or her staff, and providing by his or her personal conduct an <b>example of propriety and integrity</b> . (Article 25 of CoE MCC)	Managers should <b>demonstrate and promote ethical conduct</b> .	

	UNCAC AND ITS TECHNICAL GUIDE (ARTICLE 7)	COE RECOMMENDATIONS/ INSTRUMENTS	OECD PRINCIPLES FOR MANAGING ETHICS IN PUBLIC SERVICE	ADMINISTRATIVE LAW PRINCIPLES AND CIVIL SERVICE STANDARDS (SIGMA)
Participation/ consultation		Public administrations should <b>promote participation or consultation of staff in decision-making processes</b> concerning the organisation, structure and principles governing the exercise of public functions. (CoE RSPO)		

## 5.4. SPECIAL INTEGRITY FRAMEWORK

The main integrity standards for public officials are set by the UN, CoE and OECD. The general standards refer to fairness, objectivity, honesty, non-discrimination, integrity, transparency, accountability, responsiveness, reasonable use of public resources, and appropriate conduct towards the public. The application of these principles includes obligations for:

- acting in an **honest, lawful and respectful manner** in the execution of public functions (UNCAC; CoE MCC; EU PSP; OECD RCI).
- being **courteous** and **respectful** with each other and citizens. This requires public officials to be **polite, helpful, timely and cooperative** (CoE MCC; EU PSP).
- **disclosure of financial interest and assets** (UNCAC; OECD RAD). Depending on the level/position held, different types of information must be disclosed. The same principle applies to the subjects of disclosure. In some cases the wealth/assets of close relatives and household members may also be subject to monitoring and disclosure. OECD RAD prescribes also that certain categories of public officials (e.g. elected officials, senior executive or judicial officials) should file separate asset declarations available to the wider public.
- **avoidance and disclosure of any real, potential or perceived conflict of interests** (UNCAC; OECD RCI; CoE MCC; EU PSP). The OECD goes beyond mere declaration of interests, recommending that public officials **avoid private-capacity actions** which could derive an **improper advantage** from “**inside information**” obtained in the course of official duties, where the information is not generally available to the public.
- **avoidance and disclosure of incompatibilities**. Such incompatibilities should be resolved before assumption of duties (UNCAC; CoE MCC). For some activities, permission of the employer can be sought (CoE MCC).
- restrictions on using an official’s position to gain employment outside of the public service and post-employment restrictions (UNCAC; OECD RCI; CoE MCC; EU PSP). This also includes a ban on using privileged information obtained in the previous public service position (OECD RCI). The CoE MCC prolongs the obligation for avoidance of conflicts of interest and the appearance of such conflicts until after the official leaves the office.

- general **ban on receiving undue advantages,<sup>9</sup> gifts, favours, hospitality** or any other advantage in relation to the execution of functions (UNCAC; OECD RCI; CoE MCC; EU PSP).
- the CoE MCC gives detailed guidelines on **procedures** to be followed by public officials **if they receive an improper offer.**<sup>10</sup> Although the CoE MCC is a recommendation and compliance with it is not mandatory, in many EU jurisdictions civil servants are legally required to report criminal offences and bribery attempts are also criminalised.<sup>11</sup>
- ban on using public resources for private or other purposes (UNCAC; CoE MCC).
- adherence to **codes of conduct** promoting **integrity, honesty, objectivity and responsibility** and ensuring **honourable and proper performance of public functions** (UNCAC; OECD RCI; CoE MCC; EU PSP). Apart from prescribing integrity for all public officials, the OECD highlights the important role of the supervisors, requiring them to provide leadership, demonstrate and promote ethical conduct.
- **non-compliance** with the codes of conduct/ethics may lead to **disciplinary sanctions** (UNCAC; OECD RCI; CoE MCC).
- UNCAC and OECD RPSE prescribe the establishment of **integrity support systems/officers** who can support the employees in cases of ethical dilemmas. The CoE MCC entrusts the supervisors with the same role.

The execution of the above standards should be fostered by specialised integrity training for personnel working in corruption-prone areas, along with general awareness-raising training in ethics for all public officials (Article 7 of UNCAC). Such training should be carried out both in the initial stages after the recruitment and throughout the whole professional life of the public officials. It should be linked with the codes of conduct/ethics adopted in the public sector. In building the integrity framework, Article 8.3 of UNCAC advises adherence to the regional, interregional and multilateral standards and initiatives (e.g. CoE, OECD).

The CoE MCC was adopted by the Council of Ministers in 2000 with the aim of describing the basic standards to be adhered to in the public service in Europe. The code preceded the adoption of UNCAC and provided the foundation for inclusion of the principles of lawfulness, integrity, honesty, loyalty, non-discrimination, political neutrality, impartiality and courtesy in the UN Convention. The OECD PME stresses the ethical measures to be set in place. At EU level, the same principles are reiterated in the EU PSP and the EU Code of Good Administrative Behaviour (CGAB). Although the EU PSP are applicable only to EU civil servants, they provide an example of the principles to be followed by the EU member states and serve as an inspiration for the elaboration of national codes of good administration.

As for the judiciary, the Bangalore Principles of Judicial Conduct, CoE Recommendation CM/Rec (2010)12 on Judges, as well as the Standards of Professional Responsibility and International Association of Prosecutors' Statement of the Essential Duties and Rights of Prosecutors proclaim similar principles. Independence, impartiality, integrity, propriety, equality, competence and diligence are the key qualities that should characterise the work of every magistrate (judge or prosecutor). Special attention is paid to the propriety and the appearance of propriety, considered essential to the performance of all of the activities of a judge. The standards for judges and prosecutors vary according to the characteristics of these offices. The requirement of guaranteeing every person the fundamental right to have their case decided in a fair trial is an overarching standard. The

<sup>9</sup> The UNCAC Legislative Guide prescribes that undue advantage may be of a pecuniary or non-pecuniary nature and may also be tangible or intangible.

<sup>10</sup> Refusing the undue advantage, identifying the person who made the offer, finding out the reason, obtaining a witness/evidence and reporting to the superior/law enforcement.

<sup>11</sup> Transparency International, *Whistleblowers in Europe: Legal Protections for Whistleblowers in the EU* (Transparency International, 2013), available at [www.transparency.org/whatwedo/publication/whistleblowing\\_in\\_europe\\_legal\\_protections\\_for\\_whistleblowers\\_in\\_the\\_eu](http://www.transparency.org/whatwedo/publication/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu)

requirement of independence does not apply to the executive<sup>12</sup> but is essential for judges and to a limited extent for prosecutors.

Beyond the judiciary, independence is also an important standard for external auditors, as detailed in INTOSAI's International Code of Ethics for auditors in the public sector.<sup>13</sup>

The public sector integrity framework and its application in the executive, legislature and judiciary are tested by key indicators included in the Transparency International NIS.

## Special Integrity Framework

	UNCAC AND ITS TECHNICAL GUIDE (ARTICLE 8) (2003)	COE MCC (2000)	PUBLIC SERVICE PRINCIPLES FOR THE EU CIVIL SERVICE (2012)	OECD RECOMMENDATIONS/ INSTRUMENTS OECD PME (1998), OECD RCI (2003), OECD RAD (2011)
<b>Standards of behaviour</b>	Public servants should act in an <b>honest, lawful and respectful manner.</b>	Public officials should <b>obey the law and obey ethical standards.</b> (Article4)	Civil servants should carry out their functions to the best of their abilities and strive to meet the <b>highest professional standards</b> at all times. Civil servants should <b>have integrity and be objective, respectful transparent and accountable</b> for their actions.	Public officers should act with <b>integrity and in an impartial and non-discriminatory manner</b> and base their decisions on merit. (OECD RCI)

<sup>12</sup> "The public official has the duty to serve loyally the lawfully constituted national, local or regional authority." (art. 5 of CoE MCC)

<sup>13</sup> In executing their oversight functions, the national supreme audit institutions should be guided by the INTOSAI Code of Ethics. The values of the Code, largely refer to the values examined in the previous sections and include: trust, confidence and credibility, integrity, independence, objectivity and impartiality; political neutrality, competence and professional development; professional secrecy in dealing with information. In their work, auditors are urged to maintain irreproachable standards of professional conduct, make decisions with the public interest in mind, and apply absolute honesty in carrying out their work. This includes avoidance of any possible conflict of interests, ban for receiving gifts and undue advantages from audited bodies, prohibition for use of official position for private purposes. The auditors should also maintain professional secrecy (with the exceptions foreseen by supreme audit institutions' normal procedures or in accordance with relevant laws).

	UNCAC AND ITS TECHNICAL GUIDE (ARTICLE 8) (2003)	COE MCC (2000)	PUBLIC SERVICE PRINCIPLES FOR THE EU CIVIL SERVICE (2012)	OECD RECOMMENDATIONS/ INSTRUMENTS OECD PME (1998), OECD RCI (2003), OECD RAD (2011)
(1) Disclosure (2) Conflict of interest (3) Inside information	Procedures for <b>disclosure of financial and family interests and assets</b> ; provisions for <b>avoiding conflict of interest</b> should be set in place.	Public officials should avoid any <b>potential, real or apparent conflict of interest</b> , and <b>disclose and declare</b> any cases of such. Any conflict of interest should be resolved before appointment. Public officials should <b>withdraw</b> from processes <b>where they have personal interests conflicting with those of the state.</b> (Articles 13-14)	Civil servants should take steps <b>to avoid conflicts of interest and the appearance of such conflicts.</b> They should take <b>swift action to resolve any conflict that arises.</b>	<ul style="list-style-type: none"> <li>- Public officials should <b>dispose of, or restrict the operation of, private interests</b> that could compromise official decisions in which they participate. Where this is not feasible, a public official should <b>abstain from involvement in official decisions which could be compromised by their private-capacity interests and affiliations.</b></li> <li>- <b>Any outside interests</b> that may be in conflict with the public function <b>should be disclosed.</b></li> <li>- <b>Public officials should avoid actions in their private-capacity that could derive an improper advantage from “inside information”</b> obtained in the course of official duties, where the information is not generally available to the public, and are required not to misuse their position and government resources for private gain. (OECD RCI)</li> <li>- <b>Certain categories</b> of public officials (e.g. elected officials, senior executive or judicial officials) should <b>file separate asset declarations that should be available to the wider public.</b> (OECD RAD)</li> </ul>

