



PHASE 3bis REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN GREECE

March 2015

This Phase 3bis Report on Greece by the OECD Working Group on Bribery evaluates and makes recommendations on Greece's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on 12 March 2015.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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EXECUTIVE SUMMARY

The Phase 3bis Report on Greece by the OECD Working Group on Bribery evaluates and makes recommendations to Greece on its implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The Report results from the Working Group's exceptional decision in 2012 to conduct a supplemental Phase 3bis evaluation of Greece. It examines issues that the Working Group was unable to fully assess in the previous Phase 3 evaluation in 2012. The report also examines Greece's implementation of the Working Group's 38 Phase 3 recommendations that were made in 2012, and new developments in Greece that time. Since 2012, Greece has significantly enhanced some aspects of its implementation of the Convention but there remains ample room for improvement in others.

Greece has made efforts to tackle domestic corruption in the country, but it needs to give much higher priority to fighting foreign bribery. Greece does not fully appreciate that its companies are at substantial risk of committing foreign bribery. The National Anti-Corruption Action Plan and other government policies continue to only address "corruption" generally which is interpreted as referring only to domestic corruption. This sends an unfortunate message that fighting domestic corruption is a priority during an economic crisis, but foreign bribery is an acceptable means to win overseas business and improve Greece's economy. Greece must therefore urgently raise the priority of fighting foreign bribery and explicitly address foreign bribery in its national anti-corruption strategies. Awareness-raising efforts must specifically address foreign bribery and especially target the export, shipping and SME sectors.

There are also concerns about enforcement and detection. Greece has seven on-going foreign bribery investigations, which is a welcome development. However, one case was closed without a thorough investigation. Investigations initially were not opened into several other allegations despite investigations or convictions in foreign jurisdictions against foreign officials for receiving bribes from Greek nationals. Most of the allegations that led to investigations were provided by the Working Group and were not detected by the Greek authorities. The Working Group therefore recommends that Greece urgently raise the priority given to fighting foreign bribery, and take all necessary measures to assess and investigate allegations seriously and without delay. Sufficient resources and training must be provided to prosecutorial and investigative authorities, as questions remain over Greece's capacity to handle complex economic and corruption cases. Greece must develop and implement a strategy to proactively detect foreign bribery cases that draws on diverse sources of information. It should analyse why its embassies have not forwarded foreign bribery allegations to prosecutors. Whistleblowers in the private sector should be better protected.

Greece has made progress in other areas. The Working Group welcomes Greece's recent efforts to rationalise and reduce duplicate legislative provisions. The new foreign bribery offence clarifies some uncertainties identified earlier by the Working Group. The maximum fines for foreign bribery have been raised though further increases are necessary. The PPACC has been given an important role in investigations and prosecutions. Greece has clarified how foreign bribery investigators can obtain information protected by tax secrecy. The Working Group will follow up whether and how a new Ministry of Anti-Corruption impacts Greece's fight against foreign bribery.

The report and its recommendations reflect findings of experts from Ireland and Republic of Korea and were adopted by the Working Group on 13 March 2015. The report is based on legislation and other materials provided by Greece, and research conducted by the evaluation team. It is also based on information obtained by the evaluation team during its on-site visit to Athens on 4-6 November 2014, during which the team met with representatives of Greece's public and private sectors, judiciary, civil society, and media. Within one year of the Working Group's approval of this report, Greece report orally to the Working Group on its implementation of certain recommendations. It will submit a written report on its foreign bribery enforcement actions and the implementation of all recommendations within two years.

A. INTRODUCTION

1. The On-Site Visit

1. On 4-6 November 2014, an evaluation team from the OECD Working Group on Bribery in International Business Transactions (Working Group) visited Athens as part of the Phase 3bis evaluation of Greece's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention); 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Anti-Bribery Recommendation); and 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation).

2. The evaluation team was composed of lead examiners (Republic of Korea and Ireland) and the OECD Secretariat.¹ Before the on-site visit, Greece responded to the Phase 3 Questionnaire and supplementary questions, and provided relevant legislation and documents. The evaluation team also referred to publicly available information. During the on-site visit, the evaluation team met representatives of the Greek public and private sectors, judiciary, civil society, and media. (See Annex 2 at p. 69 for a list of participants.) The evaluation team expresses its appreciation to all participants for their openness during the discussions and to Greece for its co-operation throughout the evaluation as well as for its warm hospitality during the on-site visit.

3. The on-site visit was conducted jointly with the country visit of Greece under the Mechanism for the Review of Implementation of the UN Convention against Corruption (UNCAC). The present cycle of the UNCAC Review covers criminalisation, law enforcement and international co-operation, which are prominent topics in the Working Group's Phase 3 evaluations. By coincidence, the date of the Phase 3bis on-site visit was close to the UNCAC country visit. Ireland, one of the lead examiners in Greece's Phase 3bis evaluation, was chosen - by lot - to also review Greece under UNCAC. (The other reviewer was Gabon.) The visits for the OECD and UNCAC reviews were therefore jointly organised to take advantage of synergies and to reduce duplication while respecting the procedures governing the respective review mechanisms. Some sessions in the on-site visit were attended by the evaluation teams under both Conventions. Sessions covering topics relevant to just one of the Conventions (e.g. tax, accounting and auditing) were attended by the respective evaluation team only. For reasons of confidentiality, the UN evaluation team was absent from the session on actual foreign bribery cases.

2. The Phase 3bis Process and Earlier Evaluations

4. The Working Group has evaluated Greece previously in [Phase 1](#) (January 1999), [Phase 2](#) (April 2005) and the [Phase 2 Written Follow-Up Report](#) (September 2007). In the June 2012 [Phase 3](#) evaluation, the Working Group made 38 recommendations to Greece on several issues regarding the implementation of the Convention. Three issues were identified for future follow up. (See Annex I at p. 65.)

¹ [Ireland](#) was represented by: Mr. Henry MATTHEWS, Professional Officer, Office of the Director of Public Prosecutions; Mr. Eamon KEOGH, Detective Superintendent, Garda Bureau of Fraud Investigation. [Korea](#) was represented by Ms. Yoojin CHOI, Deputy Director, Anti-Corruption and Civil Rights Commission of Korea; Ms. Jeusun MOON, Public Prosecutor, Busan District Prosecutors' Office; Mr. Dae Seok YOUN, Investigator, Anti-Corruption Co-ordination & External Affairs Division, Anti-Corruption Department, Supreme Prosecutors' Office. The [OECD Secretariat](#) was represented by Ms. Catherine MARTY and Mr. William LOO, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs.

5. This Phase 3bis Report results from the Working Group’s exceptional decision to conduct a supplemental evaluation of Greece. During the June 2012 Phase 3 evaluation, the Working Group was unable to fully examine many additional issues because of the Greek authorities’ failure to provide timely information, detailed statistics and translated legislation. Of particular concern was the *Telecom Company* case, which involved serious allegations of foreign bribery implicating three Greek individuals, including a “well-known entrepreneur”. The Greek authorities learned of these allegations in April 2010 but had not opened an investigation by the time of the Phase 3 on-site visit in February 2012. The case was brought to the evaluation team’s attention not by the Greek authorities but by a journalist at the end of the on-site visit. This prevented the evaluation team from discussing the case with all of the relevant on-site visit participants. To allow the Working Group to properly assess this case and other matters, Greece was accordingly required to undergo a supplemental Phase 3bis evaluation (Phase 3 Report paras. 158-163).

6. This Phase 3bis Report will also assess new developments since Phase 3 and Greece’s implementation of the Working Group’s 38 Phase 3 recommendations that were made in June 2012. Under the Working Group’s Phase 3 Procedure, Greece was required to provide its Phase 3 Written Follow-Up Report on its implementation of these 38 recommendations by June 2014. But given the proximity with the Phase 3bis evaluation, the Working Group decided to combine this Phase 3bis Report with its assessment of Greece’s implementation of the Phase 3 recommendations.

3. Outline of the Report

7. This report is structured as follows. Part B examines Greece’s efforts to implement and enforce the Convention and the 2009 Recommendations, having regard to Group-wide and country-specific issues. Particular attention is paid to enforcement efforts and results, and weaknesses identified in previous evaluations. Part C sets out the Working Group’s recommendations and issues for follow-up.

4. Economic Background

8. Greece has a medium-sized economy in the Working Group. A severe economic crisis beginning in 2008 led to a prolonged recession. Nevertheless, Greece remains the 29th largest economy among the 41 Working Group members in 2014.² However, this figure omits a very substantial shadow economy that reaches around 24% of GDP by some estimates.³ In 2013, Greece ranked 35th and 33rd in exports and imports of merchandise in the Working Group. The main export destination was the European Union. Major non-EU markets included Turkey, US, Former Yugoslav Republic of Macedonia (FYROM), and Libya. The most significant exports were fuels, food and chemicals. The EU also accounted for most imports, followed by Russia, Saudi Arabia, China and Korea.⁴ In terms of foreign direct investment (FDI), Greece had the 28th largest outward stock of FDI among Working Group members in 2013. As of 2012, the largest outward FDI stocks were in Cyprus,⁵ Netherlands, Turkey, Romania, US and Bulgaria.

² [International Monetary Fund](#). GDP at current prices.

³ [Schneider, F. \(2013\), “Size and Development of the Shadow Economy of 31 European and 5 other OECD Countries from 2003 to 2013: A Further Decline”, Johannes Kepler University; Schneider, F. and Williams, C. \(2013\), “The Shadow Economy”, Institute of Economic Affairs; The Economist \(2014\), “Greece’s Shadow Economy: The Treasures of Darkness”.](#)

⁴ [OECD.Stat](#); [World Trade Organisation](#).

⁵ Footnote by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Financial intermediation was the sector with by far the largest outward FDI stock in 2011, followed by manufacturing, and transports, storage and communication.⁶

9. Greece's shipping industry is of particular interest in the context of foreign bribery (Phase 3 Report para. 5). As of 2012, Greek shipowners controlled 15.56% of the world fleet by tonnage, ranking first in the world.⁷ The majority of these vessels sail under the flag of a foreign country but are beneficially Greek-owned.⁸ The sector is of strategic importance to the Greek economy. In 2011, the sector generated 192 000 jobs and over EUR 14 billion in foreign exchange earnings (6.86% of GDP). Marine Academies offered almost 1 200 places for new recruits in 2012.⁹ The Ministry of Shipping and the Aegean was reinstated in 2012 following a four-year absence.

10. Greek small- and medium-sized enterprises (SMEs) have become more active internationally because of the economic crisis. The sector accounts for 99.9% of Greek enterprises and 84.8% of employment. Because of the recent economic crisis, an estimated 1 500 to 2 000 SMEs sought to reduce labour costs and expand markets by shifting their activities to neighbouring countries including Turkey, Cyprus and Romania. SME's main export destinations are Turkey, Italy, Germany, Bulgaria, and Cyprus. The Greek government has developed a national strategy to expand exports and FDI.¹⁰ The Directorate for Small and Medium-sized Enterprises in the Industry General Secretariat of the Ministry of Development and Competitiveness plays a key role in SME promotion.

5. Greece's Exposure and Approach to Corruption

11. Corruption is widely perceived to be pervasive in Greece and the government has prioritised addressing this phenomenon since the economic crisis. At the on-site visit, participants from all sectors largely believed that Greek citizens' tolerance for corruption has substantially diminished since the onset of the economic crisis. Protests against corruption during this period were common.¹¹ The government has taken measures in response, such as adopting a national anti-corruption policy and creating new anti-corruption institutions. However, as explained at p. 49, Greece has given fighting foreign bribery much less attention. Many of its reforms apply to domestic corruption but not foreign bribery. Awareness of foreign bribery is also much lower than that of domestic corruption.

12. Very shortly before the adoption of this report, a newly elected Greek government announced the creation of a new Ministry of Anti-Corruption. The Greek authorities stated that whether or how the new

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

⁶ [OECD.Stat](#); [UNCTADStat](#).

⁷ [European Community Shipowners' Associations, Annual Report 2012-2013](#), pp. 63-64. See also [UNCTAD \(2013\), Review of Maritime Transport](#).

⁸ As of January 2013, 71.56% of vessels in Greece's fleet were registered with a foreign country. 40.1% of vessels registered with Cyprus and 21.5% with Liberia were Greek-owned beneficially ([UNCTAD \(2013\), Review of Maritime Transport](#), pp. 6, 43, 173-178).

⁹ [European Community Shipowners' Associations, Annual Report 2012-2013](#), p. 64.

¹⁰ [European Commission \(2013\), SBA Factsheet 2013](#), pp. 3, 5, 14-15.

¹¹ For instance, see [IHT \(11 December 2008\), "In Greece, a crisis decades in the making"](#).

Ministry would impact Greece's efforts to implement the Convention and to fight foreign bribery remains to be seen.

6. Cases Involving Bribery of Foreign Public Officials

13. According to the information provided by the authorities and data collected during the on-site visit, two foreign bribery cases have been terminated and seven are under preliminary investigation. One other case involves allegations that Greek individuals bribed foreign public officials and is under investigation not for foreign bribery but for another offence. The background to these foreign bribery cases is as follows.

(a) Terminated Foreign Bribery Cases

14. *Case #1 – Telecom Company Case:* According to US court documents,¹² a (non-Greek) telecom company allegedly paid bribes in 2005 and 2006 to FYROM public officials to obtain certain business advantages for the company. The bribes were allegedly channelled through three Greek intermediaries, including a “well-known entrepreneur”. The US authorities have sanctioned the company and are prosecuting former executives of the company. They did not, however, proceed against the three Greek intermediaries.

15. The Phase 3 Report (paras. 8-10) expressed grave concerns over the Greek authorities' initial failure to investigate these allegations. The Greek authorities learned of the allegations in April 2010 when they received a request for mutual legal assistance (MLA) from the US authorities. They opened an investigation only in March 2012 after the Phase 3 evaluation team raised the matter during the on-site visit in January 2012. The foreign bribery charges are now prescribed since the statute of limitations was five years at the time of the offence (see p. 32). A money laundering investigation, not inhibited by the same statute of limitations, is ongoing.

16. *Case #2 – Energy Company Case:* According to Greece, this case was detected by the Public Prosecutor's Office through media articles.¹³ Information was also made available by the Working Group. Greece's embassy in Georgia eventually followed up and compiled a full file on the case. A Greek national was a partner with two other individuals in an energy company. The three partners allegedly offered a USD 7 million bribe to a Georgian public official to convince the Georgian government not to appeal a 2010 international arbitration decision that required the government to pay the company USD 98.1 million. The Greek national's two business partners were convicted of bribery and jailed in Georgia.

17. The Greek authorities sought MLA from Georgia in November 2011 and May 2012. In August 2012, the Georgian authorities replied that they had not conducted criminal proceedings against the Greek citizen. The Greek authorities then concluded that there was no evidence to prosecute the Greek national and filed the case. Moreover, since the facts took place in another State, it was impossible to find evidence in Greece without the help of the Georgian authorities. No steps were taken to gather evidence in Greece or to seek further information from the Georgian authorities, such as an explanation of why the Greek

¹² Information filed in *US v. Magyar Telekom, Plc.*, US District Court (E.D. Virginia) 1:11CR00597 (29 December 2011); Complaint filed in *Securities and Exchange Commission v. Magyar Telekom, PLC, and Deutsche Telekom, AG*, US District Court (S.D.N.Y.) 11CIV9646 (28 December 2011).

¹³ [International Institute for Sustainable Development \(16 December 2010\)](#); Ministry of Justice of Georgia Press Release (13 October 2010); [Haaretz \(11 January 2011\)](#); [Civil Georgia \(2011\)](#); [Bloomberg Businessweek \(8 December 2011\)](#).

national was not prosecuted in Georgia. As explained at p. 28, Greece should have been more proactive in investigating the allegations in this case.

