

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (81) 12

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON ECONOMIC CRIME

*(Adopted by the Committee of Ministers on 25 June 1981
at the 335th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the considerable growth of economic activity in Council of Europe member states and the development of international economic relations often give rise to the commission of criminal offences ;

Considering that economic crime :¹

— causes loss to a large number of people (partners, shareholders, employees, competitors, customers, creditors), to the community as a whole and even to the state, which has to bear a heavy financial burden or suffers a considerable loss of revenue ;

— harms the national and/or international economy ;

— causes a certain loss of confidence in the economic system itself ;

Considering the substantial legal problems caused by this form of crime at both national and international level ;

Considering the desirability of, first of all, seeking to prevent such crime by means of civil, commercial and administrative law measures ;

Considering that civil, commercial and administrative law should, wherever necessary, be strengthened or supplemented by the criminal law ;

Considering that effective control of economic crime would redress the balance in the system of criminal justice in relation to conventional offences, thus increasing public confidence in the working of the system ;

Convinced that it is in the best interest of Council of Europe member states to develop joint criminal-policy principles against this evil and to improve their mutual assistance in this field without delay ;

Having regard to the conclusions of the 8th Conference of European Ministers of Justice, held in Stockholm in 1973 ;

Having regard to the proceedings of the 12th Conference of Directors of Criminological Research Institutes, held in Strasbourg in 1976,

I. Recommends that the governments of member states review their legislation on business activity in the light of the need to promote a coherent and comprehensive set of standards, easily understandable to all concerned, as well as a legal system flexible enough to cope with such economic crime as may occur as a result of future economic and technological development ;

1. See appendix : list of economic offences.

II. Recommends, in particular, that the governments of member states :

1. devote greater attention to preventing economic crime, with particular reference to statutory provisions concerning the following matters :
 - the minimum funds necessary for setting up and/or running a commercial company,
 - the conditions to be observed and particulars to be supplied for the entry of commercial companies in special registers kept by the state,
 - the book-keeping of commercial companies and supervision thereof by appropriate bodies,
 - the periodic inspection of companies by government departments and the conduct of administrative enquiries concerning companies where grave irregularities are suspected ;
2. examine the possibility of entrusting an ombudsman with the task of protecting the public, particularly consumers, from abuses and malpractices in the business world ;
3. improve co-operation between the authorities responsible for economic crime control ;
4. inform the public of its rights and of the remedies available to it against economic crime and, by facilitating access to the authorities, encourage the public to turn to them for protection ;
5. encourage trade associations and other groups in the business world to draw up codes of business ethics ;

III. Recommends that the governments of member states :

1. take steps to facilitate the detection of economic offences and the institution of criminal proceedings, in particular by :
 - setting up police units specialising in economic crime control,
 - setting up, under prosecuting authorities, sections specialising in economic cases,
 - providing specialised training for police and other investigative bodies dealing with economic crime, such training being associated, where appropriate, with satisfactory career structures,
 - giving victims of economic crime the right to enforce their claims personally in the criminal proceedings or, if they already enjoy this right, by making their task easier,
 - examining the possibility of allowing certain victims' associations to be parties to criminal proceedings ;
2. take all steps required to ensure swift and efficient criminal justice in the field of economic crime, in particular by :
 - providing specialised training for judges dealing with economic cases,
 - revising the rules of secrecy for certain professions (e.g. banking),
 - permitting or encouraging other public authorities to provide the criminal authorities with information needed for criminal proceedings,
 - examining the possibility of adopting the concept of criminal liability of corporations or at least of introducing other arrangements serving the same purposes in respect of economic offences,
 - encouraging authorities responsible for prosecuting economic offences to avoid excessive delays ;
3. review their legislation on criminal penalties for economic offences with a view to :
 - appropriate use being made of custodial penalties in the case of serious offences,
 - making fines correspond better to the financial situation of offenders and to the seriousness of the economic offences committed and seeking legislative or other means to prevent a fine from being paid by a third person, particularly the person for whose benefit the offence was committed,
 - professional disqualifications being introduced as main penalties and compensation of victims being made a penalty in appropriate cases ;

IV. Recommends that the governments of member states :

— keep detailed statistics on economic crime to facilitate criminological research and reinforce the prevention and punishment of such crime,

— encourage and promote research into the causes, manifestations and consequences of economic crime and into the efficacy of preventive and punitive measures in this field ;

V. Recommends that the governments of member states intensify their co-operation at international level, in particular by :

— signing and ratifying the European Conventions on Mutual Assistance in Criminal Matters and on Extradition, the Protocols thereto and any other international instrument facilitating the prosecution and punishment of economic crime,

— examining the desirability of harmonising the rules of mutual assistance in criminal matters more closely in the Council of Europe and determining the field of application of member states' criminal law in the repression of economic crime in particular with a view to a revision of domestic laws restricting assistance ;

VI. Recommends that the governments of member states widely circulate among the appropriate authorities the report of the European Committee on Crime Problems (CDPC) on economic crime.

Appendix to Recommendation No. R (81) 12

List of economic offences

Owing to the generally recognised difficulty of giving an exact definition of economic crime, it was found necessary to delimit the concept by means of a list of offences (reference to the object) and a footnote (reference to the loss caused and description of the author).

The offences referred to in the recommendation are the following :¹

1. cartel offences ;
2. fraudulent practices and abuse of economic situation by multinational companies ;
3. fraudulent procurement or abuse of state or international organisations' grants ;
4. computer crime (e.g. theft of data, violation of secrets, manipulation of computerised data) ;
5. bogus firms ;
6. faking of company balance sheets and book-keeping offences ;
7. fraud concerning economic situation and corporate capital of companies ;
8. violation by a company of standards of security and health concerning employees ;
9. fraud to the detriment of creditors (e.g. bankruptcy, violation of intellectual and industrial property rights) ;
10. consumer fraud (in particular falsification of and misleading statements on goods, offences against public health, abuse of consumers' weakness or inexperience) ;
11. unfair competition (including bribery of an employee of a competing company) and misleading advertising ;
12. fiscal offences and evasion of social costs by enterprises ;
13. customs offences (e.g. evasion of customs duties, breach of quota restrictions) ;
14. offences concerning money and currency regulations ;
15. stock exchange and bank offences (e.g. fraudulent stock exchange manipulation and abuse of the public's inexperience) ;
16. offences against the environment.

1. Non-specific offences (i.e. Nos. 3, 4, 9, 12, 13, 14, 15 and 16) are to be taken into consideration only when they caused or risked causing substantial loss, presuppose special business knowledge on the part of the offenders, and were committed by businessmen in the exercise of their profession or functions.