	UNCAC AND ITS TECHNICAL GUIDE (ARTICLE 8) (2003)	COE MCC (2000)	PUBLIC SERVICE PRINCIPLES FOR THE EU CIVIL SERVICE (2012)	OECD RECOMMENDATIONS/ INSTRUMENTS OECD PME (1998), OECD RCI (2003), OECD RAD (2011)
<b>Incompatibilities</b>	Procedures should be put in place for <b>avoidance and disclosure of incompatibilities.</b>	Public officials <b>should not engage in activities</b> that are <b>not compatible</b> with their position. For some activities they may <b>seek permission from their employer.</b> (Article15)		
<b>Post-resignation and post-employment restrictions</b>	<b>Post-resignation and post-employment restrictions</b> may apply in some cases (depending on the position).	Public officials should <b>not take advantage of their positions to acquire employment outside</b> of the public service. <b>Post-employment restrictions may apply.</b> (Article 26)	The obligation to <b>avoid conflicts of interest</b> and the appearance of such conflicts remains <b>after the official leaves</b> the office.	Public officials are expected <b>not to take improper advantage of a public office or official position</b> that they <b>held previously</b> , including privileged information obtained in that position, especially when seeking employment or appointment after leaving public office. (OECD RCI)
<b>(1) Gifts (2) Gift registers (3) Improper benefit</b>	Regulations governing the procedures for <b>acceptance and rejection of gifts and hospitality and gift registers</b> should be adopted.	Public officers <b>should not take any undue advantage or receive gifts, favours, hospitalities or any other advantage</b> in relation to the execution of their functions (minor gifts and conventional hospitality are accepted). (Article 9)	Civil servants <b>should not place themselves under any financial or other obligation</b> that might influence them in the performance of their functions, including by the receipt of gifts.	Public officials should not seek or accept <b>any form of improper benefit</b> conferred in the expectation of influencing the performance or non-performance of official duties or functions. (OECD RCI)

	UNCAC AND ITS TECHNICAL GUIDE (ARTICLE 8) (2003)	COE MCC (2000)	PUBLIC SERVICE PRINCIPLES FOR THE EU CIVIL SERVICE (2012)	OECD RECOMMENDATIONS/ INSTRUMENTS OECD PME (1998), OECD RCI (2003), OECD RAD (2011)
(1) Integrity (2) Honesty (3) Impartiality	Adherence to the <b>code of conduct</b> promoting <b>integrity, honesty, objectivity and responsibility</b> and ensuring <b>honourable and proper performance</b> of public functions.	Public officials should act in a <b>politically neutral manner</b> , be <b>honest, impartial and efficient</b> , and <b>act only in the public interest</b> . Public officials should not be allowed to be used for partisan political purposes. (Article 4-9)	Civil servants should be <b>impartial, open-minded, guided by evidence</b> , and <b>willing to hear different viewpoints</b> . They should be ready to acknowledge and correct mistakes. In procedures involving comparative evaluations, civil servants should base <b>recommendations and decisions only on merit</b> and any other factors expressly prescribed by law. Civil servants should <b>not discriminate</b> or allow the fact that they like, or dislike, a particular person to influence their professional conduct.	Ethical standards should be clear and embedded in the legal framework. <b>Management policies, procedures and practices should promote ethical conduct. Managers should demonstrate and promote ethical conduct.</b> (OECD PME) Clear rules, procedures and guidelines for avoidance and disclosure of conflict of interests should be included in the code of conduct. Provide procedures for establishing a conflict of interest offence, and proportional consequences for non-compliance with conflict of interest policy including disciplinary sanctions. (OECD RCI)
Integrity support systems	<b>Integrity support systems/officers</b> helping in cases of ethical dilemmas	In <b>cases of uncertainly</b> regarding gift or hospitality issues, advice should be sought from the <b>supervisor</b> (Article 18)		<b>Guidance and internal consultation mechanisms</b> should be made available to help public servants apply ethical standards.(OECD PME)
Dealing with improper offers		Public officials should <b>follow a predefined procedure</b> if they receive improper offers.		
Misuse of public resources	<b>Responsible use of public resources.</b>	Public officers <b>should not misuse</b> their position or <b>public resources</b> for private gains. (Article 21 and 22)		

	UNCAC AND ITS TECHNICAL GUIDE (ARTICLE 8) (2003)	COE MCC (2000)	PUBLIC SERVICE PRINCIPLES FOR THE EU CIVIL SERVICE (2012)	OECD RECOMMENDATIONS/ INSTRUMENTS OECD PME (1998), OECD RCI (2003), OECD RAD (2011)
<b>Disciplinary sanctions</b>	<b>Disciplinary sanctions</b> in cases of non-compliance with the code	<b>Disciplinary sanctions</b> apply in cases of non-compliance with the code (Article 27).		It is necessary to have reliable procedures and resources for <b>monitoring, reporting and investigating breaches</b> of public service rules, as well as commensurate administrative or <b>disciplinary sanctions</b> to discourage misconduct. (OECD PME)
<b>Workplace relations and relations with the public</b>		Civil servants should be <b>courteous</b> in their relations with citizens and with their colleagues and supervisors.	Civil servants should <b>act respectfully</b> with each other and with citizens. They should be <b>polite, helpful, timely, and cooperative.</b>	



## Standards of independence

UNCAC (2003)	COE RECOMMENDATION ON JUDGES (2010)	BANGALORE PRINCIPLES (2002)	IAP STATEMENT (2008)	INTOSAI CODE OF ETHICS (1998)
<p>“without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.”</p> <p>“Measures to the same effect [...] may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.” (Article 11)</p>	<p><i>chapters of the recommendation:</i></p> <p><b>Judicial independence and the level at which it should be safeguarded</b></p> <p><b>External independence</b></p> <p><b>Internal independence</b></p> <p><b>Councils for the judiciary</b></p> <p><b>Independence, efficiency and resources</b></p> <p><b>Status of the judge</b></p> <p><b>Duties and responsibilities</b></p> <p><b>Ethics of judges</b></p>	<p>“Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects”</p>	<p>“prosecutorial discretion [...] should be exercised independently and be free from political interference”</p> <p>“If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be: transparent; consistent with lawful authority; subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.”</p> <p>“Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.”</p>	<p>“Independence from the audited entity and other outside interest groups is indispensable for auditors.”</p> <p>“It is essential that auditors are independent and impartial, not only in fact but also in appearance.”</p> <p>“In all matters relating to the audit work, the independence of auditors should not be impaired by personal or external interests.”</p>

## 5.5 PROTECTION OF REPORTING PERSONS / REPORTING CHANNELS

The protection of reporting persons (whistleblowers) is regulated by a number of legal instruments (UNCAC; CoE CLC; CoE Civil Law Convention on Corruption (CvLC)) and policy tools (CoE MCC; CoE RWB; TI RWB). UNCAC uses the term “reporting persons” instead of “whistleblowers” as the latter is considered a colloquialism that cannot be accurately translated in many languages. The principle of protection is vested not only in the persons who have reported corruption but also in the victims of corruption crimes and the witnesses supporting investigation and prosecution. The standards for the protection of reporting persons, witnesses and victims of corruption crimes are the following:

- The **scope of the wrongdoings whose reporting is protected varies** among the instruments and policy tools. UNCAC, CoE CLC, CoE CvLC limit protected reporting to corruption offences, while CoE MCC, CoE RWB and TI RWB have a broader spectrum and include violation of other rights, maladministration, etc.
- Promoting integrity and ensuring the **presence of adequate channels for reporting ethical misconduct/corruption offences** (UNCAC; CoE MCC; CoE RWB; CoE CLC; CoE CvLC; TI RWB). The channels can encompass: reports within an organisation or company (including to persons designated to receive reports in confidence); reports to relevant public regulatory bodies, law enforcement agencies and supervisory bodies; and disclosures to the public, for example to a journalist or a member of parliament. The UNCAC also foresees personnel and management systems with procedures for detecting incidents of professional misconduct (Article 8.),<sup>14</sup> as well as in the management of public finances (Article 9) “effective and efficient systems of **risk management and internal control**” [*emphasis added*]. Both may entail further reporting channels. The INTOSAI Guidelines for Internal Control Standards for the Public Sector sets the principle that “all staff members play a role in effecting control and should be responsible for reporting problems of operations, non-compliance with the code of conduct, or violations of policy”.<sup>15</sup>
- Public officials should be **protected against all** forms of retaliation, disadvantage or discrimination at the workplace linked to or resulting from whistleblowing when they **report in good faith and have reasonable grounds**. Sanction against employees based on the grounds that they had reported an act of corruption to persons or authorities responsible for receiving such reports are not justified (UNCAC; CoE MCC; CoE RWB; CoE CvLC; TI RWB). CoE RWB advises on establishment of **interim relief** for persons who have been **victims of retaliation** for having made a public report or disclosure, particularly in cases of loss of employment.
- There should be provision of **physical protection** (when necessary) and **reallocation of the victims, witnesses and experts**, and as appropriate for their family members (UNCAC, TI RWB).
- Transparency International recommends that **any private rule or agreement be invalid if it obstructs whistleblower protections and rights**. For instance, whistleblower rights shall override employee “loyalty” oaths and confidentiality/non-disclosure agreements.
- The received information should be treated with utmost confidentiality and the confidentiality of the whistleblower’s identity should be preserved (CoE RWB; UNCAC).

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<sup>14</sup> UNCAC Technical Guide, page 27.

<sup>15</sup> INTOSAI GOV 9100 – Guidelines for Internal Control Standards for the Public Sector, available at [www.intosai.org/issai-executive-summaries/view/article/intosai-gov-9100-guidelines-for-internal-control-standards-for-the-public-sector.html](http://www.intosai.org/issai-executive-summaries/view/article/intosai-gov-9100-guidelines-for-internal-control-standards-for-the-public-sector.html)

The question that the recommendations answer a bit ambiguously is which reporting channel to be used first by the whistleblower. The CoE RWB advises that where an employer has put in place an internal reporting system, and the whistleblower has made a disclosure to the public without resorting to the system, this may be taken into consideration when deciding on the remedies or level of protection to afford to the whistleblower. In practice this means that the report for misconduct should be first filed via the respective internal system. At the same time Transparency International recommends that if reporting at the workplace does not seem practical or possible, individuals may make disclosures to regulatory or oversight agencies or individuals outside of their organisation. Thus the answer is open to debate and remains at the discretion of the national lawmakers.

The effectiveness of the whistleblowers' protection is subject to assessment under the Transparency International NIS and is one of the indicators of measuring the integrity of the public sector.