(b) On-Going Foreign Bribery Cases

18. *Case #3 – Highway Construction Case:* Greece detected this case through media articles forwarded by the Working Group in May 2014.¹⁴ A Greek construction company allegedly offered a bribe to FYROM officials to obtain a EUR 270 million contract for constructing a highway in that country. The actual construction began in September 2012. The Greek company won the contract even though its offer was significantly higher (by EUR 40 million) than those of its competitors. The subsidiary of the Greek company in FYROM and Greek individuals are implicated. A preliminary investigation is ongoing in Greece for foreign bribery and money laundering. Greece requested MLA from FYROM in June 2014. While waiting for the response to the MLA request, the Greek authorities contacted their counterparts in Eurojust to facilitate the request.

19. *Case #4 – Construction Company Case:* Greece detected this case in March 2014 through media articles forwarded by the Working Group.¹⁵ Two executives from a branch of a Greek construction company in Oman allegedly paid at least OMR 200 000 (EUR 380 000) in bribes to an official in the Omani Ministry of Transport and Communications. Several individuals were convicted and jailed in Oman by March 2014. A preliminary investigation is ongoing in Greece for foreign bribery. Greece requested MLA from Oman in May 2014. While waiting for the response to the MLA request, the Greek authorities contacted Eurojust and instructed the Body for the Prosecution of Economic Crime (SDOE) to make inquiries in Greece.

20. *Case #5 – Lottery Contract Case:* The Working Group provided Greece with media articles containing the allegations in August 2013.¹⁶ The case concerns a firm controlled by a Greek company that supplies state-licensed gaming organisations worldwide and which allegedly paid bribes to US public officials to win a 2009 contract. A preliminary investigation is ongoing in Greece for foreign bribery and money laundering. Greece requested MLA from the US that is still pending. The Greek authorities have not reported any further steps to gather evidence in Greece.

21. *Case #6 – Cypriot PEP Case:* Media articles in Cyprus began reporting the allegations in this case in 2013 and more extensively in the first half of 2014.¹⁷ A Greek businessman transferred EUR 1 million to a senior Cypriot public official, i.e. a politically exposed person (PEP), in July 2007. The Cypriot authorities sought assistance from their Greek counterparts by August 2013. By the time of the on-site visit in October 2014, the Cypriot authorities had convicted the PEP of tax crimes and (according to Greece) were investigating the PEP for receiving bribes.

22. Greece did not open a foreign bribery investigation in this case until just before this report was adopted in March 2015, despite the media reports and on-going bribery investigation in Cyprus. At the

¹⁴ [Kurir \(23 April 2014\)](#); [Newsbomb \(14 March 2014\)](#); [Le Courier des Balkans \(19 March 2014\)](#); [Balkan Insight \(11 March 2014\)](#); [Deutsche Welle \(13 March 2014\)](#).

¹⁵ [Reuters \(16 December 2013\)](#); [Oman Observer \(4 March 2014\)](#); [Gulf News \(3 March 2014\)](#); [Times of Oman \(3 March 2014\)](#).

¹⁶ [Huffington Post \(10 December 2012\)](#); [RT News \(11 August 2012\)](#).

¹⁷ [Cyprus Mail \(7 August 2013\)](#); [Cyprus Mail \(6 March 2014\)](#); [Cyprus Mail \(16 April 2014\)](#); [Cyprus Mail \(27 June 2014\)](#); [Cyprus Mail \(26 September 2014\)](#); [Cyprus Mail \(27 October 2014\)](#); [Cyprus Mail \(12 February 2015\)](#).

time of the on-site visit in October 2014, Greek prosecutors were not aware of the allegations in this case. The Greek Financial Intelligence Unit (FIU) was aware of the allegations but was only examining the case for possible tax evasion. The FIU had provided assistance to the Cypriot authorities but had not forwarded the allegations to Greek prosecutors. The FIU explained that it was waiting for the Cypriot authorities to confirm the existence of (passive) bribery.

23. *Case #7 – Cypriot Paphos Waste Treatment Case*: Beginning in December 2014, media articles¹⁸ revealed allegations of bribes paid in 2007 by several Greek nationals to Cypriot public officials in connection with the construction of a EUR 78 million waste treatment station in Cyprus. At least two Cypriot officials had pleaded guilty to accepting bribes and other charges while others were awaiting trial. The Greek authorities stated that its FIU was working closely with its Cypriot counterpart while Greek prosecutors in Thessaloniki were providing MLA to Cyprus. Just before the adoption of this report, Greece indicated that it had opened investigations against the Greek nationals for foreign bribery.

24. *Cases #8 and #9 State Tobacco Company Cases*: This matter concerned two Greek companies that allegedly bribed a senior officer of an Algerian state-owned tobacco company. The two companies bribed the same Algerian officer but acted separately in separate transactions. The Greek authorities learned of the allegations after receiving an MLA request from Algeria in late 2014. A Greek prosecutor in Thessaloniki who was responsible for executing the MLA request then launched investigations in Greece. Senior officers in both Greek companies have been charged with foreign bribery. There was no information on whether proceedings have also been taken against the Greek companies.

(c) ***Foreign Bribery Allegations that Have Not Led to Investigations***

25. *Allegation #1 – EU Funds Case*: The Phase 3 Report (para. 12) referred to a possible foreign bribery case involving a Greek individual who operated a fictional enterprise receiving EU funds and who allegedly bribed an EU official. The Greek authorities have commenced a preliminary investigation for fraud but have not ruled out that the case could eventually involve foreign bribery.

Commentary

The lead examiners note that several foreign bribery allegations implicating Greek companies and individuals have surfaced since Phase 3. Judicial investigations have been opened into most of these allegations, which is a welcome development. These investigations, however, have yet to proceed to their conclusion. Some allegations also did not initially lead to investigations in Greece, despite investigations or convictions in foreign jurisdictions against the officials who may have received bribes from Greek nationals. Most of the allegations that have led to investigations were provided by the Working Group. They were not uncovered due to proactive efforts by Greece to detect foreign bribery.

As explained in this report, the lead examiners are also encouraged that Greece has taken steps to respond to several Working Group Phase 3 Recommendations, including by streamlining its legislation, and establishing a specialised prosecution office to deal with corruption and foreign bribery cases. That said, Greece has not given the same priority to fighting foreign bribery as it has to fighting domestic corruption. This lack of priority has

¹⁸ [Financial Mirror \(1 December 2014\)](#); [Financial Mirror \(5 December 2014\)](#); [Cyprus Mail \(5 December 2014\)](#); [Famagusta Gazette \(8 January 2015\)](#); [Cyprus Mail \(23 January 2015\)](#); [Cyprus Mail \(30 January 2015\)](#); [Cyprus Mail \(2 February 2015\)](#); [InCyprus \(5 February 2015\)](#); [Cyprus Mail \(10 February 2015\)](#); [Cyprus Mail \(11 February 2015\)](#); [Financial Mirror \(19 February 2015\)](#).

negatively impacted multiple aspects of the fight against foreign bribery, including awareness, detection, reporting and enforcement of the crime.

B. IMPLEMENTATION AND APPLICATION BY GREECE OF THE CONVENTION AND THE 2009 RECOMMENDATIONS

26. This part of the report considers Greece's approach to key horizontal (Group-wide) issues identified by the Working Group for all Phase 3 evaluations. Consideration is also given to vertical (country-specific) issues arising from Greece's progress on weaknesses identified in Phase 3, or from changes to Greece's domestic legislative or institutional framework.

1. Foreign Bribery Offence

27. The present section of the report reviews elements of the offence identified in the Phase 3 evaluation as well as issues of implementation of the offence that were discussed during the on-site visit.

(a) Provisions in the Penal Code Applicable to Foreign Bribery

28. Greece has rationalised and eliminated its multiple foreign bribery offences (Phase 3 Recommendation 1(i)). In Phase 3, provisions in the Penal Code (PC) and laws ratifying international conventions applied to the offence of foreign bribery. Law 4254/2014 merged the provisions into a separate Chapter of the PC and repealed the pre-existing duplicative offences. The main foreign bribery offence is now in Article 236 PC which covers active (domestic and foreign) bribery. Two additional offences cover certain instances of bribery of officials of public international organisations and hence also implement Article 1 of the Convention. Articles 159(3) and 159A PC cover cases of bribery of political functionaries including European Commission (EC) officials and European Parliamentarians. Articles 237 and 263A(3) PC cover aggravated cases of bribery of members of the European Union Court of Justice and Court of Auditors. The Greek authorities state that cases of bribery of these European officials would be dealt with under these specific Articles, while all other cases would be dealt with under the basic provision of Article 236 PC. Article 236(3) PC creates a new offence of negligent failure of a head of business or a person with decision-making or control powers to prevent foreign bribery.

(b) New and Outstanding Issues Raised in Phase 3 Concerning the Foreign Bribery Offence

29. This Phase 3bis evaluation is the Working Group's first opportunity to examine in depth Greece's new foreign bribery offences. The main foreign bribery offence in Article 236 PC reads:

Article 236 Active Bribery of an Official

1. Whosoever offers, promises or gives to an official, directly or through a third party, an undue advantage of any nature, for himself/herself or for another person, for an action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by at least one year imprisonment and a fine of EUR 5 000 to 50 000.

2. If the aforementioned action or omission contravenes the duties of the official, the offender shall be punished by up to ten years' incarceration and a fine of EUR 15 000 to 150 000.

3. A head of business or any other person who is vested with a decision-making or a control power in business shall be punished by imprisonment, if the act is not punished more severely by another criminal provision, if he/she by negligence failed

to prevent a person under his/hers command or subject to his/hers control from committing, to the benefit of the business, any act of the preceding sections.

(i) *Coverage of Bribe Offering and Agreement with the Briber*

30. Under Greek law, a bribe offer is sufficient to prove the active foreign bribery offence. In line with the Convention, the new offence under Article 236 PC explicitly covers bribe giving, offering and promising. Although Articles 159A and 237(2) PC cover bribe giving and bribe promising, it does not explicitly encompass bribe offering. According to the Greek authorities, the two verbs that are used in the Greek language include all three types of behaviour (giving, promising and offering) criminalised under the Convention.¹⁹ Case law provided by the Greek authorities after the on-site visit confirmed that the active bribery offence is complete upon the mere making of a bribe offer.²⁰

31. However, some judges believe that a mere offer is not sufficient to complete the bribery offence, and that there must be further proof of an agreement between the briber and the official. Judges at the on-site visit stated that proof of such an agreement is necessary because of the level of evidence required by the courts. A judge also stated that the mere offer of a bribe constituted only a bribery attempt, not the full bribery offence. GRECO has made a similar observation.²¹ Requiring proof of an agreement would not be consistent with the Convention.

Commentary

The lead examiners acknowledge that Greece’s legislation and jurisprudence indicate that the foreign bribery offence does not require proof of an agreement between the parties. Nevertheless, divergent opinions were expressed on this issue during the on-site visit and in other fora. The lead examiners therefore recommend that Greece take appropriate measures, such as through circulars or training, to make it clear to or to remind the law enforcement authorities and judges that the foreign bribery offence does not require proof of an agreement between the parties.

(ii) *Scope of the Official’s Competence and Bribery Committed by a Best-Qualified Bidder*

32. In Phase 3, Greece was asked, “with regard to the offence of foreign bribery to cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official’s competence” (Phase 3 Report para. 27 and Recommendation 2(i)).²² The Phase 2 Report (paras. 119-122) first raised the concern that the foreign bribery offence in Law 2656/1998 (OECD Convention Law) applied only to an official who performs an act or omission “pertaining to his/her service or being inconsistent with his/her duties”. In Phase 3, the Working Group reiterated the view that the

¹⁹ See also [GRECO \(June 2014\), Second Interim Compliance Report on Greece, para. 27](#).

²⁰ The authorities referred to Supreme Court (Areios Pagos) judgment 498/2013 which stated that: “Each manner of commission (i.e. giving, promising etc.) is autonomous and is sufficient for the fulfilment of the criminal act.”

²¹ [GRECO \(June 2014\), Second Interim Compliance Report on Greece, paras. 19-20](#).

²² Convention Commentary 19 states: “One case of bribery which has been contemplated under the definition in paragraph 4.c is where an executive of a company gives a bribe to a senior official of a government, in order that this official uses his office – though acting outside his competence – to make another official award a contract to that company.”

offence was tied to the official's duties and therefore would not cover officials "acting outside the [his/her] competence".

33. Greece has implemented Recommendation 2(i). Article 236 PC, which replaced the offence in Law 2656/1998, covers bribery in order that an official commits an act or omission "related to the performance of his/her duties" or that "contravenes the duties of the official". Articles 159 and 159A PC cover bribery in order that an official commits an act or omission "related to the performance of his/her duties". According to the Explanatory Memorandum prepared by the Ministry of Justice when the current Article 236 PC was drafted, the current foreign bribery offence is no longer confined to the narrow circle of an official's responsibilities but encompasses also those acts which can be committed in the exercise of his/her duties or by taking advantage of his/her position. The authorities at the on-site visit stated that the notion of an act or omission "*related*" to the official's duties is broad enough to cover the scenario where the official would use his/her capacities that fall outside his/her strict duties or post to instruct or influence another person to act or omit to act. The authorities indicated that judges use the Explanatory Memorandum as an interpretative tool but are not bound by the document since this is not part of the law and was not voted upon. The authorities further stated that it is extremely unlikely that the courts would depart from the Explanatory Memorandum.

34. Greece has also implemented Phase 3 Recommendation 2(ii). The foreign bribery offence in force at that time in the OECD Convention Law prohibited bribes in order to obtain or retain "an unfair business or other advantage of pecuniary or any other nature that is not due" (underlining added). Some doubts were expressed over whether the law covered a briber who is the best-qualified bidder as required by Commentary 4 of the Convention. The current foreign bribery offence does not contain any restrictive language in that respect and would cover bribery by the best-qualified bidder.

(iii) *Value of the Bribe, Perceptions of Local Custom and Tolerance of Local Authorities*

35. Commentary 7 of the Convention states the conduct described in Article 1(1) of the Convention amounts to a foreign bribery offence "irrespective of, *inter alia*, the value of the advantage, its results, perceptions of local custom, the tolerance of such payments by local authorities, or the alleged necessity of the payment in order to obtain or retain business or other improper advantage".

36. Greece's new foreign bribery offence appears to take into account factors such as the value of the bribe and local customs. Articles 236 and 159A PC refer to the giving etc. of "an undue advantage of any nature" to an official. According to the Explanatory Memorandum, "undue" means that the offence excludes advantages or gestures of minimum value or symbolic in nature, which the citizen concerned may perform in the context of socially appropriate ("adequate") manifestations of kindness or decency. In addition, Greek courts would need evidence of accepted social practices in a foreign country in order to determine the meaning of "undue".

Commentary

The lead examiners recommend that Greece clarify that its foreign bribery offence does not take into account factors such as the value of the advantage, perceptions of local custom, and the tolerance of local authorities in the country of the foreign public official.

(iv) *Definition of a Foreign Public Official*

37. For the purposes of the main foreign bribery offence in Article 236 PC, the definition of a foreign public official is found in Article 263A(2) PC:

263A(2). For the implementation of Articles 235(1) and (2) and 236 officials shall also mean:

- (a) the servants or other officials, under any contractual relationship, of any public international or supranational organisation to which Greece is a member, and any person authorised by such organisation to act on its behalf;
- (b) the members of parliamentary assemblies of international or supranational organisations to which Greece is a member;
- (c) those who perform judicial or arbitrator duties in international courts, whose jurisdiction is recognised by Greece;
- (d) any person performing a public function or service for a foreign country, including judges, jurors and arbitrators; and
- (e) members of parliaments and local government assemblies of other states.

38. Greece's questionnaire responses and its authorities at the on-site visit confirmed that the definition of public officials in Article 263A(1) applies only to Greece's domestic bribery offence. Article 263A(3) extends the active bribery of judges offence in Article 237 PC to cover bribery of judges of the European Union courts.

