

Council of Europe instruments and the United Nations Convention against Corruption:

Similarities, differences, complementarities and opportunities

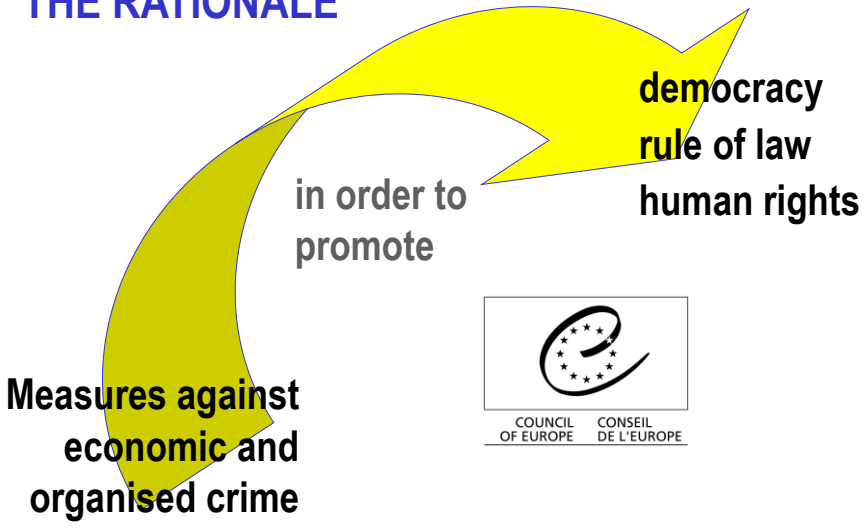


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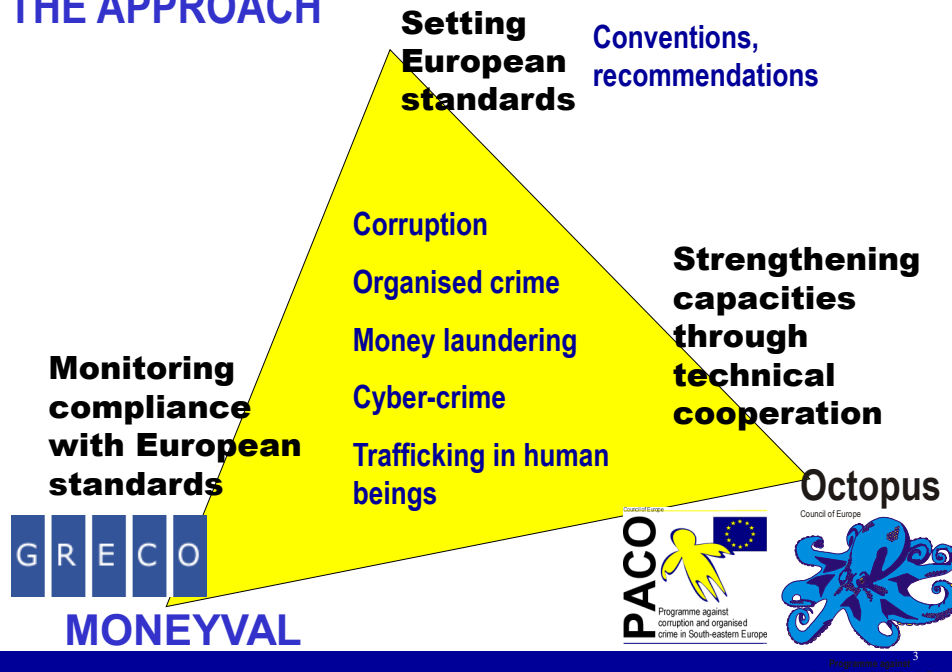


Strategy against economic and organised crime THE RATIONALE



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THE APPROACH



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Relevant Council of Europe instruments

CoE treaties on corruption:

- Criminal Law Convention on Corruption (ETS 173)
- Civil Law Convention on Corruption (ETS 174)
- Additional Protocol to the Criminal Law Convention (ETS 191)

CoE recommendations (soft law instruments):

- 20 Guiding Principles on the fight against corruption (1997)
- Rec (2003)4 on the financing of political parties and electoral campaigns
- Rec (2000)10 on the model code of conduct for public officials

Other relevant treaties:

- Convention on the Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141)
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)
- Treaties on cooperation in criminal matters

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CoE treaties on corruption - status of ratification

- **Criminal Law Convention on Corruption (ETS 173):**
Ratified by 31 member States and signed by another 16 countries (including non-member States Belarus, Mexico and USA)
- **Civil Law Convention on Corruption (ETS 174):**
Ratified by 25 member States and signed by another 15 countries (including Belarus)
- **Additional Protocol to the Criminal Law Convention (ETS 191):**
Ratified by 11 and signed by another 19 member States

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UNCAC and CoE instruments: Similarities

A range of material and procedural law provisions are similar.