## Protection of reporting persons

	UNCAC AND ITS TECHNICAL GUIDE	COE RECOMMENDATIONS	COE CLC	COE CVLC	TRANSPARENCY INTERNATIONAL RECOMMENDATIONS ON WHISTLEBLOWERS' PROTECTION
<b>Scope of wrongdoings whose reporting is to be protected</b>	<p>"acts of corruption" (Article 8)</p> <p>"any facts concerning offences established in accordance with this Convention" (Article 33, <i>[emphasis added]</i>)</p>	<p>"member States should explicitly specify the scope of the national framework, which should, <b>at least, include violations of law and human rights, as well as risks to public health and safety and to the environment</b>" (para 2., CoE RWB)</p> <p>"<b>being required to act in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with this Code, should report the matter in accordance with the law.</b>" (Article 12, CoE MCC, <i>[emphasis added]</i>)</p>	<p>"who report the <b>criminal offences</b> established in accordance with Articles 2 to 14 or otherwise co-operate with the investigating or prosecuting authorities" and "witnesses who give testimony concerning these offences." (Article 22, <i>[emphasis added]</i>)</p>	<p><b>Suspicion of corruption</b> (Article 9)</p> <p>(corruption is defined in Article 2)</p>	<p>"information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public or private sector organisations – which are of concern to or threaten the public interest"</p> <p><b>"wrongdoing, including but not limited to corruption;</b> criminal offences; breaches of legal obligation; miscarriages of justice; specific dangers to public health, safety or the environment; abuse of authority; unauthorised use of public funds or property; gross waste or mismanagement; conflict of interest; and acts to cover up of any of these."</p>
<b>Procedures and reporting channels</b>	<p>States Parties should establish <b>adequate procedures for reporting</b> acts of corruption when public officials are confronted with such situations. They should include <b>how to report</b> (which media), <b>in what format, what the procedural safeguards are to protect the source, how investigations are conducted, and measures to prevent retribution.</b></p>	<p><b>Clear channels</b> should be put in place for public interest reporting and disclosures. The channels for reporting and disclosures comprise:</p> <ul style="list-style-type: none"> <li>- <b>reports within an organisation</b> or enterprise (including to persons designated to receive reports in confidence);</li> <li>- <b>reports to relevant public regulatory bodies, law enforcement agencies and supervisory bodies;</b></li> <li>- <b>disclosures to the public</b>, for example to a journalist or a member of parliament. (CoE RWB)</li> </ul>			<ul style="list-style-type: none"> <li>- Whistleblower regulations and <b>procedures should be highly visible and understandable.</b> The <b>confidentiality or anonymity</b> (unless explicitly waived by the whistleblower) <b>should be maintained.</b></li> <li>- <b>Timely and independent investigations</b> of whistleblowers' disclosures should be ensured.</li> <li>- <b>Transparent, enforceable and timely mechanisms</b> to follow up on whistleblowers' <b>retaliation complaints</b> (including a process for disciplining perpetrators of retaliation) should be set in place.</li> </ul>

	UNCAC AND ITS TECHNICAL GUIDE	COE RECOMMENDATIONS	COE CLC	COE CVLC	TRANSPARENCY INTERNATIONAL RECOMMENDATIONS ON WHISTLEBLOWERS' PROTECTION
<b>Types of protection</b>	Protection of reporting persons (including <b>physical protection and reallocation of the victims, witnesses and experts, and as appropriate for their family members</b> ).	Whistleblowers should be <b>protected against retaliation of any form, whether directly or indirectly, by their employer and by persons working for or acting on behalf of the employer</b> . (Article 21, of CoE RWB) - The burden of the proof lies with the employer. - <b>Interim relief pending</b> the outcome of civil proceedings should be available for persons who have been the victim of retaliation for having made a public interest report or disclosure, particularly in cases of loss of employment. (Article 26 of CoE RWB)	Each party shall adopt such measures as may be necessary to provide <b>effective and appropriate protection</b> for: a) those who report the criminal offences or otherwise cooperate with the investigating or prosecuting authorities; b) witnesses who give testimony concerning these offences (Article 22). The measures should ensure efficient protection of the interests of both witnesses and the criminal justice system, while maintaining appropriate opportunities for the defence to exercise its right in criminal proceedings.	<b>Any sanction against employees</b> based on the grounds that they had reported an act of corruption to persons or authorities responsible for receiving such reports <b>will not be justified</b> . Reporting should not be considered a breach of the duty of confidentiality.	- <b>Protection from retribution</b> : individuals shall be protected from <b>all forms of retaliation, disadvantage or discrimination at the workplace</b> linked to or resulting from whistleblowing. <b>This includes all types of harm, including dismissal, probation and other job sanctions; punitive transfers; harassment; reduced duties or hours; withholding of promotions or training; loss of status and benefits; and threats of such actions</b> . Whistleblowers, whose lives or safety are in jeopardy, and their family members, are entitled to receive <b>personal protection measures</b> . - Any disclosure made within the scope of whistleblower legislation shall <b>be immune from disciplinary proceedings</b> and liability <b>under criminal, civil and administrative laws, including</b> those related to libel, slander, copyright and data protection. The burden shall fall on the subject of the disclosure to prove any intent on the part of the whistleblower to violate the law. - <b>Any private rule or agreement is invalid if it obstructs whistleblower protections and rights</b> . For instance, whistleblower rights shall override employee "loyalty" oaths and confidentiality/non-disclosure agreements.

	UNCAC AND ITS TECHNICAL GUIDE	COE RECOMMENDATIONS	COE CLC	COE CVLC	TRANSPARENCY INTERNATIONAL RECOMMENDATIONS ON WHISTLEBLOWERS' PROTECTION
<b>Conditions of protection</b>	Report in <b>good faith</b> .	Public officers <b>should be protected against any negative consequences</b> when they <b>report in good faith and have reasonable grounds</b> . (Article 12 of CoE MCC)		Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have <b>reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities</b> . (Article 9)	
<b>Addressees of the reports</b>		Where an employer has put in place an <b>internal reporting system</b> , and the whistleblower has made a disclosure to the public <b>without resorting to the system</b> , this may be taken into <b>consideration when deciding on the remedies or level of protection to afford to the whistleblower</b> . (Article 24 of CoE RWB)			If reporting at the <b>workplace does not seem practical or possible</b> , individuals may make <b>disclosures to regulatory or oversight agencies or individuals outside of their organisation</b> . These channels may include regulatory authorities, law enforcement or investigative agencies, elected officials, or specialised agencies established to receive such disclosures.
<b>Confidentiality and anonymity</b>		Whistleblowers should be entitled to have the <b>confidentiality of their identity maintained, subject to fair trial guarantees</b> . (Article 18 of CoE RWB)			<b>Full protection shall be granted</b> to whistleblowers who have <b>disclosed information anonymously and who subsequently have been identified without their explicit consent</b> .

## 5.6 PUBLIC PROCUREMENT

Public procurement is one of the most corruption-prone government processes, and as such demands a high level of assurance against possible corrupt practices. The main documents that contain special requirements related to the public officials who are involved in public procurement procedures are UNCAC, the UNCITRAL Model Code of Public Procurement, the OECD Recommendation (OECD RPP) the Checklist (OECD CPP) for Enhancing Integrity in Public Procurement, and the EU directives on public procurement. The following requirements are established:

- There should be a number of proactive measures such as **specialised declarations of (potential) conflicts of interest and screening procedures** (UNCAC; UNCITRAL Model Code of Public Procurement; OECD RPP, EU directive on public procurement). The EU directive on public procurement<sup>16</sup> adopted in 2014 also contains a special provision obliging member states to take the necessary actions to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures. Similar provisions are contained in the EU directive on the award of concession contracts<sup>17</sup> and the EU directive on procurement by entities operating in the water, energy, transport and postal services sectors.<sup>18</sup>
- **Specialised training should be established for officials** involved in public procurement (UNCAC, UNCITRAL Model Code of Public Procurement, and OECD RPP).
- The OECD CPP also proposes measures, such as: double signatures, cross-checking, dual control of assets, separation of duties and authorisation, multiple levels of review, etc.

The UNCAC Technical Guide<sup>19</sup> and UNCITRAL Model Law on Public Procurement<sup>20</sup> elaborate further, listing the following measures that may be applied: **pre-appointment screening** of successful candidates for corruption-exposed positions in the procurement sphere (ensuring the highest level of personal integrity), **specific terms and conditions for successful candidates, procedural controls** such as **performance benchmarking** and **rotation**. In addition, the management staff should ensure that relevant ethics support mechanisms are set in place such as: **regular appraisal, confidential reporting, and registration and declarations of interests, assets, gifts and hospitality**. These measures should be complemented by specialised procurement training for managers, investigators and auditors.

The organisations wishing to mitigate corruption risks in public procurement procedures can use the Transparency International NIS as a feedback mechanism, showing the environment where the public procurement processes operate.

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<sup>16</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.

<sup>17</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

<sup>18</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors.

<sup>19</sup> Technical Guide to the United Nations Convention Against Corruption, available at <http://www.unodc.org/unodc/en/treaties/CAC/technical-guide.html>

<sup>20</sup> Available at [http://www.uncitral.org/uncitral/en/uncitral\\_texts/procurement\\_infrastructure/2011Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/2011Model.html)

## Public procurement

	UNCAC (2003)	UNCITRAL MODEL CODE OF PUBLIC PROCUREMENT (2011)	OECD RPP (2008)	EU DIRECTIVE ON PUBLIC PROCUREMENT (2014/24/EU)
<b>HR preventive measures related to corruption-vulnerable positions</b>	Establishment of proactive measures including: <b>pre-appointment screening</b> of successful candidates, <b>specific terms and conditions for successful candidates</b> , procedural controls such as benchmarking the performance, and rotation	Adoption of code of conduct that includes: <b>declaration of interests</b> in particular <b>procurements, screening procedures, training requirements</b> and any other measures that aim at avoiding any real or perceived conflict of interest	Preventing corruption via <b>asset declarations, ethics training, disclosure and management of conflict of interest</b> (principle 5)  “ <b>mechanisms to monitor public procurement</b> as well as to <b>detect misconduct</b> ” (principle 7)	
<b>Ethics support mechanisms</b>	<b>Regular appraisal, confidential reporting, and registration and declarations of interests, assets, gifts and hospitality</b>		“ <b>clear chain of responsibility</b> together with effective control mechanisms” (principle 8)	Member states are obliged to take the necessary actions to effectively <b>prevent, identify and remedy conflicts of interest</b> arising in the conduct of procurement procedures.
<b>Training</b>	<b>Specialised training on</b> “evaluation and strengthening of institutions, [...] the management of public finances, including public procurement” (Article 60, para 1d)		Establishment of <b>high-level of professionalism (via training)</b>	



## 5.7 PUBLIC SECTOR FINANCIAL MANAGEMENT

Budgeting, managing, monitoring, controlling and auditing systems of public funds are among the core functions of public administrations and a significant proportion of public officials are involved in such matters. At least two sets of norms can be distinguished that provide standards for these functions. One set of norms is based on general principles of public sector financial management. Examples are standards developed by intergovernmental organisations and non-governmental organisations. Another set of norms is more specific and practical and has been defined by professional associations in this field.