39. According to the Explanatory Memorandum, "a person performing a public function or service for a foreign country" includes "any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected, and any person exercising a public function for it, including for a public agency or public enterprise, as defined in Article 1(4)(a) of the OECD Convention". Also according to the Explanatory Memorandum, the concept of "foreign country" under Article 263A(2) PC should be understood to include all levels and subdivisions of government, from national to local.

40. Article 263A(2) PC, however, fails to cover officials of all public international organisations as required by Article 1(4)(a) of the Convention. Instead, it only targets "officials, under any contractual relationship, of any public international or supranational organisation to which Greece is a member" (underlining added). The Greek authorities believe that Article 263A(2) satisfies Article 1 of the Convention because Greece is a member of all major global and regional organisations. However, there are significant international organisations of which Greece is not a member (e.g. regional multilateral development banks outside Europe) and whose officials could be the targets of bribery.

Commentary

The lead examiners recommend that Greece amend the definition of a foreign public official to ensure that it covers officials and agents of public international organisations of which Greece is not a member.

(c) *Defences and Exemptions from Prosecution*

(i) *Exemption from Punishment in Case of Reporting to Law Enforcement Authorities (Effective Regret)*

41. In Phase 2 (paras. 134-136), Greek law allowed a defence of “effective regret” for foreign bribery. Article 236 PC provided that a briber was not punishable if he/she confessed to the crime before a preliminary examination by law enforcement authorities had commenced. A bribe that had been given was not confiscated but returned to the briber. When a briber reports the foreign bribery to the law enforcement authorities, a prosecution will be taken because the principle of mandatory prosecution continued to apply. The case would then proceed to court where a judge would allow the defence and terminate the prosecution against the briber.

42. Greece repealed Article 236 PC in 2010 (Phase 3 Report para. 29) but has reintroduced the defence through Law 4254/2014. A new Article 263B(1) PC applies to offences under Articles 236 (which includes foreign bribery), 237 (bribery of judges, including those of European Union courts) and 237B. A person who commits an offence under these provisions will not be punished if, before an investigation is opened by the authorities, he/she voluntarily reports the offence orally or in writing to a prosecutor, investigator or competent authority. The preconditions for this defence are thus essentially identical to those of the repealed Article 236 PC that was considered in Phase 2.

43. Greece’s effective regret defence is inconsistent with the Convention. In Greece, a person who bribes a foreign public official and who reports the crime to the authorities before an investigation is opened is always exonerated. Self-reporting is therefore not only a factor to be taken into consideration in the exercise of prosecutorial discretion or sentence mitigation, as in other countries. It is, instead, a full defence to foreign bribery. As the Working Group noted in the Phase 2 Report and evaluations of other countries,²³ Article 1 of the Convention does not contemplate such an exception.

44. The Working Group has also observed that there is also no persuasive policy basis for the defence in the context of foreign – as opposed to domestic – bribery.²⁴ When the defence is raised in a domestic bribery case, Greece can (and likely will) prosecute its official who has accepted a bribe. In a foreign bribery case, there is no guarantee that the bribed foreign official will be prosecuted, e.g. the foreign state may refuse to do so. If this occurs, then the defence serves no useful purpose: the crime may come to light, but the offenders remain unpunished and the ends of justice remain unserved.

45. At the on-site visit, Greece initially stated that Article 263B(1) PC does not provide a defence but is merely an introductory paragraph for the following provisions in the Article. On its face, the text of the provisions does not support this position. For instance, Article 263B(1) PC applies to the offences in Articles 236-237B and provides that offenders would not be punished. Article 263(2) PC is broader and also applies to the offences in Articles 235, 239-261 and 390 PC. The provision also allows offenders to be punished (albeit with reduced sentences).

46. Greece also stated at the on-site visit that Article 263B(1) PC is not a full defence but only mitigates sentence. This interpretation again also goes against the clear language of the provision which allows an offender to go “unpunished”. The Explanatory Memorandum accompanying the legislative amendment also states that Article 263B(1) “restores the provisions of Article 236(3) PC” and provides

²³ For example, see Phase 2 Russia (paras. 242-247); Phase 2 Slovak Republic (paras. 150-161); Phase 2 Czech Republic (paras. 153-163); Phase 3 Portugal (paras. 41-42).

²⁴ *Ibid.*

“full immunity for perpetrators of corruption who reveal their acts of their own volition”. Finally, Greece pointed out that a court ultimately imposes the effective regret defence. This does not, however, detract from the defence’s impermissibility under Article 1 of the Convention, or from the absence of policy reasons for the defence in the foreign bribery context. Greece’s earlier effective regret defence that was the subject of Working Group comment in Phase 2 was also imposed by the court.

47. Arguments advanced by Greece after the on-site visit do not change the conclusion that Article 263B(1) PC is inconsistent with the Convention. Greece argued that the granting of immunity to a reporting person is common to many countries. This overlooks the fact that judges and prosecutors in these countries have discretion in granting immunity in appropriate cases, whereas reporting persons in Greece are entitled to immunity in every case. Greece also argued that its prosecutors and judges have discretion to the extent that they must decide whether the briber has accurately revealed the facts of the case. But this merely highlights that, once it is demonstrated that the reporting person has accurately confessed to the crime, there is then no discretion to deny him/her immunity. Greece further argues that the scenario where the foreign state would not prosecute is “hypothetical”, but experience shows that this is often the reality since foreign bribery is common in countries where corruption is widespread and law enforcement is weak.

Commentary

The lead examiners recommend that Greece amend its legislation and eliminate the effective regret defence in Article 263B(1) PC for the active foreign bribery offence.

(ii) Small Facilitation Payments

48. In Phase 3, Greece stated that small facilitation payments are not allowed under Greek law and that its courts have consistently treated such payments as (domestic) bribery. At the time of the Phase 3 evaluation, four cases involving small bribes were cited in support of the authorities’ position. However, at least some of these cases involved bribery in order that an official not perform his/her duties. They were therefore not facilitation payment cases as they did not involve bribery in return for routine governmental action to which the payer is entitled.

49. In the current evaluation, Greece was unable to provide additional case examples involving small facilitation payments despite several requests. Greece states that the term “small facilitation payments” is not used in Greek law. No initiatives have been taken to clarify the status of facilitation payment or to raise awareness of this issue among the private sector, including in the shipping industry which is particularly exposed to the risk of being solicited for bribes.

2. Responsibility of Legal Persons

50. Greece has established an administrative and not criminal form of liability of legal persons for foreign bribery. In Phase 3, the Working Group recommended that Greece rationalise and eliminate its multiple legislative provisions that apply to liability and fines against legal persons for foreign bribery (Recommendation 1(ii)). Law 4254/2014 implemented this Recommendation in April 2014 by consolidating the multiple provisions in Article 51 of Law 3691/2008 (AML Law). The Greek authorities stated that the placement of the new corporate liability provisions increases their visibility and effectiveness in practice since the AML Law is well-known and commonly applied. There have not been investigations or proceedings against legal persons for foreign bribery. Given its recent adoption, it is not possible to assess whether this new legislation has impacted ongoing foreign bribery cases. However, the conditions for applying corporate liability in practice raise some concerns.

(a) ***Standard of Liability***

(i) ***Entities Covered - State-Owned and State-Controlled Enterprises (SOEs)***

51. Article 51 of the AML Law applies to any type of “legal persons” but distinguishes (for sanction purposes) between obligated legal persons (i.e. legal persons subject to AML requirements) and non-obligated legal persons. The notion of a legal person is not defined in the AML Law. The OECD Convention Law applicable at the time of Phase 3 covered “any legal entity or undertaking”, which, according to the Greek authorities, included all legal persons and enterprises, including State-owned and State-controlled enterprises (SOEs). The Greek authorities state that SOEs also fall within the ambit of the AML Law. The *State Tobacco Company* cases involves alleged bribery of a senior officer of an Algerian SOE.

(ii) ***Bribery for the Benefit of the Legal Person***

52. Under Article 51 of the AML Law, a legal person is liable for foreign bribery that is committed “for the benefit” of the legal person. This means that a legal person is not liable if the principal offender acted to his/her exclusive advantage. However, this criterion could exclude an indirect advantage such as the advantage of a third party; e.g. bribes to the advantage of a subsidiary (or *vice versa*). A further issue is whether liability arises if the principal offender committed foreign bribery in the interest of him/herself or a third party but the legal person benefits coincidentally. No case law is available that would support a broad interpretation of the notion of “benefit to the legal person” under Article 51 of the AML Law.

(iii) ***Corporate Liability for Bribery through Intermediaries***

53. Annex I to the 2009 Anti-Bribery Recommendation states that Member Countries should ensure that a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to bribe foreign public official on its behalf. Article 51 of the AML Law neither expressly covers nor excludes this situation. The Greek authorities stated that it is up to the courts to clarify this issue.

Commentary

The lead examiners recommend that the Working Group continue follow up as case law and practice develop whether Greece imposes liability against a legal person for foreign bribery where (i) the legal person obtains an indirect benefit; (ii) the principal offender committed foreign bribery in the interest of him/herself or a third party but the legal person benefits coincidentally; and (iii) a legal person’s subsidiary commits foreign bribery.

(iv) ***Persons Who Can Trigger Liability of the Legal Person***

54. Article 51 of the AML Law imposes liability on legal persons for offences committed by two categories of principal offenders. First, under Article 51(1), a legal person is liable for foreign bribery committed by a natural person acting either individually or as part of an organ of the legal person, and who holds a management position in the legal person. A person has a management position if he/she has the power to (i) represent the legal person, (ii) take decisions on behalf of the legal person, or (iii) exercise control within the legal person. Second, under Article 51(2), corporate liability also arises if the lack of supervision or control by a person who meets the criteria in Article 51(1) enables foreign bribery to be committed.

55. The new regime does not expressly cover situations where a person in a senior position “directs” or “authorises” a lower level person to perpetrate the foreign bribery offence. Greece indicated that such

cases would be covered considering that exercising control within the legal person would encompass situations of directing or authorising a lower level person to perpetrate the foreign bribery offence.

56. At the time of the Phase 3 evaluation, Article 5 of the OECD Convention Law imposed liability if a legal person has benefited from foreign bribery because of the “fault of its managers”. This raised some concerns and the Working Group recommended Greece to eliminate this language (Recommendation 3(a)). Article 51 of the AML Law does not refer to the “fault of a manager”. Recommendation 3(a) has been implemented.

57. In Phase 3, the Working Group also recommended that Greece “issue guidance on what amounts to adequate supervision and control to prevent foreign bribery” (Recommendation 3(b)). Greece stated that its legal system does not permit the issuance of “guidance” on the interpretation of law; it is up to the courts and each individual judge to freely interpret and apply the law. An “Explanatory Memorandum” (see p. 15) but cannot be issued after the law is enacted. In the absence of such guidance or case law, it remains unclear how the law enforcement authorities and judges actually understand the notion of “lack of supervision or control”. Recommendation 3(b) has not been implemented.

Commentary

The lead examiners reiterate Phase 3 Recommendation 3(b) and recommend that Greece issue guidance or provide training on what amounts to adequate supervision and control to prevent foreign bribery. They also recommend that the Working Group follow up whether a legal person would be held liable if an individual in a senior position in the legal person “directs” or “authorises” a lower level individual to commit foreign bribery.

(b) Jurisdiction to Prosecute Legal Persons

58. There are some questions over the jurisdictional scope of Article 51 of the AML Law. The provision does not specify the circumstances under which there will be jurisdiction to proceed against a legal person for foreign bribery. The Greek authorities stated that, similar to the corporate liability regime in Phase 2 (paras. 165-168), Greek laws apply to all legal persons that have a registered office or an “effective seat” in Greece. An effective seat is the place where a legal person carries out its management, unless otherwise provided in the deed of constitution or the articles of incorporation. In Phase 2, the Working Group had some concerns that a legal person operating in Greece could avoid the application of Greek law merely by designating its seat to be outside of Greece through its constitution or articles. Jurisprudence on the “effective seat” theory was also apparently inconsistent.

59. According to the Greek authorities, corporate liability also applies to a foreign subsidiary whose parent company is located in Greece if there is “sufficient connection” between the subsidiary and its parent. Sufficient connection would be found if, for instance, the majority of the subsidiary’s directors are appointed by the parent company, the accounts of both companies are consolidated, and important decisions are taken by or in the parent company.

Commentary

The lead examiners reiterate Phase 2 Follow-up Issue 8(c) and recommend that the Working Group follow up whether the effective seat theory provides a sufficiently broad jurisdictional base for imposing liability against legal persons for foreign bribery.

(c) Relationship of Liability between the Legal Person and the Natural Person

60. In Phase 3, the Working Group recommended that Greece “clarify that the liability of legal persons is not restricted to cases where the natural person(s) who perpetrated the offence is prosecuted or convicted, and that proceedings against legal persons may be commenced in the absence of criminal charges against a natural person” (Recommendation 3(c)). In other words, corporate liability should be independent of not only the conviction but also the prosecution of a natural person.

61. Corporate liability for foreign bribery in Greece does not depend on the *conviction* of a natural person. Article 51(4) of the AML Law makes clear that “the implementation of the provisions of the preceding paragraphs shall be independent of any civil, disciplinary or criminal liability of the physical persons mentioned therein”.

62. In practice, however, corporate proceedings (and hence corporate liability) is contingent on the *prosecution* of a natural person, according to SDOE and the Public Prosecutor against Crimes of Corruption (PPACC). The authorities stated during the on-site visit that proceedings against legal persons may be commenced despite the absence of criminal charges against a natural person. However, according to Article 51(5) of the AML Law, corporate proceedings begin when a prosecutor informs the Minister of Justice that *criminal* proceedings against a natural person also involve a legal person. (The criminal proceedings in question refer to those against a natural person, since corporate proceedings are administrative.) If proceedings against the natural person cannot be commenced (e.g. because the person is dead), then proceedings against the legal person also cannot be launched. There is no case law that illustrate the possibility of proceeding against a legal person without also prosecuting the individual perpetrator. Recommendation 3(c) is only partially implemented.

63. In Phase 3, the Working Group also recommended that Greece “clarify that the Joint Decision of the Ministers of Finance and Justice to ensure that proceedings against legal persons may be commenced in the absence of criminal charges against a natural person, and that the Decision applies to all laws that could result in corporate liability for foreign bribery, including the OECD Convention Law” (Recommendation 3(d)). Since the OECD Convention Law has been repealed, this recommendation is moot. Greece has indicated, however, that it is preparing a new Joint Decision.

Commentary

The lead examiners reiterate Phase 3 Recommendation 3(c) and recommend that Greece take measures to ensure that the liability of legal persons is not restricted to cases where the natural person(s) who perpetrated the offence is prosecuted, and that proceedings against legal persons may be commenced in the absence of criminal investigation against a natural person.

3. Sanctions

(a) Sanctions against Natural Persons for Foreign Bribery

64. Greece has addressed concerns expressed in Phase 3 (para. 46 and Recommendation 6(b)) about the classification of foreign bribery offences and the resulting sanctions. At that time, if the bribe paid to a foreign public official was under EUR 73 000, then the offence was classified a misdemeanour and was punishable by 1-5 years’ imprisonment.²⁵ Otherwise the offence is a felony and is punishable by

²⁵ The EUR 73 000 threshold applied to the foreign bribery offence in the OECD Convention Law. The threshold was EUR 12 000 for the foreign bribery offences in two other laws. As noted at p. 7, these multiple offences have been replaced by the offence in Article 236 PC.

imprisonment of 5-10 years. The Working Group was concerned that misdemeanour bribes below the EUR 73 000 threshold could nevertheless be significant, especially in developing countries. This concern has been addressed because the current foreign bribery offence in Article 236 PC does not use a monetary threshold. Foreign bribery is now a misdemeanour if the act induces a foreign official to perform his/her duties and is punishable by imprisonment of 1-5 years. The act is a felony if the official is induced to breach his/her duties and is punishable by 5-10 years' imprisonment.