For example:

- Active and passive bribery of domestic public officials (Art 2 + 3 ETS 173, Art 15 UNCAC)
- of foreign public officials (Art 5 + 6 ETS 173, Art 16 UNCAC)
- of officials of international organisations (Art 9 ETS 173, Art 16 UNCAC)
- Bribery in the private sector (Art 8 + 9 ETS 173, Art 21 UNCAC)
- Money laundering (Art 13 ETS 173, Art 23 UNCAC)
- Trading in influence (Art 12 ETS 173, Art 18 UNCAC)
- Corporate liability (Art 18 ETS 173, Art 26 UNCAC)
- Confiscation of proceeds (Art 19 + 23 ETS 173, Art 31 UNCAC)
- Protection of witnesses (Art 22 ETS 173, Art 32 UNCAC)
- Specialised authorities (Art 20 ETS 173, Art 36 UNCAC)

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... UNCAC and CoE instruments: Similarities

Other UNCAC provisions are also found in various CoE instruments

For example:

- Protection of “whistleblowers” (ETS 174, Art 33 UNCAC)
- Compensation for damage (ETS 174, Art 35 UNCAC)
- Prevention of money laundering (ETS 141 + ETS 198, Art 14 UNCAC)
- Joint investigations (ETS 182, Art 49 UNCAC)
- International cooperation (Art 25-31 ETS 173 + treaties on cooperation in criminal matters, Art 43-50 UNCAC)

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UNCAC and CoE instruments: Differences

Geographical scope:

- CoE Europe = 46+
- UNCAC = global

Mandatory versus optional provisions:

- UNCAC = shall, shall endeavour, shall consider
- CoE = shall + reservations (to expire or to be confirmed w/i 3 years) in treaties. Softlaw instruments which are monitored

Scope:

- UNCAC = Broad range of measures within a single instrument
- CoE = Broad range of measures in different instruments

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... UNCAC and CoE instruments: Differences

UNCAC contains additional provisions on criminalisation and law enforcement. For example:

- Embezzlement
- Abuse of functions
- Illicit enrichment
- Concealment
- Obstruction of justice

Additional measures in CoE Criminal Law Convention ETS 173:

- Bribery of judges on international courts (Art 11)
- of members of domestic (Art 4) and international parliamentary assemblies (Art 10)

Additional measures in CoE Civil Law Convention ETS 174:

- Validity of contracts, protection of employees, liability etc.

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... UNCAC and CoE instruments: Differences

Additional provisions in UNCAC

- Prevention chapter in UNCAC
- Preventive policies
- Preventive body/bodies (compare to Art 20 of CoE ETS 173)

Prevention measures in CoE recommendations

- 20 Guiding Principles on the fight against corruption (1997)
- Rec (2003)4 on the financing of political parties and electoral campaigns
- Rec (2000)10 on the model code of conduct for public officials

Prevention of money laundering

- Convention on the Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141)
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)

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... UNCAC and CoE instruments: Differences

- UNCAC chapter on asset recovery
- CoE treaties on money laundering (monitored by MONEYVAL)
- CoE treaties on cooperation in criminal matters

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... UNCAC and CoE instruments: Differences

Monitoring

- UNCAC: to be determined

• CoE: **GRECO**

- International monitoring mechanism
- Established in 1999 by the Council of Europe
- 39 members
- Open to member and non-member States of the Council of Europe

TASK:

- Monitoring the observance of Council of Europe's international legal instruments on corruption

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... UNCAC and CoE instruments: Differences



Mutual evaluation and peer pressure

Procedure:

- Evaluation rounds
- Specific provisions selected
- Questionnaire
- Evaluation teams
- Country visits
- Evaluation reports
- Recommendations
- Compliance procedure
- Publication

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... UNCAC and CoE instruments: Differences



Second round of evaluations (2003 - 2005)

Evaluation themes:

- Proceeds of Corruption
- Public Administration and Corruption
- Legal Persons and Corruption

(“20 Guiding Principles” and Criminal Law Convention on Corruption)

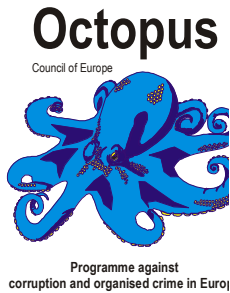
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... UNCAC and CoE instruments: Differences

Technical assistance

- Chapter in UNCAC
- CoE technical cooperation programmes



Joint Programmes EC/COE

European Commission
Commission européenne



Council of Europe
Conseil de l'Europe

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UNCAC and CoE instruments: Differences

Differences = complementarity
≠ contradictions

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UNCAC and CoE instruments: Opportunities

- **UNCAC to make use of CoE instruments and experience (e.g. code of conduct, political finances, judicial cooperation, civil law convention, specialised services, money laundering)**
- **CoE to make use of UNCAC (specialised services, prevention, other provisions not covered by or less detailed in CoE instruments)**
- **UNCAC to make use of GRECO experience**
- **COE and UN to cooperate in technical assistance**