General norms applying to public sector financial management are included both the UNCAC and the UN Resolution on promoting transparency, participation and accountability in fiscal policies.<sup>21</sup> The latter also encourages UN member states to consider applying on a voluntary basis the High-level Principles on Fiscal Transparency, Participation and Accountability of the Global Initiative for Fiscal Transparency (GIFT).<sup>22</sup> The GIFT High-level Principles (2012), the OECD Best Practices for Budget Transparency (2002), the OECD Ten Principles of Budgetary Governance (2014) and the International Monetary Fund - Fiscal Transparency Code (2014) establish partly overlapping standards on the transparency of the government sector, access to budgetary information, well-defined accountability and systems of financial controls, with standards that align with the UNCAC standards.

The other set of norms (e.g. OECD SIGMA papers on public finance and audit<sup>23</sup>) address the details of what the broad principles of efficiency, accountability, effectiveness and transparency mean in the practice of public sector financial management (including its legal structure and governance). These also include the norms of internal auditing and internal control, as well as external auditing by supreme audit institutions.

The international auditing and controlling norms are set by international professional bodies of auditors or auditing institutions (e.g. the International Organisation of Supreme Audit Institutions and the Institute of Internal Auditors) and of accountants (e.g. the International Federation of Accountants and its International Auditing and Assurance Standards Board and International Public Sector Accounting Standards Board). These norms and the EU best practices of this field are distilled into the Public Internal Financial Control model of the European Commission.<sup>24</sup> These standards are also embedded in the Transparency International NIS, where budgetary transparency is one of the indicators for assessing the transparency of the executive power.

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<sup>21</sup> UN General Assembly resolution 67/218, *Promoting transparency, participation and accountability in fiscal policies*, A/RES/67/218 (21 December 2012), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/67/218](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/218)

<sup>22</sup> See at: <http://fiscaltransparency.net/wp-content/uploads/2012/09/GIFT-High-Level-Principles-2012-08-ENG.pdf>

<sup>23</sup> See for example OECD, "Financial Management and Control of Public Agencies", SIGMA Papers, No. 32 (OECD Publishing, 2001), available at <http://dx.doi.org/10.1787/5kml60vk0h9x-en>

<sup>24</sup> See [http://ec.europa.eu/budget/library/biblio/documents/control/brochure\\_pifc\\_en.pdf](http://ec.europa.eu/budget/library/biblio/documents/control/brochure_pifc_en.pdf)

UNCAC (2003)	OECD TEN PRINCIPLES OF BUDGETARY GOVERNANCE (2014)	OECD BEST PRACTICES FOR BUDGET TRANSPARENCY (2002)	INTERNATIONAL MONETARY FUND - THE FISCAL TRANSPARENCY CODE (2014)	GIFT'S HIGH-LEVEL PRINCIPLES (2012)
<p>“take appropriate measures to promote <b>transparency and accountability</b> in the management of public finances” including</p> <p>“a <b>system of accounting and auditing standards and related oversight</b>,”</p> <p>“effective and efficient systems of <b>risk management</b> and internal control;”</p> <p>“Where appropriate, <b>corrective action</b> in the case of failure to comply” (Article 9, para2, <i>[emphasis added]</i>)</p>	<p>“Budget documents and data should be <b>open, transparent and accessible.</b>” (principle 4, <i>[emphasis added]</i>)</p> <p>“Debate on budgetary choices should be <b>inclusive, participative and realistic.</b>” (principle 5, <i>[emphasis added]</i>)</p> <p>“Budget execution should be actively planned, managed and monitored.” (principle 7, <i>[emphasis added]</i>)</p>	<p>“<b>A dynamic system of internal financial controls</b>, including internal audit, should be in place to assure the integrity of information provided in the reports.”</p> <p>“each report should contain a <b>statement of responsibility</b> by the finance minister and the senior official responsible for producing the report.” (3.2, <i>[emphasis added]</i>)</p>	<p>“<b>Fiscal reports should be published in a frequent, regular, and timely manner.</b>” (1.2, <i>[emphasis added]</i>)</p> <p>“Governments should <b>publish regular summary reports</b> on risks to their fiscal prospects” (3.1, <i>[emphasis added]</i>)</p> <p>“The powers and responsibilities of the executive and legislative branches of government in the budget process should be defined in law, and the budget should be presented, debated, and approved in a timely manner.” (2.2)</p> <p>“Fiscal forecasts and budgets should be presented in a way that facilitates policy analysis and accountability.” (2.3)</p> <p>“Specific risks to the public finances should be regularly monitored, disclosed, and managed.” (3.2)</p>	<p>“The <b>Government sector should be clearly defined and identified for the purposes of reporting, transparency, and accountability</b>, and government financial relationships with the private sector should be disclosed, conducted in an open manner, and follow clear rules and procedures” (principle 6, <i>[emphasis added]</i>)</p> <p>“<b>Roles and responsibilities for revenue raising, incurring liabilities, consuming resources, investing, and managing public resources should be clearly assigned</b> in legislation between the three branches of government (the legislature, the executive and the judiciary), between national and each sub-national level of government, between the government sector and the rest of the public sector, and <b>within the government.</b>” (principle 7, <i>[emphasis added]</i>)</p>

## 5.8 POLITICAL NEUTRALITY/RESOURCING OF POLITICAL CAMPAIGNS

The main principles regarding political neutrality and political campaign resourcing can be found in UNCAC, the CoE MCC and the CoE recommendation on the status of public officials (CoE RSPO). The extent to which these standards are mandatory varies.

According to Article 7 of UNCAC “each State Party shall also consider” adopting rules and procedures regarding the candidature for and election to public office. The practical implementation of the provision may include the establishment of limitations on political involvement (such as membership of political parties or standing for office) of certain categories of public officials (e.g. magistrates, senior public officials and law enforcement officers). However, it is not a mandatory standard. The same non-mandatory provision applies to transparency in the funding of candidatures and of political parties. Regarding this issue the only mandatory norms are to be found in the criminalisation chapter of UNCAC, among the criminal offences.

The CoE MCC and the CoE RSPO contain similar provisions on restrictions of political activities that would impair public confidence in public administration or in the impartiality of the public official. These restrictions should respect the fundamental and constitutional rights of the country and the particular restrictions are decided at national level depending on the political and administrative peculiarities of the country. Article 16 of the CoE MCC elaborates more on this issue. As both instruments are recommendations their implementation into national integrity frameworks are optional. If these recommendations are followed and adopted as national norms both foresee disciplinary consequences for the violation of these rules.

In practice the principle of political neutrality and proper use of public resources is embedded in all policy documents described in section 5.3 as under the general integrity framework, public officials are required to act in a neutral, objective and non-discriminatory manner, always respecting the public interest and refraining from any activities that may be viewed as incompatible with these principles.

## Political neutrality/resourcing of political campaigns

	UNCAC (2003)	COE MCC (2002)	COE RECOMMENDATION ON THE STATUS OF THE PUBLIC OFFICIALS (2000)
<b>Political neutrality</b>	States Parties shall consider prescribing “criteria concerning candidature for and election to public office” (Article 7, para 2)	<p>“[...] the public official <b>should take care that none of his or her political activities or involvement on political or public debates impairs the confidence of the public</b> and his or her employers in his or her ability to perform his or her duties impartially and loyally.”</p> <p>“In the exercise of his or her duties, the public official should not allow himself or herself to be used for partisan political purposes.”</p> <p>“The public official should comply with any restrictions on political activity lawfully imposed on certain categories of public officials by reason of their position or the nature of their duties.” (Article 16, <i>[emphasis added]</i>)</p>	“Public officials should, in principle, enjoy the same rights as all citizens. However, <b>the exercise of these rights may be regulated by law or through collective agreement in order to make it compatible with their public duties.</b> Their rights, particularly political and trade union rights should only be lawfully restricted in so far as it is necessary for the proper exercise of their public functions.” (Article 8, <i>[emphasis added]</i> )
<b>Resourcing of political activities and parties</b>	<p>“enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties” (Article 7, para 3)</p> <p>States Parties shall criminalise <b>embezzlement</b> and shall consider criminalisation of <b>abuse of function.</b> (Article 17 and 19, <i>[emphasis added]</i>)</p>	<p>“In the exercise of his or her discretionary powers, the public official should ensure that on the <b>one hand the staff, and on the other hand the public property, facilities, services and financial resources with which he or she is entrusted</b> are managed and used effectively, efficiently and economically. They <b>should not be used for private purposes except when permission is lawfully given.</b>” (Article 23, <i>[emphasis added]</i>)</p>	

## 5.9 COLLABORATION IN PREVENTION WITH OTHER COUNTRIES AND TECHNICAL ASSISTANCE

Matters related to international cooperation, technical assistance and training are discussed in UNCAC. International cooperation is also facilitated by the CoE Twenty Guiding Principles and the Stockholm programme “An open and secure Europe serving and protecting citizens”.<sup>25</sup>

**International cooperation** in matters related to prevention is covered by Article 5 paragraph 4 of UNCAC. The convention encourages the parties “to collaborate with each other and with relevant international and regional organizations”, participate in joint international and regional programmes and projects aimed at preventing corruption. The CoE Twenty Guiding Principles encourage the member states to cooperate and coordinate their efforts to the widest extent possible in all anti-corruption fields. At EU level, the 2010 Stockholm Programme called for increased coordination between member states in the UNCAC, GRECO and OECD anti-corruption frameworks.

**Technical assistance and training:** Provision of training (lectures, workshops, seminars) and exchange of experience and good practices (conferences, study tours) are among the most typical forms of technical assistance. UNCAC chapter VI provides concrete guidelines on the form of training that should be provided to personnel working in the area of corruption prevention (as well as investigation and prosecution). The convention gives a non-inclusive list of typical topics to be included in the training. Sub-regional, regional and international conferences/seminars for promotion of cooperation and technical assistance that are used for discussion platforms on problems of mutual concern are recommended. Specialised training is envisioned for the specialised anti-corruption prevention bodies (Article 6).

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<sup>25</sup> Stockholm Programme – An open and secure Europe serving and protecting citizens [Official Journal C 115 of 4.5.2010], available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52010XG0504%2801%29>

# 6. CRIMINALISATION AND DISCIPLINARY MEASURES

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Criminalisation of national and international corruption is key for member states' efforts to diminish corruption in Europe. It is characterised as a guiding principle in the CoE Twenty Guiding Principles and instruments such as the CoE CLC and the UNCAC, underscore the need for pursuing a common criminal policy and criminalising corruption behaviour.