65. Greece has resolved earlier concerns that fines are only available when foreign bribery is committed to obtain financial advantages. In Phase 3 (para. 48), fines were available only for crimes that “emanate from causes of profit” (Article 81 PC). This raised concerns that foreign bribery committed to obtain non-financial advantages would not qualify. The current foreign bribery offence in Article 236 PC, however, no longer restricts fines to crimes that “emanate from causes of profit”.

66. Concerns about the maximum available fines remain, however. In Phase 3 (para. 48), the maximum fine of EUR 15 000 was too low (Article 81 PC). Under the new foreign bribery offence in Article 236 PC, foreign bribery that induces a breach of duties is subject to a EUR 5 000 to 50 000 fine. The fine is EUR 15 000 to 150 000 if the official is induced to breach his/her duties. These maximum fines remain insufficient when compared to the multimillion euro bribes and contracts often seen in cases of foreign bribery in international business. Recommendation 6(a) is therefore only partially implemented.

67. A further unresolved matter concerns suspended sentences and the conversion of jail sentences to fines. The Phase 3 Report (para. 47) noted that jail sentences between one to three years may be converted to a fine of up to EUR 64 605, which may be further converted to community service. Jail sentences of under two years must be suspended barring exceptional cases. Suspension of sentences between two to five years is discretionary. Recent media reports indicate that the government was considering additional plans to allow persons convicted of financial crimes to pay fines and reduce or avoid prison sentences.²⁶ The Greek authorities stated that there has been no legislative development on the matter.

68. The Greek authorities remain unable to provide detailed statistics on the sanctions imposed in practice in corruption cases. They stated that the courts had recently meted out significant sentences for domestic corruption. However, these sentences were imposed against corrupt Greek officials, not those who bribed them.

69. It should be noted in passing that the new offence of negligent failure of a head of business or a person with decision-making or control powers to prevent foreign bribery is punishable by imprisonment of up to five years (Article 236(3) PC).

Commentary

The lead examiners reiterate Phase 3 Recommendations 6(a) and 8(ii) and recommend that Greece increase the maximum fines available against natural persons for foreign bribery, and maintain detailed statistics on sanctions imposed in foreign bribery cases. They also reiterate Phase 3 Follow-up Issue 16(b) and recommend that the Working Group follow up whether sanctions imposed against natural persons for foreign bribery are effective, proportionate and dissuasive, in light of the system of converting and suspending sentences of imprisonment.

²⁶ SE Times (8 July 2014), “[Greece Offers Leniency to Corruption Convicts](#)”; SE Times (21 October 2014), “[Lighter Sentences Sought in Greece Corruption Cases](#)”.

(b) Sanctions against Legal Persons for Foreign Bribery

70. Greece has implemented Phase 3 Recommendation 6(c) concerning the calculation of fines against legal persons for foreign bribery. In Phase 3, legal persons were subject to fines equivalent to three times the value of the benefit received or expected from the crime. This gave rise to concerns over how the benefit would be determined under the different corporate liability provisions. Under the current provisions in Article 51 of the AML Law, fines are not explicitly linked to the benefit arising from the crime.

71. The current regime imposes different sanctions depending on the type of legal person and whether liability arises from the commission of foreign bribery or a failure to prevent the crime. “Obligated” legal persons (i.e. those subject to the AML requirements) are fined EUR 50 000 to 5 million for foreign bribery committed by someone who is a member of the legal person’s organ or has the power of decision-making, control or representation. However, “non-obligated” legal persons can only be fined EUR 20 000 to 2 million for the same act. If foreign bribery results from company management’s failure to exercise supervision or control, then the fine is only EUR 10 000 to 1 million for “obligated” legal persons, and EUR 5 000 to 500 000 for “non-obligated” legal persons.

72. The sanctions available under these provisions are not effective, proportionate or dissuasive. “Obligated” legal persons are mostly financial institutions; most of the companies that may commit foreign bribery are thus of the “non-obligated” variety. These legal persons are subject to substantially lighter sanctions for foreign bribery than their “obligated” counterparts. Yet there is no policy reason why that should be the case, or why foreign bribery committed by “non-obligated” legal persons should be considered a less egregious crime. The maximum sanctions available are also insufficient, especially for bribery resulting from a failure to exercise supervision or control. A maximum fine of just EUR 500 000 against “non-obligated” legal persons in these circumstances is entirely out of proportion with the bribes and benefits frequently seen in foreign bribery cases.

73. Article 51 of the AML Law provides for additional administrative sanctions. These include withdrawal or suspension of a permit of operation, or prohibition from carrying out the company’s business for one month to two years, or permanently; prohibition from carrying out specific business activities, establishing branches, or increasing capital for the same period of time; and final or provisional exclusion from public grants, aids, subsidies, awarding of contracts for public works or services, procurement, advertising and tenders of the public sector or of the legal persons belonging to the public sector. These provisions overlap with other laws on debarment from public procurement (see p. 56).

Commentary

The lead examiners recommend that Greece amend its legislation so that the sanctions against “non-obligated” legal persons for foreign bribery are equivalent to those for “obligated” legal persons. They also recommend that Greece substantially increase the maximum fines available against legal persons, especially for foreign bribery resulting from company management’s failure to exercise supervision or control.

4. Confiscation of the Bribe and the Proceeds of Bribery

74. This section deals with the confiscation of the bribe and the proceeds of foreign bribery. Pre-trial seizure and freezing of property is considered at p. 34.

75. Greece has eliminated multiple provisions that provide for confiscation in foreign bribery cases (Phase 3 para. 53). Two provisions are now applicable. First, Article 238(1) PC provides for confiscation of gifts and any other assets given, and objects acquired directly or indirectly from these assets, in cases under Articles 235-237B PC. (The foreign bribery offence is in Article 236 PC.) Second, Article 46 of the

AML Law provides for the confiscation of the proceeds of money laundering or of a predicate offence; assets acquired directly or indirectly from such proceeds; and instrumentalities of such offences. (Foreign bribery is an eligible predicate offence; see p. 35.) A conviction is not a prerequisite to confiscation under Article 46. Article 238(2) PC and Article 46(2) AML Law both provide for value confiscation. Greece states that the general confiscation provision in Article 76(1) PC would not apply to foreign bribery cases because of the principle of *lex specialis*. Other duplicative confiscation provisions in the laws ratifying international conventions on corruption were repealed by Law 4254/2014. Phase 3 Recommendation 1(iii) is fully implemented.

76. Some concerns about confiscation against legal persons remain. The Phase 3 Report (para. 54) noted that there are no provisions which expressly deal with confiscation against legal persons. In Phase 3bis, Greece argues that AML Law Article 46(1) is applicable since that provision allows confiscation against a third person, which according to Greece includes a legal person. No supporting case law was provided. Greece's position is questionable because Article 46(1) permits confiscation only if the third person "was aware of the [foreign bribery offence] at the time of [the assets'] acquisition". Nothing in the provision, however, indicates how knowledge would be attributed to a legal person. Greece states that the "general rules" for attributing knowledge apply but does not describe these rules or their source. Confiscation under this provision may also be unavailable where a legal person is liable for failure to prevent foreign bribery (see p. 19). In many of these cases, the legal person will not be "aware" of the offence until after it acquires the assets in question, and hence would not meet the test for confiscation in Article 46(1). Greece also referred to the Siemens case in which "confiscation" had been imposed against a legal person. However, Greece acknowledged that the penalty against Siemens had been imposed as an administrative sanction under AML Law Article 51. That Article 46(1) was not used instead arguably supports the view that this provision does not provide for confiscation against legal persons.

77. A final issue is confiscation in practice. Phase 3 Recommendations 1(iii) and 6(d) asked Greece to ensure that confiscation is routinely sought in corruption cases and to maintain relevant statistics. In Phase 3bis, statistics remain unavailable. Greece's questionnaire responses stated that property in excess of EUR 400 million had been "confiscated" from corrupt Greek officials or companies. However, a more detailed description of the four underlying cases indicates that only EUR 81 000 had been confiscated; the remaining funds have been seized or frozen pending resolution of the litigation but have yet to be confiscated.

Commentary

The lead examiners are encouraged that Greece has imposed confiscation in domestic corruption cases. The lead examiners reiterate Phase 3 Recommendation 1(iii) and recommend that Greece maintain detailed statistics on the use of confiscation. They also recommend that the Working Group follow up whether Greece can impose confiscation against legal persons under Article 46 of the AML Law.

5. Investigation and Prosecution of the Foreign Bribery Offence

78. Greece's record of foreign bribery enforcement has visibly improved though some concerns remain. The Phase 3 Report (paras. 57-82) noted several issues concerning Greece's ability to investigate and prosecute foreign bribery cases. Since Phase 3, Greece has reported seven new foreign bribery investigations. In several of these cases, Greece has proactively liaised with the foreign countries where the alleged bribery took place. These are very positive developments. However, two concerns remain. First, certain foreign bribery allegations have not been seriously investigated because of a lack of awareness of the foreign bribery offence in the enforcement community, judiciary and the FIU. Second, the authorities have not proactively investigated certain foreign bribery allegations.

(a) ***Authorities Responsible for Enforcing the Foreign Bribery Offence***

(i) ***Prosecution Authorities Responsible for Foreign Bribery Cases***

79. In Phase 3, Greece indicated that two specialised prosecution services were relevant for the fight against corruption: the Economic Crime Prosecutor Office set up in 1997 and the Public Prosecutor against Crimes of Corruption (PPACC) set up in 2011. The competence of the Economic Crime Prosecutor Office over foreign bribery cases was, however, not well established (see para. 63 of the Phase 3 Report).

80. Greece states that the PPACC has jurisdiction in foreign bribery cases under Article 1 of Law 4022/2011. The second part of Article 1(b) gives the PPACC jurisdiction to prosecute “felonies falling under the competence of the Court of Appeals, acting as a first instance court, which are committed [...] by officials according to the provisions of Articles 13A and 263A of the Greek Penal Code, provided that the above mentioned perpetrators commit these felonies during the exercise of their duties or have benefited from their status.” Article 263A of the Penal Code defines “officials” to include Greek and foreign public officials. Article 1(b) therefore gives the PPACC jurisdiction over a felony foreign bribery case since a foreign public official who receives or requests a bribe commits an offence under Greek law (Article 235 PC). Greece adds that cases of bribery, including foreign bribery, pending at the Public Prosecutor’s Office at the Courts of First Instance will remain there until the preliminary investigations are complete. Thereafter the Public Prosecutor’s Office will inform the PPACC of the results of the investigations and request permission to prosecute the case.

81. In practice, the PPACC will investigate most but not all foreign bribery cases, according to Greece. When a local prosecutor comes across a foreign bribery allegation, it is obliged to inform the PPACC. Greece did not, however, refer to any legislative provision that spells out this obligation. In any event, upon receiving the report, the PPACC will return the matter to the local prosecutor if it decides that the case involves misdemeanour foreign bribery (i.e. bribery to induce an official to perform his/her duties; see p. 21). This is because the PPACC does not have jurisdiction over misdemeanours (Article 1 of Law 4022/2011). If the case involves felony foreign bribery (i.e. bribery to induce an official to breach his/her duties), then the PPACC may – but is not obliged to – take the case.

82. Following a further specialisation in 2013 (Law 4139/2013), the PPACC now has offices in Athens and Thessaloniki, the jurisdictions with the highest number of complex corruption cases. These offices are tasked with supervising and co-ordinating corruption investigations. The offices became operational in May 2013 and now have five prosecutors and ten assistant prosecutors in Athens, and one prosecutor and two assistants in Thessaloniki. Greece’s ability to effectively investigate on-going and future foreign bribery cases will be an indicator of whether these levels of human resources are sufficient. In addition, the PPACC does not have a case management system or the ability to track the status of a criminal case in real time. Such a system would also be a useful tool to monitor the adequacy of resources within the PPACC. Whether a planned project on the digitalisation of judicial data would resolve this concern remains to be seen. At the time of this report, the PPACC was prosecuting the *Highway Construction, Construction Company, Lottery Contract, Cypriot PEP* and *Cypriot Paphos Waste Treatment* cases. A local prosecutor in Thessaloniki had conduct of the *State Tobacco Company* investigations.

Commentary

The lead examiners welcome the establishment of the PPACC to specialise in anti-corruption matters. They recommend that Greece ensure that the PPACC has sufficient resources to prosecute foreign bribery cases, including by providing PPACC with a case management system and the ability to track the status of a criminal case in real time.

(ii) *Law Enforcement Bodies Responsible for Investigating Foreign Bribery and Allocation of Foreign Bribery Cases*

83. At the time of the Phase 3 evaluation, the Greek authorities asserted that the Body for the Prosecution of Economic Crime (SDOE), the Hellenic Police and the Economic Police Service²⁷ (EPS) within the Hellenic Police had concurrent jurisdiction over foreign bribery cases. The jurisdiction of the Hellenic Police and EPS under the OECD Convention Law was, however, legally unclear. The Working Group therefore recommended that Greece take all necessary measures to ensure that foreign bribery can be investigated by SDOE, Hellenic Police and EPS where appropriate, and establish procedures for co-ordination, sharing information and resolving conflicts of competence among these authorities (Recommendation 5(a)). Greece was also asked to consider issuing guidelines to prosecutors on how to decide which investigative body should have conduct of specific foreign bribery investigations (Recommendation 5(b)).

84. Since Phase 3, which bodies beyond SDOE have jurisdiction to investigate foreign bribery has remained unclear. The provision in the OECD Convention Law 2656/1998 giving SDOE jurisdiction in foreign bribery cases has been replaced by Article 9 of Presidential Decree (PD) 85/2005 (as amended by Article IE.18 of Law 4254/2014) and PD 111/2014. As for EPS, Greece states that the competence of the EPS to investigate foreign bribery offences is set out in Article 24(1) of Law 4249/2014. However, this provision refers to “crimes committed against the financial interests of the State and national economy in general”. It thus appears to give EPS jurisdiction over domestic but not foreign bribery. Greece also refers to Article 32 of PD 178/2014, but this provision also appears to give EPS jurisdiction at the most over bribery of EU officials and not all types of foreign bribery.²⁸ Greece adds that the Hellenic Police has general competence to investigate all crimes including foreign bribery. In sum, Greece has not taken all necessary measures to ensure that foreign bribery can be investigated by SDOE, Hellenic Police and EPS as recommended by the Working Group (Recommendation 5(a)). Just before the adoption of this report, the Greek authorities referred for the first time to Article 33 CPC as the legal basis for prosecutors to use any police body to conduct a criminal investigation. Given the late timing at which this information was provided, the evaluation team was unable to discuss this provision with on-site visit participants and fully assess its impact.

85. As was the case in Phase 3, SDOE is not a police force under the Ministry of Interior but a law enforcement body within the Ministry of Finance primarily responsible for investigating financial crimes against the EU and the Greek state, such as tax evasion and smuggling.²⁹ During the on-site visit, the authorities stated that the law enforcement powers of SDOE were reinforced by PD 111/2014 which gives competence to SDOE to carry out criminal investigations under the supervision of a public prosecutor.

86. Co-ordination of the law enforcement bodies over foreign bribery cases has not been resolved. At the time of the on-site visit, Greece stated that a bill had been introduced to the Parliament which would

²⁷ The EPS has the mission to prevent, investigate and suppress financial crimes, namely those that have been committed against the interests of the public sector and the national economy or have the characteristics of organised crime.

²⁸ Article 32 of Presidential Decree 178/2014 refers to “financial crimes committed by natural or legal entities and cause damage or threaten the Greek public interest or the broader public sector and European Union including crimes such as fraud, infidelity and corruption affecting the financial interests of the state or the EU and are directly related to public procurement contracts, public entities, the broader public sector and private legal entities, which are subsidized by the state or community budget”.