The following section looks at the criminalisation of the corrupt behaviour of public officials in the applicable legal instruments – CoE CLC, UNCAC as well as EU ACC – involving officials of the European Community or officials of member states of the EU.

## 6.1 OFFENCES AND ELEMENTS OF OFFENCE

UNCAC, CoE CLC and EU ACC are the legal instruments that instruct the member states on the types of corrupt behaviour that constitute criminal offences.<sup>26</sup> UNCAC has the largest scope, criminalising a number of activities that do not fall within the scope of the CoE CLC and the EU ACC. However, unlike CoE CLC and EU ACC, under UNCAC the criminalisation of a certain activities has a non-mandatory character, thus leaving the decision to the consideration of the state parties. The following activities of public officials are proclaimed by all the three conventions to constitute corruption crimes:

- **Active and passive bribery of domestic public officials** (mandatory criminalisation in all three instruments): The definitions in the three conventions are almost identical. The deed should be deliberately conducted by a public official and should include the promising, offering<sup>27</sup> or giving (active) or solicitation<sup>28</sup> or acceptance (passive), directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. The CoE CLC and its Protocol contain separate provisions for criminalising the active and passive bribery of public officials, members of domestic public assemblies, domestic arbitrators and domestic jurors, whereas the UNCAC applies one definition for persons holding any of these positions.
- **Active and passive bribery of foreign public officials:** The elements of the active and passive bribery of domestic officials apply to the bribery of foreign public officials and officials of international organisations. The criminalisation of the active bribery of foreign public officials is mandatory in all conventions.<sup>29</sup> The passive bribery of a foreign public

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<sup>26</sup> Although the *United Nations Convention against Transnational Organized Crime* has been ratified by all EU member states and it prescribes the mandatory criminalisation of the laundering of proceeds of crime, as well as active and passive corruption (bribery) of national, foreign and international public officials we do not discuss its provisions here due to their high similarity to UNCAC provisions. For the similarity with the EU ACC we do not include the *Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests* in this analysis.

<sup>27</sup> 'Offering' is not included in the Article 3 of the EU ACC which criminalises the active bribery.

<sup>28</sup> The UNCAC uses the term 'solicitation' while the Coe CLC and the EU ACC use 'request'.

<sup>29</sup> The EU ACC's personal scope of foreign public officials is 'Community or [...] any national official of another Member State' (Article 1a).

official is one of the non-mandatory offences under UNCAC but obligatory under CoE CLC and EU ACC. The CoE CLC and its Protocol contains separate provisions for criminalising the active and passive bribery of foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, judges and officials of international courts, foreign arbitrators and foreign jurors, whereas the UNCAC uses two definitions – foreign public official and official of a public international organization – covering all these positions.

Apart from the above, UNCAC and CoE CLC criminalise a number of other deliberate acts of improper behaviour that constitute corruption offences. These are:

- **Active and passive trading in influence:** (non-mandatory offence under UNCAC and mandatory under CoE CLC). The definitions in the two conventions are identical. The act should be intentionally committed and should include the promising, giving or offering (active) directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or acceptance (passive) of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.
- **Laundering of the proceeds of corruption offences** is subject to mandatory criminalisation under both UNCAC and CoE CLC. The latter one defines this criminal offence by referring to Article 6 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and by using its own definitions for the predicate offences.

The following offences are criminalised by the UNCAC only

- **Embezzlement and misappropriation or other diversion of property** (non-mandatory): The Convention says that any deliberate embezzlement, misappropriation or other diversion done for the benefit of the public official or for the benefit of another third party, of any property, public or private funds or securities or any other thing of value entrusted to the public official constitutes a corruption offence.
- **Abuse of functions** (non-mandatory): This targets public officials who abuse their functions or position by acting or refraining to act, in violation of laws, for the purpose of obtaining an undue advantage for himself or herself or a third party.
- In the event that the public official has a significant increase in his/her assets that he/she cannot reasonably explain and provide lawful justification of this income, he/she may be prosecuted for **illicit enrichment** (non-mandatory).
- While **concealment** (facilitating or furthering of other corruption offences) is one of the non-mandatory crimes, the **obstruction of justice of corruption-related** crimes is included in the mandatory criminalisation portfolio. Both UNCAC and CoE CLC criminalise **aiding or abetting the commission** of any of the criminal offences established in accordance with the conventions.

Offence criminalised by the CoE CLC only:

- The CoE CLC is the only convention of the three that contains **accounting offences** committed in order to commit, conceal or disguise any of the offences covered by the convention. The scope of Article 1 of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities'

financial interests partly overlaps the CoE CLC accounting offences in as much the predicate offences relate to the European Communities' financial interests.<sup>30</sup>

**Offences and elements of offences** (*provisions in italics are not mandatory*)

	UNCAC	COE CLC	EU ACC
<b>Active bribery/corruption</b>	“The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; when committed intentionally.” (Article 15a)	“The promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions, when committed intentionally.” (Article 2)	“Deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties shall constitute active corruption.” (Article 3, para 1)
<b>Passive bribery/corruption</b>	“The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties when committed intentionally.” (Article 15b)	“The request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions when committed intentionally.” (Article 3)	“The deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties.” (Article 2, para 1)

<sup>30</sup> Official Journal C 316 , 27/11/1995 P. 0049 - 0057, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:41995A1127%2803%29>



	UNCAC	COE CLC	EU ACC
<b>Active and passive bribery of foreign public official</b>	<p>When committed intentionally, “the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business”. (Article 16. para 1)</p> <p><i>When committed intentionally, “the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties”. (Article 16 para 2)<sup>31</sup></i></p>	<p>“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 Articles 2 and 3, when involving a public official of any other State.” (Article 5)</p>	
<b>Embezzlement and misappropriation or other deviation of property</b>	<p>When committed intentionally, “the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position”. (Article 17)</p>		

<sup>31</sup> The same definition is contained in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The convention however criminalises only active bribery.

	UNCAC	COE CLC	EU ACC
<b>Trading in influence</b>	<p><i>When committed intentionally, "a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person; b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage."</i> (Article 18)</p>	<p>When committed intentionally, "the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any domestic or foreign public official; member of domestic or foreign public assembly; official of international organisation; member of international parliamentary assemblies; judges and officials of international courts, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result." (Article 12)</p>	
<b>Abuse of functions</b>	<p><i>When committed intentionally, "the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity".</i> (Article 19)</p>		
<b>Illicit enrichment</b>	<p><i>When committed intentionally, "illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income".</i> (Article 20)</p>		

	UNCAC	COE CLC	EU ACC
<b>Laundering of proceeds of crime</b>	<p>When committed intentionally, "(i)The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; (ii)The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime." (Article 23, para 1a)</p>	<p>"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, Seizure 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 13)</p>	
<b>Concealment</b>	<p><i>When committed intentionally "after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention". (Article 24)</i></p>		

	UNCAC	COE CLC	EU ACC
<b>Obstruction of justice</b>	When committed intentionally, "a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention; b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention." (Article 25)		
<b>Account offences</b>		Following acts or omissions, when committed intentionally, in order to commit, conceal or disguise the offences referred to in the convention: "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 when committed intentionally, in order to commit, conceal or disguise the any corruption crime inscribed by the convention" (Article 14)	
<b>Participation and attempt</b>	"1) participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention; 2) any attempt to commit an offence established in accordance with this Convention; 3) the preparation for an offence established in accordance with this Convention." (Article 27)	Participatory acts: aiding or abetting the commission of any of the criminal offences established in accordance with the convention. (Article 15)	Participating in and instigating of active or passive corruption is punishable. (Article 5 paragraph 1)

## 6.3 SANCTIONS, MEASURES AND COMPENSATION

Provisions about imposing sanctions, applying measures and awarding compensation for damages are included in UNCAC, CoE CvLC, CoE CLC and EU ACC. With a few exceptions (see Annex 1), the provisions of these conventions are mandatory for the EU member states.

**Sanctions and measures:** The sanctions established under the conventions vary from criminal to civil, administrative and disciplinary. The conventions establish the principle that sanctions should be effective, proportionate and dissuasive, always taking into account the gravity of the offence. They do not specify what that means in practice but leave room for national context. The wide range of sanctions and measures to be taken against corrupt officials may be applied separately or cumulatively and include:

- imprisonment (CoE CLC; EU ACC)
- disciplinary measures for officials violating codes or standards (UNCAC)
- disciplinary sanctions: removal, suspension, reassignment (UNCAC; EU ACC)
- extradition (UNCAC; CoE CLC; EU ACC)
- freezing, seizure and confiscation (UNCAC; CoE CLC)
- disqualification from holding public office or/and holding office in an enterprise owned by the state (UNCAC)

**Compensation for damage:** The CoE CvLC and UNCAC envision also compensation for the persons who have suffered damage as a result of the corruption crime. The damage may have taken the form of material damage, loss of profits and non-pecuniary losses. The CoE RPL elaborates the liability as follows: “the obligation of public authorities to make good the damage caused by their acts, either by compensation or by any other appropriate means”.

### Sanctions and compensation

	UNCAC	COE CLC	COE CVLC	EU ACC
<b>Sanctions (criminal)</b>	<b>Sanctions:</b> “1) The commission of an offence established in accordance with this Convention is liable to <b>sanctions that take into account the gravity of that offence.</b> ” (Article 30.1, <i>[emphasis added]</i> )	“The sanctions and measures for the corruption offences should be, <b>effective, proportionate and dissuasive</b> , including, when committed by natural persons, penalties involving <b>deprivation of liberty</b> which can give rise to <b>extradition.</b> ” (Article 19.1, <i>[emphasis added]</i> )		“Any conduct constituting passive or active corruption and participating in and instigating the conduct in question, is punishable by <b>effective, proportionate and dissuasive criminal penalties</b> , including, at least in serious cases, penalties involving <b>deprivation of liberty</b> which can give rise to <b>extradition.</b> ” (Article 5.1, <i>[emphasis added]</i> )

	UNCAC	COE CLC	COE CVLC	EU ACC
<b>Sanctions (disciplinary and administrative)</b>	<p>"Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, <b>disciplinary or other measures against public officials who violate the codes or standards</b> established in accordance with this article." (Article 8.6, <i>[emphasis added]</i>)</p> <p>"6) establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be <b>removed, suspended or reassigned by the</b> appropriate authority, bearing in mind respect for the principle of the presumption of innocence; 7) establishing procedures for the <b>disqualification</b>, by court order or any other appropriate means, for a period of time determined by its domestic law, <b>of persons convicted of offences</b> established in accordance with this Convention <b>from: holding public office or/and holding office in an enterprise owned in whole or in part by the State</b>; 8) the above sanctions shall be without prejudice to the exercise of <b>disciplinary powers</b> by the competent authorities against civil servants". (Article 30, <i>[emphasis added]</i>)</p>			<p>"Paragraph 1 shall be without prejudice to the exercise of <b>disciplinary powers</b> by the competent authorities against national officials or Community officials. In determining the penalty to be imposed, the national criminal courts may, in accordance with the principles of their national law, take into account any disciplinary penalty already imposed on the same person for the same conduct." (Article 5.2, <i>[emphasis added]</i>)</p>
<b>Confiscation</b>	<p>"a) <b>Proceeds of crime derived from offences</b> established in accordance with this Convention <b>or property the value of which corresponds to that of such proceeds</b>) b; <b>Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention</b>". (Article 31, <i>[emphasis added]</i>)</p>	<p><b>"to confiscate</b> or otherwise deprivation of the <b>instrumentalities and proceeds of criminal offences</b> established in accordance with this Convention, or property the value of which corresponds to such proceeds". (Article 19.3, <i>[emphasis added]</i>)</p>		

	UNCAC	COE CLC	COE CVLC	EU ACC
<b>Extradition</b>	<p>“where the person who is the subject of the request for <b>extradition</b> is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party”. (Article 44, <i>[emphasis added]</i>)</p>	<p>“The criminal offences established in accordance with this Convention shall be deemed to be included as <b>extraditable offences</b> in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.” (Article 27.1, <i>[emphasis added]</i>)</p>		<p>“Any Member State which, under its law, does not <b>extradite</b> its own nationals shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance with the obligations arising out of Articles 2 and 3 when committed by its own nationals outside its territory.” (Article 8, <i>[emphasis added]</i>)</p>
<b>Compensation for damage and state responsibility</b>	<p>“entities or persons who have suffered damage as a result of an act of corruption have the right to initiate <b>legal proceedings against those responsible for that damage in order to obtain compensation</b>”. (Article 35, <i>[emphasis added]</i>)</p>		<p>“Each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the <b>right to initiate an action in order to obtain full compensation</b> for such damage. Such compensation may cover material damage, loss of profits and non-pecuniary loss.” (Article 3)</p> <p>“Each Party shall provide in its internal law for appropriate procedures for <b>persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation</b> from the State or, in the case of a non-state Party, from that Party’s appropriate authorities.” (art 5., <i>[emphasis added]</i>)</p>	
<b>Early release</b>	<p>“Each State Party shall take into account the gravity of the offences concerned when <b>considering the eventuality of early release or parole of persons convicted of such offences</b>.” (Article 30.5, <i>[emphasis added]</i>)</p>			

## 6.4 IMMUNITIES AND STATUTES OF LIMITATIONS

There are very general provisions on immunities and statutes of limitations in UNCAC, the CoE Criminal and Civil Law Conventions and EU ACC.

- **Lifting immunity:** UNCAC, EU ACC<sup>32</sup> and CoE CLC refer to the procedures established in either in national legislation (UNCAC) or in other texts (EU, CoE). UNCAC stresses that there should be a proper balance between any immunities and jurisdictional privileges accorded to public officials and the necessity of effectively investigating and prosecuting corruption offences.
- **Granting immunity:** The only instrument that refers to the possibility of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of corruption offence is UNCAC.
- **Statute of limitations:** UNCAC does not specify concrete periods but requests the States Parties to establish long statutes of limitations allowing for the proper investigation and prosecution of corruption crimes. The time frame should be prolonged (or the statute of limitations should be suspended) in a case where the offender has evaded prosecution. As for civil liabilities, the CoE CvLC sets a limit of three years from the day the person who has suffered damage became aware, or should reasonably have been aware, that damage has occurred or that an act of corruption has taken place, and of the identity of the responsible person. Civil liability for damages cannot be sought after ten years from the date of the act of corruption.

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<sup>32</sup> EU law stipulates "Each institution of the Communities shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Communities", Protocol on the Privileges and Immunities of the European Communities, available at [https://www.ecb.europa.eu/ecb/legal/pdf/ppi\\_en.pdf](https://www.ecb.europa.eu/ecb/legal/pdf/ppi_en.pdf)



## Immunities and defences. Statutes of limitations

	UNCAC	COE CLC	COE CVLC	EU ACC
<b>Withdrawal of immunity</b>	<p>“Appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention”. (Article 30.2)</p>	<p>“The provisions of the convention are without prejudice to the provisions of any Treaty, Protocol or Statute, as well as their implementing texts, as regards the withdrawal of immunity.” (Article 16)</p>		<p>“This Convention shall apply in full accordance with the relevant provisions of the Treaties establishing the European Communities, the Protocol on the Privileges and Immunities of the European Communities, the Statutes of the Court of Justice and the texts adopted for the purpose of their implementation, as regards the withdrawal of immunity.” (Article 4.4)</p>
<b>Granting of immunity</b>	<p>“granting of immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention”. (Article 37.3)</p>			

	UNCAC	COE CLC	COE CVLC	EU ACC
<b>Statute of limitations</b>	<p>“Each State Party shall, where appropriate, establish under its domestic law <b>a long statute of limitations period</b> in which to commence proceedings for any offence established in accordance with this Convention and establish <b>a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.</b>” (Article 29, <i>[emphasis added]</i>)</p>		<p>“The proceedings for the recovery of damages are subject to a <b>limitation period of not less than three years</b> from the day the person who has suffered damage became aware or should reasonably have been aware, that damage has occurred or that an act of corruption has taken place, and of the identity of the responsible person. <b>Such proceedings shall not be commenced after the end of a limitation period of not less than ten years from the date of the act of corruption.</b>” (Article 7, <i>[emphasis added]</i>)</p>	

## 6.5 INTERNATIONAL COOPERATION AND MUTUAL LEGAL ASSISTANCE

All the conventions (UNCAC; CoE CLC; CoE CvLC, and EU ACC) proclaim the general principle of promoting international cooperation and mutual legal assistance to the widest possible degree. International cooperation facilitates investigation and prosecution of trans-border corruption offences as well as extradition and asset recovery. The adoption of a common approach in defining the penal systems within member states is a key factor enabling international cooperation and mutual legal assistance. Cooperation is supported by these norms not only in criminal cases but in civil and administrative proceedings related to corruption cases.

# 7. RIGHTS OF CITIZENS

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As most of the decisions of civil servants have direct effects on individuals, the rights of citizens and corresponding obligations of public officials must also be analysed in the anti-corruption context. These rights are enshrined in binding human rights treaties, complemented by the soft law instruments of various intergovernmental entities that monitor and provide advice on the interpretation of their norms. In addition, the prevention standards described in Chapter 5 contain rules to protect human rights.

## 7.1 RIGHT TO GOOD ADMINISTRATION

The right to good administration is proclaimed in the EU ChFR as a fundamental right of EU citizens. Article 41 stipulates that “every person has the right to have his/her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union”. This right is based on the case law of the European Court of Justice concerning good administration as a general principle of EU law.

While the EU ChFR provides enforceable rights to every citizen, of the other documents referring to the right to good administration some are binding, some non-binding. With regard to EU public servants, the EU PSP (2012) establishes a set of soft law principles, while the EU CGAB (2000) imposes binding rules on EU civil servants. Although they do not apply to civil servants of national public administrations, they establish standards that can be followed. As for the Council of Europe, several soft law instruments contain relevant standards. The CoE CGA (2007) contains “principles and rules which should be applied by public authorities in their relations with private persons”; according to CoE RSPO (2000) good administration “principles concerning the status of public officials should be established by law [...] and their implementation should be left to the government and/or other competent authorities”; and the CoE RDP (1980) “recommends the governments of member states to be guided in the law and administrative practice by the principles”.

The above-mentioned instruments explicitly call for public officials to:

- act always in an **impartial, objective and non-discriminatory manner** (EU PSP; EC CGAB; EU ChFR; CoE CGA; CoE RSPO; CoE RDP)
- **act respectfully** to each other and to citizens. They should be **polite, helpful, and cooperative** and express themselves clearly, using plain language (EU PSP)
- be **transparent and accountable**: always justify decisions, keep proper records and be open to public scrutiny (EU PSP; EU CGAB; CoE CGA)
- act within a reasonable timeframe (EU CGAB; EU ChFR; CoE GGA; CoE RDP)
- **provide all necessary information** on administrative and appeal procedures (EU CGAB; CoE CGA; CoE RDP)
- always justify their decisions (EU CGAB; CoE RDP)
- **ensure that every person is heard**, before any individual measure which would affect him or her adversely is taken; listen to all parties with direct interest (EU ChFR; EU CGAB; CoE CGA)
- acknowledge the receipt, indicate the name and telephone number of the competent official dealing with the request, reply to letters in the language of the citizen; and transfer the matter to the competent service (EU CGAB)

- provide means for participation of the citizen in the decision-making process (White paper on European governance<sup>33</sup>, CoE CGA)

## Right to good administration

	EU PSP	EU CGAB	EU CHFR	UNCAC	COE RECOMMENDATIONS/ INSTRUMENTS
<b>General standards:</b> 1) integrity 2) lawfulness and non-discrimination 3) impartiality and proportionality 4) professionalism and predictability 5) transparency and accountability 6) courtesy 7) acting in reasonable time limits	<b>Objectivity, impartiality and non-discrimination</b>	<b>Objectivity, impartiality and non-discrimination</b>	<b>Equality before the law</b> (Article 20) and <b>non-discrimination</b> (Article 21)		<b>Impartiality and equality</b> (CoE CGA; CoE RDP)
	<b>Lawfulness</b> <b>Decisions based on merit and proportionality</b> , taken only in the interests of the citizens and EU	<b>Lawfulness and proportionality, absence of abuse of power</b>			<b>Lawfulness and proportionality</b> (CoE CGA, CoE RDP)
	<b>Integrity, professionalism, transparency</b>	<b>Integrity, professionalism; consistency and predictability</b>			<b>Predictability and legal certainty</b> (CoE GGA, CoE RDP)
	<b>Respect for others</b> (citizens and colleagues)	<b>Service minded, correct, courteous and accessible</b>			
		<b>Acting in a reasonable timeframe</b>	<b>Obligation to act in a reasonable timeframe</b> (Article 41)		<b>Taking actions within reasonable time limits</b> (CoE GGA, CoE RDP)
<b>Transparency/accountability/reasoning of decisions</b>	<b>Be transparent and accountable for their actions</b>	<b>Duty to state the grounds for the decision</b>	The administration is obliged to <b>give reasons for its decisions</b> . (Article 42.2c)	Transparency in decision-making processes. (Article 10)	<b>Transparency</b> in decision-making (Article 10 CoE CGA) and <b>reasoning of the decisions</b> (Article 10 CoE CGA).