²⁹ SDOE added that it also operates as an administrative authority with all powers available in administrative proceedings.

create a “Co-ordination Committee”, comprised of the heads of the General Secretariat of Public Revenue, SDOE, the Hellenic Police and EPS, the Public Prosecutor on Economic Crime and the PPACC, headed by the most senior public prosecutor. When an investigation is conducted by at least two law enforcement bodies, the head of the Committee would designate the competent enforcement body on the basis of technical expertise, priorities and resources available. At the time of this report, however, the bill has yet to be enacted. Instead, Greece stated that the government newly elected in January 2015 has appointed a Minister against Corruption. Exactly how the new Minister would address co-ordination is unclear.

87. Regarding resources and expertise, Greece stated that (human and financial) resources have increased for law enforcement bodies over the last years, including scientific and technical assistance. This contradicts the Phase 3 Report (para. 68) which indicated that the financial crisis had impacted the resources of these bodies. Other sources also indicate that the key institutions in tackling corruption are facing the same resource pressure as felt by the whole of the public administration in Greece.³⁰ During the on-site visit, SDOE indicated that it is currently composed of 572 investigators of which 200 are certified forensic accountants and 17 information technology experts with another 14 expected to join. SDOE’s staff has considerably decreased from 1 207 in 2006 to 744 in 2014. According to Greece, the EPS has 3 IT experts and - together with the Hellenic Police - rely on “a sophisticated forensic division”.

Commentary

The lead examiners continue to believe that prosecutors in foreign bribery cases should be able to call upon not only SDOE, but also the Hellenic Police and EPS to conduct investigations where appropriate. However, the legislative provisions referred to by Greece appear to provide EPS with jurisdiction over domestic corruption and bribery of EU officials but not bribery of other foreign officials. Greece stated that the Hellenic Police has jurisdiction over all crimes.

The lead examiners accordingly reiterate Phase 3 Recommendation 5(a) and recommend that Greece take all necessary measures to ensure that foreign bribery can be investigated by SDOE, Hellenic Police and EPS where appropriate. They also reiterate Recommendation 5(b) and recommend that Greece set out a mechanism for prosecutors to decide which investigative body should have conduct of specific foreign bribery investigations. The lead examiners further recommend that Greece ensure that the law enforcement bodies responsible for investigating foreign bribery have sufficient human and technical resources.

(b) Principle of Mandatory Prosecution and Lack of Awareness of the Foreign Bribery Offence

88. As stated in the Phase 3 report (para. 58), Greek law establishes the principle of mandatory prosecution (or “legality”). If a prosecutor at the Court of First Instance becomes aware of an allegation of a crime, then he/she is obliged to open criminal proceedings (Articles 27 and 43 CPC). A Court of First Instance prosecutor may also be ordered to commence proceedings by prosecutors at the Court of Appeal and *Areios Pagos*, as well as by the Minister of Justice (Articles 30(1) CPC). At the time of Phase 3, the Working Group expressed major concerns that the principle of mandatory prosecution had not been applied in the *Telecom Company* and *EU Funds* cases. As a consequence, Greece was asked to “take all necessary measures to ensure that it assesses credible allegations of foreign bribery and seriously investigates complaints of this crime, and proceed proactively and without delay against both natural and legal persons in a foreign bribery-related case whenever appropriate” (Recommendation 4(a)).

³⁰

See the [EU Anti-Corruption Report of 2014 on Greece](#).

89. The *Telecom Company* case illustrates a lack of awareness of the foreign bribery offence. In 2010, the US requested Greece to provide MLA for use in proceedings in the US against non-Greek individuals and entities for bribery of FYROM officials. However, the request indicated that three Greek individuals, including a “well-known entrepreneur”, acted as intermediaries and channelled bribes to the officials (see p. 10). The MLA request passed through at least four Greek MOJ officials, prosecutors and judges before arriving at the investigative judge. None of these four officials reported the matter to a prosecutor despite a legal obligation to do so. The prosecutors involved also did not start an investigation despite the principle of mandatory prosecution as apparently they did not appreciate that the specific circumstances of the case amounted to an offence. Greece has sought to address this issue making a single investigative judge responsible for executing all MLA requests. As further explained at p. 47, this approach fails to address a broader, systemic lack of awareness of the foreign bribery offence.

90. The *Cypriot PEP* case may also show a lack of awareness of the foreign bribery offence. This case relates to a transfer of EUR 1 million by a Greek businessman to a Cypriot politically exposed person (PEP). The Greek FIU provided information to the Cypriot authorities. By the time of the on-site visit in October 2014, Cyprus had convicted the PEP of tax offences and was investigating the PEP for bribery. The Greek FIU, however, had not forwarded the allegation to Greek prosecutors to allow a foreign bribery investigation to be opened. The FIU did not give a clear explanation for its inaction. It did, however, mention that it was examining whether tax offences had been committed, which might suggest that FIU officials had not identified the potential foreign bribery dimension of the case. Later at the on-site visit, the FIU explained that it was waiting for the Cypriot authorities to confirm the existence of (passive) bribery. The Greek authorities also argued that it would be reasonable for the FIU to “consider how to achieve maximum results before sending the case to the [prosecutor] to commence prosecution”. But as further explained at p. 36, given that the Cypriot authorities had launched a criminal bribery investigation against its official, the Greek FIU should have informed Greek prosecutors of the case to allow a parallel criminal investigation to be opened in Greece. Just before this report was adopted in March 2015, the Greek authorities stated that the FIU had forwarded the allegations in this case to Greek prosecutors.

Commentary

Since Phase 3, Greece has opened seven new foreign bribery investigations. The lead examiners welcome these encouraging developments. However, there are concerns that investigations of other allegations have not been opened because of a lack of awareness of the foreign bribery offence. They therefore recommend that Greece enhance its efforts to further strengthen and institutionalise the awareness of foreign bribery as a criminal offence among all authorities responsible for detection, investigation and prosecution of foreign bribery.

(c) Proactive Investigation of Foreign Bribery Allegations

91. There are concerns that the *Energy Company* case may not have been proactively and thoroughly investigated before the case was closed. The matter relates to a Greek national who allegedly offered a USD 7 million bribe to a Georgian public official. Georgia convicted two of the Greek national’s business partners for bribery. Greece sought MLA from Georgia in November 2011 and May 2012. Georgia replied that it was not prosecuting the Greek citizen. On this basis, the Greek authorities concluded that there was no evidence to prosecute this individual. They also decided that, since the facts took place in another State, it was impossible for the Greek authorities to find evidence in Greece without the help of the Georgian authorities. Subsequently the case was filed. No steps were taken to gather evidence in Greece or to seek further information from the Georgian authorities, such as an explanation of why the Greek national was not prosecuted in Georgia.

92. Some of the on-going foreign bribery investigations also show a lack of proactivity. In the *Lottery Contract* and *Highway Construction* cases, Greece has sought MLA from foreign countries but has not gathered evidence in Greece. In the *EU Funds* case, the Greek authorities have commenced a preliminary investigation for fraud but consider that the case could potentially involve foreign bribery. Another EU country, however, is leading the investigation; the Greek authorities stated that they would prefer to wait for the MLA to arrive before conducting domestic investigations in these cases. One exception is the *Construction Company* case. Greek investigators have gathered some documentary evidence in Greece because they were less confident that they would be able to obtain evidence through MLA from foreign countries in this case.

93. Finally, Greece initially did not investigate two foreign bribery allegations that had surfaced. In the *Cypriot PEP Case*, Greek prosecutors initially did not open a criminal investigation even though the media had reported the allegations since 2013, and the Cypriot authorities were actively investigating its official for accepting bribes. In the *Cypriot Paphos Waste Treatment Case*, the allegations surfaced in early December 2014. The Greek authorities confirmed that investigations had been opened in these two cases only just before the adoption of this report in March 2015.

Commentary

The lead examiners are encouraged that Greece has opened proceedings and sought MLA to investigate several foreign bribery allegations. Nevertheless, they believe that Greece should be more proactive in opening additional investigations and in gathering evidence in Greece in some cases. The lead examiners therefore reiterate Phase 3 Recommendation 4(a) and recommend that Greece take all necessary measures to ensure that it assesses credible allegations of foreign bribery and seriously investigates complaints of this crime. They also recommend that Greek authorities use proactive steps to gather information from diverse sources to increase allegations and enhance foreign bribery investigations, including by taking all necessary steps to gather evidence in Greece.

(d) *Procedure for Corporate Investigations and Prosecutions of Foreign Bribery*

94. While conducting criminal proceedings against a natural person, if a prosecutor finds that the case also implicates a legal person, then he/she is required to notify the Executive authorities to allow corporate proceedings to be commenced. If the legal person in question is an “obligated” legal person (i.e. a legal person that is subject to AML requirements), then the PPACC is obliged to inform the “competent authority” that monitors the obligated legal person’s compliance with AML requirements (such as the Bank of Greece or the Hellenic Capital Markets Commission). If the case involves a “non-obligated” legal person, then the PPACC must notify the Minister of Justice. Upon notification, the “competent authority” or the Minister of Justice then launches corporate proceedings (Article 51(5) AML Law; see also p. 21).

95. However, the PPACC stated at the on-site visit that in practice it does not inform the Minister of Justice or the “competent authority” because of its independence from the Executive. Instead, the PPACC would most likely rely on SDOE to do so. This raises some concerns. The AML Law was designed to ensure corporate proceedings are commenced when a legal person’s involvement in a crime is uncovered by requiring the prosecutor to report to the Minister. The PPACC’s failure to do so circumvents this safeguard. In addition, Greece pointed out that SDOE is not an independent authority and is required under its founding statute to report to the Minister of Finance. Although SDOE could inform the Minister of Justice, it is not required by statute to do so. As a consequence, such reporting might not occur in practice.

96. Once corporate proceedings are launched, current Greek law does not clearly define how the investigation would then be conducted. During the on-site visit, SDOE and the PPACC stated that two

scenarios can be envisaged. First, the PPACC would instruct SDOE to investigate the legal person even though the PPACC has no powers over these proceedings that are of an administrative nature. The Greek authorities could not indicate the legal basis for PPACC to instruct SDOE to investigate a legal person. Greece stated that the FIU could also be asked to gather information. A more likely scenario, according to PPACC, is that the initiative to launch and conduct investigations against a legal person would be left to SDOE exclusively. Greece states that SDOE has jurisdiction to do so as part of its overall competence in preliminary investigations of financial crimes (Law 3296/2004 Article 30).³¹ The evidence gathered by SDOE may be supplemented by evidence gathered in an investigation against a natural person.

Commentary

The lead examiners recommend that Greece (a) clarify the procedure for investigations and proceedings against legal persons, including which body would launch and conduct such investigations, and (b) take steps to clarify that the PPACC and other prosecutors who investigate foreign bribery cases will inform the Minister of Justice or the competent AML supervisory authorities of a legal person's involvement in a foreign bribery case, as required by Article 51(5) of the AML Law.

(e) Article 5 of the Convention

97. Foreign bribery investigations and prosecutions in Greece must conform to Article 5 of the Convention. The provision requires foreign bribery investigations and prosecutions to be governed by the rules and principles that apply generally to all cases. Foreign bribery cases must not be influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved. Commentary 27 on the Convention and the 2009 Anti-Bribery Recommendation add that foreign bribery cases must not be subject to political influence, and that allegations must be seriously assessed and investigated by adequately-resourced bodies.

98. The Phase 3 Report (para. 57) referred to press reports of possible interference of the Executive government in certain tax evasion cases. At the Phase 3bis on-site visit, the PPACC and the Economic Crime Prosecutor Office stated that sufficient safeguards are in place to ensure the full independence of the judiciary and that this independence is also guaranteed in practice. They stated that there has not been executive interference in the corruption cases that fall under their jurisdiction. Some progress has also been made in the prosecution of high-level domestic corruption cases (see p. 34). This trend still needs to materialise in the context of foreign bribery.

99. There are nevertheless concerns about the independence of SDOE in corporate investigations and proceedings. Prosecutors and investigative judges are responsible for foreign bribery investigations against natural persons. Corporate investigations, however, are launched and conducted by SDOE (see p. 29). Greece stated that the prosecutor assigned to SDOE would oversee these corporate investigations. SDOE is not a police force under the Ministry of Interior but a law enforcement body within the Ministry of Finance (see p. 26). As acknowledged by the Greek authorities (see p. 29), SDOE is not an independent authority and is required under its founding statute to report to the Minister of Finance. Unlike judges and prosecutors, the constitution does not guarantee the independence of SDOE. The principle of mandatory prosecution (see p. 24) also does not apply to proceedings against legal persons. Compared to cases involving natural persons, foreign bribery cases involving legal persons do not have the same safeguards

³¹ However, Greece stated at p. 23 that SDOE's jurisdiction in foreign bribery cases derives from different statutory provisions, namely Article 9 of Presidential Decree 85/2005 (as amended by Article IE.18 of Law 4254/2014) and Presidential Decree 111/2014.

for shielding investigations from political influence as required by Article 5. Greece further argues that police in other countries are also subject to ministerial supervision. However, this supervision in many cases is limited to administrative and budgetary matters. The police forces in many other countries also conduct investigations under the direction of an independent judicial or prosecutorial authority. That is not the case for SDOE in corporate investigations.

100. Further concerns about independence and political influence arise because a government minister – not a judge – decides the sanction to be imposed. After the investigation is completed and the Executive is informed of the case, the Hellenic Capital Markets Commission decides the appropriate sanction in cases involving “obligated” legal persons (Article 51(1)(a)). For cases involving “non-obligated” legal persons (which likely includes most foreign bribery cases), the Minister of Justice and the “competent Minister” jointly decide the sanctions to be imposed (Article 51(1)(b)). This arrangement could result in a conflict of interest. For example, the Ministers of Economy and Shipping are duty-bound to promote the Greek shipping industry and Greek private sector. They are also in close contact with other government officials responsible for matters such as the diplomatic relations with other states. Their decision to penalise a company could thus be influenced by factors prohibited by Article 5 of the Convention, namely Greece’s national economic interest, relations with a foreign State, and the identity of the natural or legal persons involved. The principle of mandatory prosecution also does not apply to Ministers.

101. Greece’s responses to concerns about the independence of the process were not satisfactory. It stated that Ministers are bound by Article 5 of the Convention and that they do not have discretion over the sanctions to be imposed. However, Article 51 of the AML Law gives the Minister discretion to decide the amount of the fine up to the maximum and to impose additional sanctions (such as debarment). Greece also stated that the Minister’s decision may be reviewed by an administrative court and parliament. There are no guarantees, however, that this would occur in cases where proceedings are not commenced, or where the sanctions imposed are inadequate (and hence are unlikely to be appealed by the company).

102. Greece also stated that, because corporate liability is administrative in nature, an administrative body must be responsible for imposing sanctions. This does not, however, address concerns about independence and political influence. At the on-site visit, one Greek legal academic opined that it would be permissible under Greece’s legal system to give an independent administrative court the responsibility for imposing corporate penalties. The Greek authorities replied that this is not a viable option since administrative courts only review State actions and cannot carry out governmental functions.

Commentary

The lead examiners have concerns over whether features in Greece’s system for investigating and sanctioning legal persons for foreign bribery may be influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of natural or legal persons involved. They therefore recommend that the Working Group follow up this issue.

(f) Political Offences and Offences Affecting International Relations

103. The Phase 2 Report (para. 146) noted that Article 30(2) CPC provided that “political offences” and “offences through which the international relations of the State may be disturbed” could be exempted from prosecution by a decision of the Minister of Justice, following a concurring opinion of the Council of Ministers. Article 30(2) was thus *prima facie* incompatible with Article 5 of the Convention, which states that foreign bribery investigations and prosecutions should not be influenced by “the potential effect upon relations with another State”. Phase 2 Recommendation 6(b) asked Greece to exclude the operation of Article 30(2) from the offence of foreign bribery.

104. At the time of Phase 3, Greece had excluded the operation of Article 30(2) from the foreign bribery offence in the OECD Convention Law but not those in other laws, e.g. the Penal Code. Greece was therefore asked to amend its legislation to exclude the application of Article 30(2) CPC from all foreign bribery offences (Recommendation 4(d)).

105. Article 30(2) CPC was amended by Subparagraph IE.14 of Article 1 of Law 4254/2014 to expressly exclude foreign bribery from this exemption. Recommendation 4(d) has been implemented.

(g) Statute of Limitations and Delay in the Criminal Justice System

106. A preliminary investigation must be completed within 5 years of the commission of a misdemeanour foreign bribery offence and 15 years for a felony foreign bribery.³² The limitation period is suspended for up to 5 years (for felonies) or 3 years (for misdemeanours) when a case goes to court or when prosecution cannot commence or continue (Articles 111-113 PC). These limitation periods were the same in Phase 3. In Phase 3, Greece was asked to take steps to ensure that the limitation period for foreign bribery offences qualified as misdemeanours is sufficient to allow adequate investigation and prosecution (Recommendation 4(c)).

107. The 5-year statute of limitations for misdemeanour foreign bribery may be too short for an investigation to be completed, especially if MLA must be sought. The limitation period is not suspended while the Greek authorities are waiting for a foreign country to provide MLA, according to the Greek officials at the on-site visit. The 3-year suspension of the limitation period does not apply during a preliminary investigation when MLA is sought, but only when the case reaches the courts, or if the case cannot commence or continue. Greece has identified delays in obtaining MLA as one of the main challenges to foreign bribery investigations. Responses to MLA requests take 1 to 2 years and supplementary questions are very common. At the time of this report, the MLA requests in the three on-going foreign bribery investigations have already been outstanding for approximately 10 months.

108. The pace of actual investigations may also suggest that the 5-year limitation period for misdemeanour foreign bribery is too short. The misdemeanour foreign bribery charges in the *Telecom Company* case were time-barred (see p. 10). As described at p. 28, the *Energy Company* case may not have been proactively investigated without delay. The allegations in the *Lottery Contract* case date back some six years ago to 2009. The investigation is on-going with no indication that it will soon go to court (and hence suspend the limitation period). The bribes in the *Cypriot Paphos Waste Treatment* and *Cypriot PEP* cases were allegedly paid in 2007. Greece opened investigations in both cases only just before the adoption of this report in March 2015. The Greek authorities are of the view that most corruption cases would fall under the category of felonies and that the 15-year period (not including the 5-year suspension which does not apply to investigations) is sufficient. Nevertheless, many foreign bribery cases will concern bribery to induce an official to perform his/her duties and thus constitute only a misdemeanour. Recommendation 4(c) has not been implemented.

109. In Phase 3, Greece was also asked to maintain detailed statistics on criminal cases (particularly those involving corruption) that are barred by the statute of limitations (Recommendation 8(iii)). No statistics are available on the number of time-barred cases. Recommendation 8(iii) has not been implemented.

³² It is a misdemeanour to bribe a foreign public official to perform his/her duties, but a felony to bribe the official to breach his/her duties (see p. 18).

110. Since Phase 2, the Working Group has expressed concern regarding actual delay in the Greek justice process. Different sources,³³ including press articles,³⁴ continue to highlight the fact that the effective application of the law is hampered by delays in the prosecution and adjudication of corruption offences. Some figures indicate that a million cases are pending in courts and officials are concerned by backlogs of up to 10 years in the courts. In the current evaluation, Greece referred to Law 4022/2011 that provides for an expedited procedure for corruption cases, granting in effect full priority to corruption cases, in order to eliminate any delays in the administration of justice. However, this mechanism is not available for misdemeanour foreign bribery cases (see p. 25).

Commentary

The lead examiners are concerned that Greece's statute of limitations for misdemeanour foreign bribery may be too short. They are disappointed that the misdemeanour foreign bribery charges in the Telecom Company case have been time-barred. They further note that the Working Group has expressed concerns in other evaluations where a foreign bribery offence is subject to a five-year limitation period that cannot be suspended by an MLA request to a foreign state.³⁵ The lead examiners therefore reiterate Phase 3 Recommendation 4(c) and recommend that Greece take steps to ensure that the limitation period for foreign bribery offences qualified as misdemeanours is sufficient to allow adequate investigation and prosecution. At a minimum, Greece should allow outstanding MLA requests to interrupt the limitation period. They also reiterate Phase 3 Recommendation 8(iii) and recommend that Greece compile statistics on criminal cases (particularly those involving corruption) that are barred by the statute of limitations.

(h) *Statistics*

111. In Phase 3, Greece was asked to “maintain detailed statistics on enforcement actions against natural and legal persons in foreign corruption” (Recommendation 8(i)). In Phase 3bis, Greece acknowledged that statistics remain a challenge for the Greek court system. The authorities stated that a major project is currently undertaken by the Ministry of Justice to link the records and archives of all courts in the country. This would allow detailed categorisation of each case using the same parameters and indicate the progression of a case through the court system. The authorities stated that this project is expected to run experimentally in some courts by the end of 2014 and to be fully functional by 2016.

Commentary

The lead examiners reiterate Recommendation 8(i) and recommend that Greece maintain detailed statistics on foreign bribery enforcement actions against natural and legal persons.

³³ See in particular the EU Anti-Corruption report of 2014 on Greece.

³⁴ See SE Times (8 July 2014), “[Greece Offers Leniency to Corruption Convicts](#)”.

³⁵ For instance, see Phase 3 Reports of Chile (paras. 84-85 and Recommendation 3(f)); Denmark (para. 96-98 and Recommendation 3(f)(i)); Estonia (para. 77 and Recommendation 2(d)); Finland (paras. 52-54 and Recommendation 3); and Norway (paras. 66-71). See also the Phase 3 Report of the United States (para. 36-41 and Recommendation 1) where the Working Group expressed concerns over a limitation period of five years that can be extended to eight years due to an outstanding MLA request.

(i) ***Training and Awareness-Raising***

112. In Phase 3, Greece was asked to “provide additional training to judges, prosecutors and law enforcement officials on the Convention and the foreign bribery offence, including the practical aspects of foreign bribery investigations” (Recommendation 4(b)). The Greek authorities indicated that the National School of Judges has added new courses on economic crime and corruption offences in both its judges and prosecutors departments. A number of seminars were scheduled to take place from January 2015 in all major Courts of First Instance for serving judges and prosecutors. They also stated that prosecutors from the PPACC are regularly invited to give lectures and seminars to serving judges and prosecutors in the Continuing Education Institute of the National School of Judges. However, Greece could not indicate whether foreign bribery forms systematically part of these training initiatives. Their actual number and frequency are also unknown.

113. SDOE has a regular series of seminars every month attended by all officers and experts in which the practical aspects of investigating bribery cases are discussed. Advanced training takes place in the form of in-house seminars, e.g. on taxation matters, customs matters, anti-money laundering, VAT fraud, investigative techniques, etc. i.e. in relation to SDOE core competencies. None specifically deals with foreign bribery. The Hellenic Police also has a regular series of lectures on matters pertaining to economic crime and corruption but not specifically on foreign bribery and the practical aspects of such investigations.

114. Despite sporadic initiatives in the judiciary, very little effort has been made to implement Phase 3 Recommendation 4(b) which has only been partially implemented. The need for better awareness of the foreign bribery offence in the judiciary and the law enforcement community remains. This is particularly true since a new foreign bribery offence was introduced in the Penal Code early 2014. Corporate liability has also been reformed since Phase 3 and should be subject to specific training.

Commentary

The lead examiners recommend that Greece intensify training to judges and law enforcement officials on the Convention and the foreign bribery offence. The training should include the practical aspects of foreign bribery investigations.

(j) ***Investigative Tools and Access to Financial Information***

115. At the time of the Phase 3 evaluation, Article 253A CPC provided for special investigative techniques such as lifting the confidentiality of communications, sound and video recordings, and examination of all related personal data. These techniques were, however, not available under the OECD Convention Law. Greece was therefore asked to “make the special investigative techniques in Article 253A CPC available to all foreign bribery offences and take steps to ensure that its prosecutors and law enforcement officials have the capacity to investigate complex financial crimes” (Recommendation 4(e)). Law 4254/2014 added Article 253B CPC that provides for undercover investigation as well as techniques such as lifting the confidentiality of communications and data recordings. These powers are available for corruption offences, including in relation to Article 236 PC. However, law enforcement officials still cannot use wiretapping in foreign bribery investigations.³⁶

³⁶ Recordings by *private individuals* are admissible in corruption cases, however (Areios Pagos judgment 277/2014).

116. At the time of Phase 3, the Working Group questioned Greece's capacity to investigate complex financial crime cases, including large domestic corruption cases (Phase 3 Report para. 82 and Recommendation 4(e)). Financial investigations are conducted during the preliminary investigation on the basis of an order from the public prosecutor, and during the administrative investigations conducted by SDOE. For the purposes of gathering the financial intelligence needed for investigating their various cases, the PPACC co-operate with a large number of departments and bodies in the public sphere, including at the EU level (e.g. Eurojust). Recently, there have been more investigations and convictions of high-level (domestic) corruption, which might indicate more efficient and determined prosecution and adjudication of corruption cases. It remains to be seen, however, whether these efforts lead to better enforcement of the foreign bribery offence and integrated financial investigations, i.e. an investigative component that looks from the commencement of investigations into organised crime or into the possibility of the securing of criminally gained assets in economic crime cases.

117. In order to fulfil their mission, SDOE staff and officials have a broad range of competencies, including the right to access any information or data necessary for carrying out their duties. This includes the right to lift bank and tax secrecy.³⁷ Furthermore, SDOE staff and officials can seize assets, property or means used in connection with crime in order to safeguard the interest of the public or in cases of financial crime, large scale tax evasion and smuggling; they may freeze bank accounts and assets by written order from the service director with the obligation to inform the competent prosecutor within 24 hours of this action.³⁸ The EPS may lift tax, banking, stock exchange and business secrecy during preliminary investigations (Article 32(4) of Law 3986/2011). Finally, the PPACC has been given the power to access all information required for the performance of its duties. According to Article 2(5) of Law 4022/2011, tax and banking secrecy can be lifted for a one-month period which is renewable.

118. According to the Greek authorities, access to bank account information of persons under investigation on the part of law enforcement authorities as well as the FIU and the ability where necessary to freeze criminal assets held with financial institutions has become much swifter and direct following the enactment (in Law 4170/2013) of provisions establishing an indirect centralized register of accounts. It became fully operational in October 2013. The Hellenic Police, EPS, SDOE as well as the PPACC have direct access to this register. The operation of this register is expected to enhance financial investigations by the authorities having online access to the system.

Commentary

The lead examiners note very recent encouraging developments in fighting domestic corruption in Greece. They also note, however, that there remain some questions over Greece's capacity to handle complex economic and corruption cases, particular over the resources available (see pp. 25 and 27) and the lack of proactivity in some actual investigations (p. 28). The lead examiners therefore recommend that the Working Group follow up Greece's capacity to investigate complex financial crimes, including large domestic corruption cases.

6. Money Laundering

119. There have been no substantial changes to Greece's anti-money laundering laws and institutions since Phase 3. In Phase 3, Greece was asked to "ensure that all stakeholders involved in the fight against money laundering are adequately aware that foreign bribery is a predicate offence for money laundering and provide guidance and training to the FIU on detecting and reporting foreign bribery"

³⁷ Presidential Decree 85/2005, Article 2(3).

³⁸ Law 3296/2004, Article 30.

(Recommendation 10). No actions are reported by the authorities to raise awareness among stakeholders involved in the fight against money laundering in relation to foreign bribery. No guidance or training was provided by the FIU to facilitate the detection and reporting of foreign bribery when reporting entities suspect foreign bribery. In particular, detection of foreign bribery has not been subject to specific awareness raising initiatives in the annual meetings that the FIU is holding with the compliance officers of financial institutions. If awareness-raising initiatives and typologies exercises have taken place vis-à-vis the non-financial professions, they have not addressed the issue of foreign bribery in particular. Recommendation 10 has not been implemented.

120. One particular concern expressed in Phase 3 (Follow-Up Issue 16(c)) was that the FIU may be devoting much greater resources and priority to tax and other offences rather than corruption. This concern remains valid. The authorities indicate that the number of STRs continues to increase over the years, largely as a result of the AML Law requirements to report tax crimes and of the obligation imposed on tax authorities to report tax offences to the FIU. In the responses to the questionnaire, the Greek authorities indicated that four STRs since 2010 related to bribery of foreign officials. The FIU retracted this statement after the on-site visit. Based on figures provided by the FIU, it appears that more than 80% of the cases forwarded by the FIU to the public prosecutor since 2012 related to tax crimes. Tax fraud was also the most common offence in cases of asset seizure since 2010.

121. The authorities state that there has been no change in the FIU's structure since Phase 3. In terms of human resources, the number of financial analysts (7) has remained unchanged. This number is low considering the increase in the number of STRs received by the FIU. During the visit, the FIU indicated that staff from other divisions can be allocated to analytical functions. However, such an arrangement does not seem satisfactory to respond to a situation where the number of STRs is increasing every year and where there is a constant growing demand for analytic work.

122. One concern is the FIU's initial decision not to refer two foreign bribery allegations to Greek prosecutors. As described at p. 11, the *Cypriot PEP* case concerned allegations that a Greek businessman transferred EUR 1 million to a Cypriot politically exposed person. The Greek FIU provided information about the suspicious transaction to the Cypriot authorities. At the time of the on-site visit, Cyprus had either charged the PEP with receiving a bribe or was taking steps to do so. The Greek FIU, however, still had not forwarded the matter to Greek prosecutors for a foreign bribery investigation to be commenced against the Greek businessman. Similarly, the FIU has assisted Cyprus in the *Cypriot Paphos Waste Treatment Case*. In both cases, Greece confirmed only in March 2015 that the FIU had forwarded the allegations to Greek prosecutors.

123. One explanation given for the FIU's inaction in the *Cypriot PEP* case was that it was waiting for Cyprus to confirm that the PEP had been bribed. The FIU's threshold for referring cases to the prosecution office is thus too high. The FIU is not a law enforcement agency *per se* and does not have all the necessary investigative tools at its disposal. It should thus readily transfer suspected cases of foreign bribery to Greek prosecutors for a full investigation to be conducted. Furthermore, delaying the transfer would be especially problematic if the case involves misdemeanour foreign bribery which is subject to a shorter limitation period (see p. 32). As discussed at p. 24, an alternative reason for the FIU's inaction may be a lack of awareness that foreign bribery is an offence in Greece.

124. During the on-site visit, the FIU discussed the enforcement of the money laundering offence. Since Phase 3, although the number of money laundering investigations, prosecutions and convictions has

increased,³⁹ there have not been investigations or convictions of money laundering predicated on foreign bribery. The FIU reported some money laundering cases related to domestic bribery but could not provide statistics. There has been one investigation (*Telecom Company* case) but no convictions of money laundering predicated on foreign bribery.

Commentary

The lead examiners reiterate Phase 3 Recommendation 10 and recommend that Greece ensure that all stakeholders involved in the fight against money laundering are adequately aware that foreign bribery is a predicate offence for money laundering. The lead examiners also recommend that Greece take steps to ensure that the FIU is adequately resourced to effectively detect money laundering cases predicated on foreign bribery, and provide awareness-raising and training to FIU officials on detecting bribery-related money laundering cases. The FIU should also take steps to ensure that suspicions of foreign bribery are promptly referred to Greek prosecutors for investigation.

7. Accounting Requirements, External Audit, Corporate Compliance and Ethics Programmes

125. This section considers Greece's accounting standards that prohibit the types of accounting misconduct described in Article 8 of the Convention and penalties for such misconduct. It then turns to external auditing measures for detecting and reporting foreign bribery. The last part assesses Greek companies' corporate compliance, internal controls and ethics measures for addressing foreign bribery.