<sup>33</sup> *Official Journal* 287, 12/10/2001 P. 0001 – 0029, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52001DC0428&rid=2>

	EU PSP	EU CGAB	EU CHFR	UNCAC	COE RECOMMENDATIONS/ INSTRUMENTS
<b>Participation</b>		Citizens have the <b>right to be consulted</b> on matters affecting their interests.		States Parties shall promote active participation of individuals and civil society organisations in the prevention of and the fight against corruption. (Article 13)	Citizens have the <b>right to participation in decision-making processes via consultations.</b> (Article 8 and Article 15 of CoE CGA)
<b>Right to be heard</b>		Listening to <b>all parties with direct interest</b>	Every person has the <b>right to be heard, before any individual measure</b> that would affect him or her <b>adversely is taken.</b> (Article 41.2a)		In the case that a <b>decision</b> will be taken that may have an <b>adverse effect</b> on individuals, they should <b>be given the opportunity to express their views</b> within a reasonable time and in the manner provided for by national law. (Article 14 of CoE CGA)
<b>Administrative and appeal procedures</b>		Provision of information on <b>administrative and appeal procedures</b>			Provision of information on the <b>expected time within which the decision will be taken, and of the legal remedies</b> that exist in case the authority does not take a requested decision; administrative decisions shall be published (Articles 13.4 and 18.1, CoE CGA; 9-10. CoE RDP)
<b>Administrative procedures/ dealing with inquiries</b>		Acknowledgement of receipt and indication of competent officials, reply to letters in the language of the citizen; obligation to transfer the matter to the competent service			The CoE CGA contains detailed principles on Initiation of administrative decisions, requests, involvement of affected parties, costs, publication of administrative decisions, entry into force, appeals and execution (CoE GGA)

## 7.2 RIGHT TO LEGAL REMEDIES

The right to effective remedy is one of the fundamental rights stipulated in the CoE's Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (Article 13). The Convention says that every citizen has the right to an effective remedy before a national authority, irrespective of whether the violation has been committed by persons acting in an official capacity. This right has been also enshrined by the EU ChFR, ICCPR<sup>34</sup> and UDHR. Other key documents prescribe the rights of the citizens (obligations of public officials) related to maladministration and corruption cases include the UNCAC, EU CGAB, the CoE Code of Good Administration (CGA), CoE Recommendation (84)15 on Public Liability and CoE Recommendation (80)2 concerning the exercise of discretionary powers by administrative authorities. The main rights stipulated are as follows:

- **The right to administrative appeal and judicial review** of an administrative decision that directly affects the rights and interests of the citizens (EU ChFR; ECHR, ICCPR, UDHR, CoE CGA, CoE RDP).
- **The right to an effective remedy** of persons who suffered damage through unlawful administrative decisions or negligence on the part of the administration or its officials. Every citizen has the right to seek compensation from the authorities concerned (before the case is handled by the court) or issue legal proceedings against public officials in their personal capacity (CoE CGA, CoE RPL, UNCAC). This right also includes the right to a fair public hearing within a reasonable time by an independent and impartial tribunal as well as the right to receive advice and to be defended and represented (EU Charter on Fundamental Rights, ECHR, ICCPR, UDHR, CoE CGA, CoE RPL).
- The **right to bring an action** against public authorities is not preconditioned by the obligation to act first against the responsible public official. Every citizen who has suffered damage from a failure of the public authority to conduct itself in a lawful way can initiate action and request remedies from the respective authority. Decisions granting reparations should be implemented as quickly as possible (CoE RPL).

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<sup>34</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

## Right to appeal and to legal remedies

	EU CHFR/ECHR	ICCPR	UDHR	UNCAC	COE RECOMMENDATIONS
<b>Right to administrative appeal and judicial review</b>	Everyone has the right to an effective <b>remedy, fair trial and public hearing</b> within a <b>reasonable time</b> by <b>independent and impartial tribunal</b> . (EU ChFR Article 47 / ECHR Article 6 and 13)	Each State Party to the present Covenant undertakes the following:  "any person whose rights or freedoms as herein recognized are violated shall have an <b>effective remedy</b> , notwithstanding that the violation has been committed by persons acting in an official capacity" (Article 2, para 3a, <i>[emphasis added]</i> )  "To ensure that any person claiming such a remedy <b>shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy</b> " (Article 2. para 3b, <i>[emphasis added]</i> )	Everyone is entitled in <b>full equality to a fair and public hearing by an independent and impartial tribunal</b> , in the determination of his or her rights and obligations and of any criminal charge against him or her. (Article 10)		<b>Right to administrative appeal and judicial review</b> of an administrative decision that directly affects an individual's rights and interests (CoE CGA; CoE RDP)
<b>Right to effective remedy</b>	Every person has <b>the right to have the Union make good any damage caused by its institutions or by its servants</b> in the performance of their duties, in accordance with the general principles common to the laws of the member states. (Article 41.3)		Everyone has the <b>right to an effective remedy by the competent national tribunals for acts violating the fundamental rights</b> granted to him or her by the constitution or by law. (Article 8)	Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to <b>ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation</b> . (Article 35, <i>[emphasis added]</i> )	<b>Reparation should be ensured for damage caused by an act due to a failure of a public authority</b> to conduct itself in a way that can reasonably be expected from it in law in relation to the injured person. <b>Remedy can be sought by the official or the public body</b> (CoE RPL). Citizens have the right to seek remedies for cases where decisions are not taken within a reasonable time. (Article 13 of CoE CGA)
<b>Timeliness of the reparation</b>					Decisions granting <b>reparations should be implemented as quickly as possible</b> . (CoE RPL)



## 7.3 RIGHT TO PETITION AND COMPLAIN

The right to petition and/or complaint is enshrined, though limited to EU institutions as respondents, in the TFEU, in the EU ChFR and in the EU CGAB. The right has two key elements: first to address particular public bodies by sharing information, expressing an opinion and seeking action of the public bodies; and second to obtain a reply from the addressed public body (regardless of whether any action was taken).

The first element is implicit in the right to freedom of expression enshrined in the ECHR, ICCPR and UDHR; however, none of these conventions includes the obligation of public bodies to take action or to reply to the petitioner. Although these treaties do not include a full right to petition/right to complain and do not mention the institution of ombudspersons, the latter has some foundation in international law. Already in 1946, the UN Economic and Social Council addressed the issue of national human rights institutions and one of these institutions is the ombudsman.<sup>35</sup> The UN General Assembly's resolution on the role of the ombudsman in its preamble emphasises "the role of the Ombudsman, mediator and other national human rights institutions in promoting good governance in public administrations, as well as improving their relations with citizens, and in strengthening the delivery of public services" and also encourages the "creation or the strengthening of independent and autonomous ombudsman".<sup>36</sup>

Although the following rights are guaranteed only with regard to EU institutions it is worth underlining them as many national laws have similar provisions and the EU legislation may serve as an example.

- Every citizen has the **right to file a complaint** to the European Ombudsman in cases of maladministration<sup>37</sup> in the activities of the institutions, bodies, offices or agencies of the EU (EU ChFR, EU CGAB). In addition, the EC communication on updating the handling of relations with the complainant in respect of the application of EU law<sup>38</sup> prescribes that anyone may file a complaint with the Commission free of charge against a member state about any measure (law, regulation or administrative action), absence of measure or practice by a member state that they consider incompatible with Union law.
- **The right of every citizen** (acting individually or jointly with others) **to petition** to the European Parliament is stipulated in Article 227 of the Treaty on the Functioning of the EU. The EU Charter on Fundamental Rights also stipulates that any citizen of the EU and any natural or legal person residing or having its registered office in a member state has the right to petition the European Parliament (Article 44). The petition should concern issues within the competence of the EU and may encompass: an individual grievance, such as the recognition of family allowance rights; a request arising from a general need, for example the protection of a cultural monument; or an application to the European Parliament to take a position on a matter of public interest, like human rights. The right to petition as stated in the EU ChFR refers to the institutions and bodies of the EU and to the member states when they are implementing EU law. However, as the charter also has an exemplary function, the right to petition principle has been adopted

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<sup>35</sup> National Human Rights Institutions: History, Principles, Roles and Responsibilities, OHCHR Professional Learning Series No. 4 (Rev.1), OHCHR/P/PT/4/Rev.1 (2010), available at [www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI\\_en.pdf](http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf)

<sup>36</sup> UN General Assembly resolution 67/163, The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, A/RES/67/163 (20 December 2012).

<sup>37</sup> Such as an administrative irregularity, unfairness or discrimination; an abuse of power; a lack or refusal of information; or an unnecessary delay.

<sup>38</sup> European Commission, Communication from the Commission to the Council and the European Parliament. Updating the handling of relations with the complainant in respect of the application of Union law, COM (2012)0154.

in all member states and national ombudsman institutions<sup>39</sup> have been established to deal with cases of the maladministration of national authorities.

In the Transparency International NIS, indicators and procedures for handling complaints are present in the assessment of the pillars of public institutions (legislative, executive, judiciary, public sector, law enforcement, electoral management body and anti-corruption agencies) and the institution of ombudsman is examined in detail in every country whose NIS is studied.<sup>40</sup>

## Right to petition and complain

	EU CGAB	EU CHFR	ECHR	TFEU
<b>Right to file a complaint</b>	Every decision should contain the appeal procedure and the right to <b>petition the European Ombudsman.</b> (Article 19)	Every citizen can refer to the <b>European Ombudsman in cases of maladministration</b> in the activities of the institutions, bodies, offices or agencies of the EU, with the exception of the Court of Justice of the EU acting in its judicial role. (Article 43)		<p>“Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia: [...] the right to <b>petition the European Parliament</b>, to <b>apply to the European Ombudsman</b>, and to <b>address the institutions and advisory bodies of the Union</b> in any of the Treaty languages and to obtain a reply in the same language.” (Article 20, para 20, <i>[emphasis added]</i>) (see also Article 24)</p> <p>“Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall <b>have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament</b> on a matter which comes within the Union’s fields of activity and which affects him, her or it directly.” (Article 227, <i>[emphasis added]</i>)</p> <p>“A European Ombudsman, elected by the European Parliament, <b>shall be empowered to receive complaints from any citizen of the Union</b> or any natural or legal person residing or having its registered office in a Member State <b>concerning instances of maladministration [...].</b> He or she <b>shall examine such complaints and report on them.</b>” (Article 228, <i>[emphasis added]</i>)</p>
<b>Right to petition</b>		Any citizen of the EU and any natural or legal person residing or having its registered office in a member state <b>has the right to petition the European Parliament.</b> (Article 44)		

<sup>39</sup> Full contact details can be found at [www.ombudsman.europa.eu/en/atyourservice/nationalombudsmen.faces](http://www.ombudsman.europa.eu/en/atyourservice/nationalombudsmen.faces)

<sup>40</sup> NIS Indicators and Foundations, available at [http://www.transparency.org/files/content/nis/NISIndicatorsFoundations\\_EN.pdf](http://www.transparency.org/files/content/nis/NISIndicatorsFoundations_EN.pdf)

## 7.4 THE RIGHT TO ACCESS TO INFORMATION

The right of access to information and documents is a human right enshrined in the ECHR, ICCPR and UDHR. The CoE has also adopted the Convention on Access to Official Documents (CoE Convention), but it has not yet entered into force.<sup>41</sup> The United Nations Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) is a sector-specific convention on access to environmental information, which has become part of the EU *acquis*. UNCAC also contains provisions on access to information, though it does not have a rights-based approach in this matter.