(a) Accounting Standards

126. As in Phase 3, the International Financial Reporting Standards (IFRS) as adopted by the EU are the principal accounting standards in Greece. IFRS is mandatory for (i) companies whose debt or equity securities trade in regulated markets; (ii) financial institutions; (iii) subsidiaries of (i) and (ii) that represent more than 5% of the consolidated turnover, assets, or results. IFRS is permitted for all other companies that are independently audited by a Certified Public Accountant.⁴⁰ IFRS for SMEs is not available. SMEs must use either full IFRS (if they are independently audited by a Certified Public Accountant) or Greek Accounting Standards (GAAP).⁴¹ Greek GAAP is set by the Accounting and Auditing Oversight Board (ELTE) (through its Accounting Standardisation Board (SLOT)).⁴²

127. The Code of Books and Records (CBR) imposes additional accounting requirements.⁴³ The CBR requires "traders" to maintain books and records for fulfilling tax obligations (Article 1). Traders include any Greek or foreign natural or legal person who operates in Greek territory and seeks to earn income from commercial or other business activities (Article 2). Traders are divided into three categories. The majority of companies are category 3 traders (Article 4(2)) and are required to maintain double-entry books and

³⁹ According to statistics provided by the FIU, there have been 191 money laundering investigations in 2011; 162 in 2012 and 130 for the first semester of 2013. The FIU also reports 105 prosecutions in 2011, 103 in 2012 and 99 in the first half of 2013. There have been 27 convictions in 2011, 20 in 2012 and 36 from January to June 2013.

⁴⁰ Phase 3 Report para. 89; Company Law 2190/1920, Articles 134-143.

⁴¹ [IFRS Profile - Greece \(September 2013\) \(www.ifrs.org\)](http://www.ifrs.org).

⁴² Law 3148/2003 Article 2; [IFRS Profile - Greece \(September 2013\) \(www.ifrs.org\)](http://www.ifrs.org).

⁴³ Presidential Decree No. 186/1992; Phase 3 Report para. 89.

records in accordance with Greek GAAP (Articles 7). Less stringent standards apply to traders in categories 1 and 2 (Article 4(2)).

128. Shipping companies are subject to different rules. The Company Law 2190/1920 only applies to one type of companies, namely *sociétés anonymes*. These are companies whose shares may be traded in a public market. Shipping companies that are not *sociétés anonymes* are not subject to the Company Law but are governed by Laws 959/1979 and 3190/1955.⁴⁴ In addition, companies that own ships must keep Category 2 books under the CBR (see above) and additional fiscal records. Companies that manage or operate ships must keep Category 3 books.⁴⁵

129. State-owned enterprises (SOEs) are also subject to different rules than other companies. SOEs whose debt or equity securities trade in regulated markets are subject to IFRS. The remaining SOEs use a cash-based rather than double-entry system of accounting (Phase 3 Report para. 90). There are current efforts to adopt an accrual accounting system, according to Greek officials at the on-site visit.

(b) Offence of False Accounting

130. Greece has reduced the multitude of provisions that sanctioned the accounting misconduct described in Article 8(1) of the Convention (Phase 3 Report para. 91). Previously, the laws ratifying the Convention and UNCAC each contained a false accounting offence. These offences have been replaced by a new offence in Law 4254/2014, Paragraph IE, subparagraph IE.19 (see p. 78). The Greek authorities state that the offences in Articles 5, 17 and 19(1) of the Tax Penalties Law 2523/1997 that were referred to in the Phase 3 Report have not been repealed and will apply to tax-related accounting misconduct.

131. One concern about the new false accounting offence is its visibility and lack of awareness. Unlike the foreign bribery offence, the new false accounting offence is not in the Penal Code. Instead, it is contained in a 107-page “omnibus” law, most of which is unrelated to criminal law or foreign bribery. No efforts have been made to draw the attention of prosecutors and investigators to the new provision. The lack of awareness of the previous false accounting offences was also of concern to the Working Group in Phase 3 (para. 95 and Recommendation 11(a)).

132. Working Group concerns in Phase 3 over the agency responsible for investigating the offence remain. The previous false accounting offences were enforced by SDOE, which is essentially the tax police. This led the Working Group to express concerns that SDOE would give greater priority to investigating false accounting related to tax crimes over those related to foreign bribery (Phase 3 Report para. 95 and Recommendation 11(a)). Law 4254/2014 is silent on which body would enforce the recently enacted false accounting offence. The Greek authorities say that SDOE would continue to be responsible because of its “general competence on financial crimes”.

133. A further question concerns which body would prosecute foreign bribery-related false accounting. It would obviously be sensible let a single agency prosecute both foreign bribery and related-false accounting that arise in the same case. However, the Public Prosecutor against Crimes of Corruption (PPACC) has jurisdiction only over felony corruption offences, and not corruption-related false accounting (Law 4022/2012 Article 1) (see p. 25).

⁴⁴ OECD Global Forum on Tax Transparency (2013), *Peer Review Report, Combined: Phase 1 + Phase 2, Incorporating Phase 2 Ratings*, para. 56.

⁴⁵ OECD Global Forum on Tax Transparency (2013), *Peer Review Report, Combined: Phase 1 + Phase 2, Incorporating Phase 2 Ratings*, para. 182.

Commentary

The lead examiners welcome Greece's efforts to reduce the number of foreign bribery-related false accounting offences. Nevertheless, the new false accounting offence lacks visibility and efforts have not been made to raise awareness of this provision. Furthermore, the PPACC prosecutes foreign bribery but not foreign bribery-related false accounting. The lead examiners accordingly reiterate Phase 3 Recommendation 11(a) and recommend that Greece (a) ensure the same body can prosecute both foreign bribery and the new false accounting offence in Law 4254/2014, and (b) raise awareness of the offence among law enforcement agencies that may investigate and prosecute this offence.

(c) Role of External Auditing

(i) Entities Subject to External Audit and Auditing Standards

134. Annual external audits are required for the following companies:

- (a) Companies that apply IFRS.⁴⁶ These companies are described at p. 37.
- (b) Corporations that exceed two of the following three criteria: (i) balance sheet of EUR 2.5 million; (ii) net turnover of EUR 5 million; and (iii) 50 employees on average in the previous financial year.⁴⁷
- (c) Companies whose (i) annual turnover is over EUR 1 million, (ii) Articles of Association require them to do so, or (iii) shareholders decide at the General Meeting decide to submit the company to external audit.⁴⁸

External audits in (a) and (b) must be performed by a certified auditor-accountant. Audits in (c) are conducted by at least two (i) certified auditor-accountants or (ii) auditors with a university degree who are members of the Economic Chamber of Commerce and who hold a professional license of Accountant-Tax advisor class A. Roughly 6 000 entities in Greece are subject to annual external audits, according to on-site visit participants.

135. Since 2008, Greek external auditors have been required to apply International Standards on Auditing (ISAs) set by the International Auditing and Assurance Standards Board (IAASB) as modified by the Greek Accounting and Auditing Oversight Board (ELTE).⁴⁹ This includes ISA 240 on detecting material misstatements in the company's financial statements due to fraud, and ISA 250 on detecting material misstatements in the company's financial statements due to breaches of law.

(ii) Awareness and Detection of Foreign Bribery by External Auditors

136. The Phase 3 Report (paras. 98-99) expressed concern over the efforts by external auditors to detect foreign bribery. Greek external auditors did not always consider the risk of foreign bribery when preparing audit plans. Some did so only if the audited company was subject to US foreign bribery laws.

⁴⁶ Company Law 2910/1920 Article 137.

⁴⁷ Company Law 2910/1920 Article 36.

⁴⁸ Company Law 2910/1920 Article 36a.

⁴⁹ Law 3693/2008 Article 24.

Only accountants and auditors in major firms had been trained on foreign bribery issues. Phase 3 Recommendation 11(b) thus asked Greece to raise awareness of foreign bribery among accountants and auditors, and to encourage auditors to make efforts to detect foreign bribery in all audited companies.

137. Greece has not taken steps to raise awareness among auditors and accountants since Phase 3. Its questionnaire responses provided information regarding internal but not external auditors. External auditors at the on-site visit could not identify any government awareness-raising efforts or training that relate specifically to foreign bribery. All of the external auditors at the on-site visit acknowledged that foreign bribery “red-flag” indicators could be relevant to detecting material misstatements due to fraud. But in practice, none of them had ever taken such indicators into account when auditing a Greek company.

Commentary

As in Phase 3, when Greek external auditors conduct audits, they appear to continue to ignore an audited company’s exposure to the risk of committing foreign bribery. Recommendation 11(b) is therefore not implemented. The lead examiners reiterate the Recommendation and urge Greece to raise awareness of Greece’s foreign bribery laws among Greek accountants and auditors. In particular, Greece should encourage accountants and auditors to take an audited company’s risk of committing foreign bribery into account when performing audits.

(iii) Reporting of Foreign Bribery by External Auditors

138. The Phase 3 Report (para. 100) stated that the ISAs largely governed Greek external auditors’ duty to report foreign bribery internally to the audited company’s management. External auditors who discover fraud or breaches of law that lead to material misstatements must report the matter to company management and, where appropriate, to the company’s general meeting of shareholders.⁵⁰

139. The Phase 3 Report (paras. 101-103) further noted that external auditors had taken inconsistent positions regarding their duty to report foreign bribery externally to competent authorities. Since Phase 2 in 2005, the Greek authorities have maintained that external auditors are bound by Article 40 CPC, which requires all individuals to report crimes to the prosecutor. External auditors agreed with this view in Phase 2 but reversed their position in Phase 3. They considered that an auditor’s duty of confidentiality to the client under Company Law 2190/1920 Articles 22a(3) overrode the duty to report in Article 40 CPC. Phase 3 Recommendation 11(b) therefore recommended that Greece clarify that the Company Law does not impede external auditors from reporting foreign bribery to law enforcement authorities.

140. This issue is even less clear today as external auditors have taken yet another new position. External auditors at the on-site visit stated that they only have a duty to report suspicious money laundering transactions to the FIU under the AML Law. This is not sufficient to meet the reporting requirement in Article 40 CPC, however. First, not every act of foreign bribery necessarily constitutes money laundering. Some acts of foreign bribery may therefore be unreported. Second, reports under the AML Law are made not to prosecutor, but to the FIU which cannot open a criminal investigation. A further problem is that the AML Law prohibits external auditors from informing the audited company of the suspicious transaction. This contradicts the auditors’ position in Phase 3 that they are obliged to report foreign bribery to the audited company’s management pursuant to the ISAs (see above).

⁵⁰ ISA 240(40)-(42); ISA 250(22)-(24); Phase 3 Report para. 100. See also Articles 21 and 24 of Law 3693/2008, which state that information obtained during an audit is subject to existing provisions on professional secrecy and applicable auditing standards.

Commentary

The lead examiners are concerned that Greece has not clarified an external auditor's duty to report foreign bribery as suggested in Phase 3 Recommendation 11(b). External auditors have taken three inconsistent positions on this issue since Phase 2. The Greek authorities have made no efforts to clarify these conflicting views of the law. Until that occurs, accounting and auditing is unlikely to be an effective means of detecting bribery and corruption.

The lead examiners therefore again recommend that Greece take steps to clarify an external auditor's duty to report foreign bribery (a) internally to the audited company's management, and (b) externally to competent authorities. In particular, the Greek authorities should clarify the inter-relationship of Company Law 2190/1920 Articles 22a(3) on an external auditor's duty of confidentiality; Article 40 CPC on the duty to report crimes; the STR provisions of the AML Law; and the provisions on reporting in the ISAs.

(d) Corporate Compliance, Internal Controls and Ethics Programmes

141. The Phase 3 Report (paras. 106-112) indicated that Greek enterprises may not have adequately implemented corporate compliance, internal controls and ethics programmes to address foreign bribery. Many large international Greek companies appeared to have developed some form of compliance measures. These companies, however, also largely denied that their employees or contractors were at risk of committing foreign bribery. This raised questions that these companies may not have properly assessed their risk profiles. Of particular concern were shipping companies, which denied that their employees were exposed to solicitations of bribes and facilitation payments. Internationally active SMEs also did not have compliance measures. Recommendation 11(c) therefore asked Greece to “encourage companies (especially SMEs) to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance”.

142. The Greek government has not taken steps to promote anti-foreign bribery corporate compliance measures since Phase 3. This includes bodies that are in direct contact with internationally active Greek companies, such as the Hellenic Capital Markets Commission, Enterprise Greece and Directorate for Small and Medium-Sized Enterprises in the Industry General Secretariat of the Ministry of Development and Competitiveness.

143. Private sector business associations have made limited efforts. The Hellenic Institute of Internal Auditors and various chambers of commerce have held conferences and seminars on corruption issues. These events do not appear to specifically address foreign bribery, however. They are also more in the nature of raising awareness of corruption rather than on implementing corporate compliance programmes. None of the business associations has produced any written materials that address foreign bribery. The only exception is the International Chamber of Commerce, which has translated into Greek and distributed its “Rules and Recommendations for combating Bribery & Extortion”. This document, however, is not specifically adapted to the Greek context. The Hellenic Corporate Governance Council produced the Hellenic Corporate Governance Code for Listed Companies in 2013. But this deals only with corporate governance and not specifically with corruption.

144. The corporate compliance landscape in Greece therefore remains unchanged since Phase 3. Large internationally active Greek companies that attended the on-site visit indicated that they continue to have corporate compliance programmes that addressed corruption. Several companies provided copies of their codes of conduct which specifically prohibit employees from bribing public officials. One company had an additional policy that addressed corruption. None specifically mentioned bribery of foreign public officials.

One shipping company's code of conduct addressed bribery but not facilitation payments. Information on other companies available on the Internet similarly indicates that few companies address foreign bribery specifically. SMEs generally do not have compliance measures, according to on-site visit participants.

Commentary

The lead examiners are concerned that the Greek government has not taken steps to promote corporate compliance measures to prevent and detect foreign bribery. Phase 3 Recommendation 11(c) has not been implemented. They therefore reiterate the Recommendation, and recommend that Greece encourage companies (especially SMEs) to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance.

8. Tax Measures for Combating Bribery

145. This section covers the tax deduction of bribes followed by detection, reporting and awareness-raising by Greek federal tax authorities. The last part concerns tax secrecy and the sharing of tax information with Greek and foreign authorities in foreign bribery investigations.

(a) Tax Deductibility of Bribes

(i) Express Prohibition against Tax Deductibility

146. Greece has enacted an express prohibition on the tax deduction of bribes. In 2006, Greece added Article 31(16) to its Income Tax Code (Law 2238/1994) which states that "Payments in case or in kind are not considered deductible expenses from the gross income when such payments constitute a criminal offence, even when payable abroad." A new Income Tax Code (Law 4172/2013) will apply to income and expenses that arise after 1 January 2014. Article 23(f) of the new Code states that "the provision or receipt of remuneration in case or in kind that constitutes a criminal offence" is not a deductible expense.

147. The Phase 3 Report (para. 114) raised concerns that Greece's prohibition against tax deduction of bribes in the Income Tax Code did not apply to shipping companies. The Income Tax Code does not apply to profits from the operation of ships flying the Greek flag that are obtained by Greek companies, co-operatives or unions of co-operatives (Income Tax Code Article 103(1)(g)). Such profits are taxed under Law 27/1975 which does not expressly prohibit the tax deduction of bribes. The Greek authorities confirmed that the Income Tax Code has no application if a separate tax law applied. Recommendation 12(a) accordingly recommended that Greece amend Law 27/1975 to expressly prohibit Greek shipping companies from deducting bribe payments from their taxes.

148. Additional information provided by Greece in Phase 3bis has removed these concerns. Shipping companies in Greece (including foreign shipping companies operating in the country) are not taxed under the Income Tax Code. Instead, they are taxed based on ship tonnage (i.e. ship size).⁵¹ Critically, this tax is not based on the shipping company's income. A shipping company therefore would not seek to deduct expenses – including bribes – from its tax bill. An express prohibition against the tax deduction of bribes would thus be unnecessary for shipping companies.