The right of access to information and documents is also one of the fundamental rights included in the TFEU and EU ChFR. Article 15 of the TFEU proclaims that “any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union’s institutions, bodies, offices and agencies, whatever their medium”. The TFEU also instructs all institutions, bodies and agencies of the EU to ensure their proceedings are transparent and allow for proper access to their documents.

There are also certain soft law standards that elaborate details of the rights enshrined in the above instruments. The UN Human Rights Committee adopted a general comment that confirms the right of access to information as a human right,<sup>42</sup> the CoE adopted a recommendation on access to official documents that provided the basis for the CoE Convention,<sup>43</sup> the CoE CGA contains relevant provisions, and the European CGAB also includes rules on the obligations of EU public officials concerning access to information. The NGO Article 19 has developed Principles on Freedom of Information Legislation, which were endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression,<sup>44</sup> and a model law on freedom of information that addresses each component that is needed to exercise this right under domestic law.<sup>45</sup>

The language of the relevant provisions of the ECHR, ICCPR and UDHR are quite similar; however, the text of the ECHR includes only two elements of the right to “receive and impart” information, while the right to “seek” information has started to develop through the jurisprudence of the European Court of Human Rights interpreting Article 10 fairly recently.<sup>46</sup> The scope of possible restrictions of the right varies between each the above-mentioned treaties. For example, the ICCPR provides a few broad reasons for restriction – “a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals” – while the ECHR, the CoE Convention and the Aarhus Convention break down these exemptions further. In the end national legislators have significant freedom in defining the areas where restrictions on the right of access to information are possible, but the international forums that interpret this right have built strict standards as to what “conditions, restrictions or penalties [as] are prescribed by law and are necessary in a democratic society”.<sup>47</sup>

The CoE Convention and the soft laws provide useful details on the obligations of public officials who are in charge of providing for the exercise of this right. These details include time limits, fees, reasoned decisions on refusals, forms of access and information on review procedures. When the ECHR, ICCPR and UDHR were adopted, the notion of proactive disclosure was not very developed

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<sup>41</sup> Council of Europe Convention on Access to Official Documents, CETS No. 205.

<sup>42</sup> UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression* (12 September 2011), CCPR/C/GC/34

<sup>43</sup> Recommendation *Rec(2002)2* of the Committee of Ministers to member states on access to official documents.

<sup>44</sup> [www.article19.org/data/files/pdfs/standards/righttoknow.pdf](http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf)

<sup>45</sup> Model Freedom of Information Law, available at [www.article19.org/data/files/pdfs/standards/modelfoiaw.pdf](http://www.article19.org/data/files/pdfs/standards/modelfoiaw.pdf)

<sup>46</sup> [www.right2info.org/cases](http://www.right2info.org/cases)

<sup>47</sup> Art. 10, para 2 of the ECHR.

and their provisions do not include explicit references on this matter. However, the legal instruments adopted more recently, such as the UNCAC and the Aarhus Convention, also include standards on obligations to publish information without a request.

Access to information is part of the transparency indicators of Transparency International NIS and present in the assessment of the judiciary, public sector, electoral management body, supreme audit institutions and media pillars of the NIS studies.<sup>48</sup>

## Right of access to information

UDHR	ICCPR	ECHR	EU CHFR	TFEU
<p>“Everyone has the right to freedom of opinion and expression; this right includes <b>freedom to hold opinions without interference and to seek, receive and impart information and ideas</b> through any media and regardless of frontiers.” (Article 19, <i>[emphasis added]</i>)</p>	<p>“Everyone shall have the right to freedom of expression; this right shall include <b>freedom to seek, receive and impart information and ideas of all kinds,</b> regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” (Article 19, <i>[emphasis added]</i>)</p>	<p>“Everyone has the right to freedom of expression. This right shall include <b>freedom to hold opinions and to receive and impart information and ideas without interference by public authority</b> and regardless of frontiers.” (Article 10, <i>[emphasis added]</i>)</p>	<p>“Every EU citizen or EU legal entity resident in the EU or entity having a registered office in the <b>EU has the right to access the documents of the European Parliament, European Commission and the European Council.</b>” (Article 42, <i>[emphasis added]</i>)</p>	<p>“Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a <b>right of access to documents of the Union’s institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph...</b> Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph.” (Article 15, <i>[emphasis added]</i>)</p>

<sup>48</sup> NIS Indicators and Foundations, available at [www.transparency.org/files/content/nis/NISIndicatorsFoundations\\_EN.pdf](http://www.transparency.org/files/content/nis/NISIndicatorsFoundations_EN.pdf)

## 7.5 RIGHT TO PRIVACY/PROTECTION OF PERSONAL DATA

Any individual who interacts with the public administration frequently has to share intimate details of his/her private life with public officials. In these situations and through such details the individuals are defenceless and public officials of low integrity may abuse the information they hold on individuals. Such abuse can take the form of abuse of office, blackmailing, solicitation of bribes, extortion, etc. Therefore protection of privacy is a key area of protection of human rights in public administration.

The right to privacy is a human right enshrined by the ECHR, ICCPR, UDHR and EU ChFR. The protection of privacy is very often guaranteed through protection of personal data. The EU ChFR and TFEU both recognise the right to the protection of personal data. There are three more instruments that are binding in this field for all EU member states: the CoE's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data from 1981, one of the first generation data protection norms,<sup>49</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data, and EU Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.

The CoE Convention established a Consultative Committee to, among other things, "express an opinion on any question concerning the application of this convention", and the Article 29 Working Party was set up under Directive 95/46/EC. Both entities have been producing important opinions, recommendations, studies and reports on the right to privacy and protection of personal data. The OECD Guidelines governing the protection of privacy and transborder flows of personal data (July 2013), the CoE CGA, and the EU CGAB are further soft law norms on relevant requirements of public authorities and public officials in this field.

The two binding sets of norms, the CoE's data protection convention and Directive 95/46/EC, both provide all the necessary details that are needed for a national privacy/data protection law. The principles, the definitions, the exceptions, the remedies foreseen, and the requirement of a supervisory authority are quite similar. The main differences are that the EU has better means to enforce its directive and the EU directive was adopted 14 years later, which allowed it to rely on the experiences of a period of significant technical development. In 2012 proposals were prepared for the modernisation of both instruments.<sup>50</sup>

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<sup>49</sup> Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, CETS No. 108 and the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows, CETS No. 181. N.B. While the convention has been ratified by all EU member states, its additional protocol has not been ratified by many of them.

<sup>50</sup> Find documents on the modernisation of CoE Convention No. 108 at [www.coe.int/t/dghl/standardsetting/dataprotection/modernisation\\_en.asp](http://www.coe.int/t/dghl/standardsetting/dataprotection/modernisation_en.asp) and on the reform of the EU data protection rules at [http://ec.europa.eu/justice/newsroom/data-protection/news/120125\\_en.htm](http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm). In the consultation on the modernisation of the CoE data protection convention it was a very prominent question how the norms of the two documents align with each other (see details at [www.coe.int/t/dghl/standardsetting/dataprotection/TPD\\_documents/TPD-BUR\\_2011\\_10\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/dataprotection/TPD_documents/TPD-BUR_2011_10_en.pdf)).

## Right to privacy/protection of personal data

UDHR	ICCPR	ECHR	EU CHFR	TFEU
<p>“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” (Article 12)</p>	<p>“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.” (Article 17, para 1)</p>	<p>“Everyone has the right to respect for his private and family life, his home and his correspondence.” (Article 8, para 1)</p>	<p>“Everyone has the right to respect for his or her private and family life, home and communications.” (Article 7)</p> <p>“1. Everyone has the right to the protection of personal data concerning him or her. 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. 3. Compliance with these rules shall be subject to control by an independent authority.” (Article 8)</p> <p>The right of every person to have <b>access to his or her file</b>, while respecting the legitimate interests of confidentiality and of professional and business secrecy (Article 41, para 2, <i>[emphasis added]</i>)</p>	<p>“Everyone has the right to the protection of personal data concerning them.” (Article 16, para 1)</p> <p>“The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the rules relating to the <b>protection of individuals with regard to the processing of personal data</b> by Union institutions, bodies, offices and agencies, and <b>by the Member States when carrying out activities which fall within the scope of Union law</b>, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.” (Article 16, para 2, <i>[emphasis added]</i>)</p>

# ANNEX 1: COMPLIANCE AND MONITORING TOOLS (AS OF NOVEMBER 2014)

LEGAL INSTRUMENT	OPEN FOR SIGNATURES	ENTRY INTO FORCE	RATIFICATION STATUS	REVIEW MECHANISM	TOPIC FOR NEXT REVIEW
UNCAC	2003	2005	All member states	UNCAC review mechanism	The second evaluation cycle (2015-2020) will focus on Chapters 2 and 5: Prevention and asset recovery.
CoE CLC	1999	2002	All member states apart from <i>Germany</i>	GRECO peer review mechanism	The fourth evaluation round was launched in 2012 and focuses on Prevention of corruption in respect of members of parliament, judges and prosecutors.
CoE CvLC	1999	2003	All member states apart from Denmark, Ireland, Luxembourg, Portugal and the United Kingdom	GRECO peer review mechanism	The topics of the next evaluation round are still subject to discussion. It is expected in Phase 4 to focus more closely on detection, enforcement, corporate liability, and other major topics relevant to adequate implementation of the Convention's obligations.
OECD Anti-bribery Convention	1997	1999	All member states apart from Croatia, Cyprus, Malta, Lithuania and Romania	OECD Working Group on Bribery peer review mechanism	This assesses the overall anti-corruption policy/situation/achievement, and is conducted every two years.
EU ACC	1997	2005	All member states	Anti-corruption Report	

# ANNEX 2: LIST OF ANALYSED NORMS AND REFERENCE LITERATURE

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