⁵¹ Law 27/1975; Constitution of Greece Article 107.

(ii) *Enforcement in Practice of the Non-Tax Deductibility of Bribes*

149. The Phase 3 Report (para. 115) expressed concern about Greece's enforcement in practice of the non-deductibility of bribes. Greece stated that after an individual or company is determined to have committed (domestic or foreign) bribery, it is "standard practice" for the Greek tax authorities to re-examine the tax returns of the individual or company to determine whether bribes were deducted. However, Greece could not provide statistics or examples to demonstrate this practice. Phase 3 Recommendation 12(a) asked Greece to establish a written policy of re-examining the tax returns of all individuals and companies that have engaged in bribery to verify whether bribes had been deducted.

150. Recommendation 12(a) remains unimplemented since Greece has not established a written policy of re-examining the tax returns of those found to have engaged in bribery. Its questionnaire responses did not address this issue. At the on-site visit, the Greek authorities stated that they might be asked to re-examine a taxpayer post-conviction. However, there was no written policy to ensure that this is done in every case. The tax authorities stated that there were no re-examinations in widely publicised cases such as the Siemens and Submarines Cases after these companies admitted to bribing Greek officials. After the on-site visit, the Ministry of Justice contradicted the position of the tax authorities and stated that tax reviews are conducted in preliminary investigations. There was no information, however, on the outcome of the tax reviews in the Siemens and Submarine Cases. The tax authorities further stated at the on-site visit that tax auditors would re-audit smaller companies and natural persons that have been convicted. It is unclear why larger companies are excluded from this practice, or whether the practice applies routinely to bribery cases. After the on-site visit, the Ministry of Justice stated that the opposite was the case, i.e. larger but not smaller companies are re-audited.

Commentary

The lead examiners recommend that the Working Group follow up whether Greece routinely re-examines the tax returns of individuals and companies that have engaged in bribery to verify whether bribes had been deducted.

(b) *Detecting, Reporting, and Awareness-Raising of Foreign Bribery by Tax Authorities*

151. The Phase 3 Report (paras. 116-119) expressed concerns that Greek tax examiners might not routinely look for bribery in every tax examination. Greece could not provide statistics on the number of domestic or foreign bribery cases detected during tax examinations; the effectiveness of its detection measures therefore could not be assessed. Phase 3 Recommendation 12(b) therefore asked Greece to ensure that its tax authorities include bribery in their risk assessments and audits, and that measures to detect bribes are incorporated into future tax amnesties.⁵²

152. Greece has not implemented Recommendation 12(b). It stated that the detection of bribery is "top priority during tax reviews" and tax auditors look for bribery and other offences. However, the detection of bribery has not been added to the tax authorities' standard audit manual to ensure the routine application of detection measures in every audit. Statistics on actual detection remain unavailable. At the on-site visit, one Greek official stated that bribery cannot be detected during tax examinations of big companies. Greece added that no tax amnesties were planned for the time being.

⁵² A tax amnesty is a measure to allow a taxpayer to pay a predetermined sum that would allow him/her to bring funds from abroad to Greece without undergoing a tax audit (Phase 3 Report para. 118).

153. Greece has partially implemented Recommendation 12(c) concerning the OECD Bribery Awareness Handbook for Tax Examiners. The Phase 3 Report (para. 177) indicated that Greece had not translated or distributed the Handbook. In Phase 3bis, Greece's questionnaire responses stated that the Handbook had been translated and distributed to all departments in the Ministry of Finance. At the on-site visit, however, officials clarified that only the 2005 version of the Handbook had been translated and distributed. (The Handbook has since been updated in 2009 and 2013.) The Greek authorities stated that there are only minute differences between the 2005 and latest version of the Handbook. This additional information was distributed to officials who attended training seminars.

154. In terms of training and awareness-raising, Greece added that seminars have been held with the OECD and the EC Task Force on Greece. However, these seminars covered a wide range of matters and offences. How prominent foreign bribery figured in these events is unclear. As mentioned above, Greece stated that it has used the OECD Handbook to train its officials.

155. As with all public officials, Greek tax officials must report crime (see p. 52). Suspected bribery detected during a tax examination must be reported to the prosecutor. Suspected money laundering is reported to the FIU. The tax authorities could not provide statistics on the number of reported cases of suspected bribery. Statistics on reported money laundering cases were available but not provided.

Commentary

The lead examiners reiterate Phase 3 Recommendation 12(b) and (c) and recommend that Greece translate and distribute the latest OECD Bribery Awareness Handbook to all tax examiners. They further recommend that Greece ensure that its tax authorities include bribery in their risk assessments and audits. This should include the incorporation of the Handbook into the tax authorities' tax audit manual to ensure that bribery detection measures are routinely applied in all tax examinations. Finally, Greece should ensure that measures to detect bribes are incorporated into any future tax amnesties.

(c) Tax Secrecy and Sharing Information with Greek and Foreign Law Enforcement Authorities

156. The Greek authorities state that, since Phase 3, new provisions concerning the confidentiality of tax information have been enacted under Article 17 of the Tax Procedure Law 4172/2013. Tax officials may provide confidential tax information only to, among others, law enforcement and judicial authorities and the FIU in cases involving the State or "fraud", tax evasion and other tax crimes. "Fraud" in this context refers to tax-related fraud (Article 55). It is unclear whether tax officials can provide confidential tax information concerning a foreign bribery offence to law enforcement spontaneously (as opposed to upon demand, which is discussed in the next paragraph). The General Secretary for Public Revenue may prescribe penalties for breach of tax secrecy. The Greek authorities did not indicate whether the General Secretary has done so.

157. Greece has clarified the ability of law enforcement authorities to lift tax secrecy in foreign bribery cases. The Public Prosecutor against Crimes of Corruption may obtain tax information concerning persons related to an investigation. However, secrecy is lifted for only one month; extensions require judicial authorisation (Law 4022/2011 Article 2(5)). Powers to lift tax secrecy are also provided by legislation to SDOE (Law 3296/2004 Article 30(6)), the Economic Police Service (Law 3986/2011 Article 32(4)(a) and Law 4294/2014 Article 44(2)), and the FIU (Law 3932/2011 Article 7B(4)). Phase 3 Recommendation 12(d) is fully implemented.

158. Greek tax officials may provide information to foreign authorities only pursuant to an international convention or EU directive (Tax Procedure Law 4172/2013 Articles 17 and 29). Since

Phase 3 Greece has ratified the Convention on Mutual Administrative Assistance in Tax Matters of the OECD and Council of Europe. Recommendation 12(e) is thus fully implemented. Greece adds that administrative exchange of tax information is also provided for under 56 double tax agreements (DTAs), an unspecified number of tax information exchange agreements (TIEAs), and several EU Directives. Greece states that its policy is to include the language in Article 26 of the OECD Model Tax Convention (which provides for sharing of tax information for non-tax use) in its future bilateral tax treaties.

Commentary

The lead examiners recommend that the Working Group follow up whether Greek tax authorities can spontaneously provide information covered by tax secrecy that relates to a foreign bribery offence.

9. International Co-operation

159. The Phase 3 Report (paras. 122-129) noted several issues concerning Greece's ability to provide MLA in foreign bribery cases, including the requirement of dual criminality, the types of MLA available, and the procedure for executing MLA requests. Recommendation 7 asked Greece to improve its system for seeking and providing MLA, and clarify the types of assistance available for requests that are based on the Criminal Procedure Code (CPC) rather than a treaty. Recommendation 8(iv) also recommended that Greece maintain detailed statistics on MLA requests, including the offence underlying requests, time required for execution, and nature of assistance sought.

(a) Treaty and Legislative Framework for MLA

160. Greece's treaty framework for MLA has not changed since Phase 3. It has 14 bilateral MLA treaties. Ten additional bilateral MLA treaties are not in use because co-operation with those countries is based on the 1990 Convention applying the Schengen Agreement or the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. Greece is also party to other multilateral criminal law conventions that contain provisions on MLA, including the UN Conventions on Corruption (UNCAC) and Transnational Organised Crime; and the Council of Europe Conventions on Corruption and money laundering. Greece is not party to the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

161. Greece states that, in the absence of an applicable MLA treaty or administrative arrangement, domestic law is applied to provide MLA on the condition of reciprocity. Article 28 of the Constitution is cited as authority for this statement. In such cases, Articles 457-461 CPC apply. These provisions set out the different types of assistance available (see p. 77 of the text of these provisions).

(b) Dual Criminality and MLA

162. Requests to Greece to provide MLA may need to meet the requirement of dual criminality. For MLA requests made on the basis of a treaty, whether dual criminality is required depends on the terms of the treaty. For MLA requests that are not based on a treaty, the applicable legislative provisions *prima facie* require dual criminality as a precondition for rendering assistance. The Minister of Justice, with the consent of the competent council of appeals judges, may refuse an incoming MLA request if the underlying offence is not extraditable (Article 458(3) CPC). One condition for an extraditable offence is that the act constituting the crime is punishable in Greece and the requesting state by at least two years' imprisonment or death, i.e. dual criminality (Article 437(a) CPC)).

163. In particular, dual criminality is likely a precondition for Greece to grant MLA in the absence of a treaty. In Phase 3 (para. 123) and in its Phase 3bis questionnaire responses, Greece stated that

Articles 457-461 CPC (which apply to MLA without a treaty) do not *explicitly* require dual criminality. However, this statement falls short of saying that there is no such implicit requirement, and also overlooks Articles 437(a) and 458(3) CPC described above. Greece further states that, “in any case, dual criminality will always be met in foreign corruption cases since all domestic legal provisions, including Article 458(3) CPC, are interpreted by Greek jurists in combination with treaties on extradition and MLA to which Greece is party”. Examples of such treaties cited by Greece included Article 46(9)(b) UNCAC and Article 18(1)(f) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. However, these provisions in fact allow the requested state to require dual criminality as a condition for providing coercive forms of MLA.

164. It is unclear whether Article 9(2) of the Convention could apply to make all MLA requests in foreign bribery cases meet the dual criminality requirement. That provision states that, “Where a Party makes mutual legal assistance conditional upon the existence of dual criminality, dual criminality shall be deemed to exist if the offence for which the assistance is sought is within the scope of this Convention.” Upon Greece’s ratification of the Convention, Article 9(2) became part of Greek domestic law and prevails over any contrary provision in Greek law (Constitution Article 28(1)). Greece has not, however, cited Article 9(2) as a basis for its position that dual criminality is not required in foreign bribery cases. The Greek authorities explain that, to date, they tend to rely on the European Convention on Mutual Assistance in Criminal Matters.

165. Greece states that it can provide MLA in investigations against legal persons, even though dual criminality is likely a precondition for providing MLA and Greece’s legal system does not recognise criminal liability of legal persons (see p. 18). In these cases, Greece provides MLA in relation to the natural persons involved in the criminal activities of the legal person. Greece could not provide an example of providing MLA for use in foreign proceedings against a legal person since such cases are recorded as requests relating to natural persons.

(c) *Types of MLA Available*

166. When an MLA request is not made pursuant to a treaty, the applicable legislation does not appear to allow certain types of assistance. When an MLA request is based on a treaty, the terms of the treaty set out the types of MLA available. In the absence of a treaty, Articles 457-461 CPC apply (see above). These provisions refer to a limited range of assistance: examination of witnesses and defendants, onsite inspections, expert opinions and seizure of evidence (Article 458(1) CPC); service of documents (Article 458(2)); transfer of persons in custody (Article 459) and of exhibits (Article 461). These provisions do not provide for special investigative techniques, (e.g. wiretapping and covert surveillance), asset freezing or confiscation. It is therefore unclear whether these types of assistance are available.⁵³

167. Greek officials’ explanation about the availability of these additional types of assistance was not entirely convincing. In their view, the provisions that govern the use of such techniques in *domestic* criminal investigations could be used to provide MLA to a foreign state. However, nothing on the face of the legislation suggests that these provisions could be extended to the MLA context. Furthermore, if provisions that apply to domestic investigations can also be applied to execute MLA requests, then the MLA provisions in the CPC would be redundant. For instance, there would have been no need to enact Article 458(1) CPC to execute MLA requests for witness examinations or seizure of evidence; one could have merely used the equivalent provisions for domestic investigations. This is unlikely to have been the legislator’s intention. The Greek authorities agree that the CPC could be clearer but argue that this concern is largely theoretical since most MLA requests are treaty-based.

⁵³ Phase 3 Report para. 123; FATF (2007), [Greece Mutual Evaluation Report](#), para. 784.

Commentary

The lead examiners reiterate Phase 3 Recommendation 7 and recommend that Greece amend its legislation to explicitly provide for certain the types of assistance (e.g. special investigative techniques, asset freezing and confiscation) for MLA requests that are not based on a treaty.

(d) *Delay in and Procedure for Executing MLA Requests*

168. The Phase 3 Report (paras. 125-126) expressed concerns about delay in executing MLA requests. Greece provided only limited and incomplete statistics on MLA. Nevertheless, Greece estimated that many requests are “addressed within days” and in “exceptional” cases between “a week to a maximum of six months”. Anecdotal evidence suggested that delay could be much longer. The *Telecom Company* case and another case involving a foreign company bribing Greek officials saw response times of over six months.

169. In Phase 3bis, Greece provided substantial information on MLA but not on delays in executing requests. Greece stated that statistics would only be available when it completes an ongoing project. The questionnaire responses complained about delay in Greece obtaining MLA from foreign countries in many cases of foreign companies bribing Greek officials. However, Greece was requested but did not provide information on the MLA it gave to foreign countries in these cases.

170. Delay in providing MLA may be partly due to the procedure for processing requests, as noted in the Phase 3 Report (paras. 124, 127-128). Incoming MLA requests must generally be sent to the Central Authority in the Ministry of Justice.⁵⁴ Thereafter, requests are sent to the Court of Appeal, which transfers the request to the Prosecutor General of the Court of First Instance, who then forwards it to the President of the Court of First Instance, who finally sends it to an investigative judge for execution. The gathered evidence retraces this route on its way to the foreign authorities. Several of these officials merely pass on the request without reviewing its contents, according to Greece. The necessity of their involvement is thus questionable. These multiple layers also add to delay. This process has not been streamlined since Phase 3. The Greek authorities state that requests from EU states are made directly to law enforcement authorities and do not follow this procedure.

Commentary

The lead examiners reiterate Phase 3 Recommendation 8(iv) and recommend that Greece (a) maintain detailed statistics on MLA requests, including the offence underlying requests, time required for execution, and nature of assistance sought, and (b) streamline the process for executing incoming MLA requests with a view to reducing delay in providing MLA.

(e) *Treatment of Foreign Bribery Allegations in Incoming MLA Requests*

171. A major concern in Phase 3 (paras. 59-61) was Greece’s failure to investigate foreign bribery allegations contained in an MLA request from the US in the *Telecom Company* case. The request indicated that three Greek individuals, including a “well-known entrepreneur”, channelled bribes to FYROM officials (see p. 10). Greece explained that when it “receives an MLA request that discloses information about its citizens committing crimes abroad, it gives higher priority to executing the MLA request unless there is proof that a crime had been committed in Greece.” This overlooked the fact that there was evidence in the *Telecom Company* case suggesting that the Greek individuals committed crimes of foreign

⁵⁴ A request under the EU Schengen agreement and urgent requests under some treaties such as the 1959 European Convention may be sent directly to the “competent” Court of Appeal.

bribery in Greece. Furthermore, the Convention obliges Greece to seriously investigate foreign bribery allegations implicating Greek citizens. A general policy that favoured assisting foreign authorities over conducting a domestic investigation may also be inappropriate.

172. Phase 3 Recommendation 4(f) thus recommended that Greece “ensure that foreign bribery allegations provided to Greek officials through MLA or in multilateral fora on international co-operation (e.g. Eurojust), or otherwise, are promptly forwarded to Greek law enforcement authorities and that domestic investigations are subsequently opened as appropriate”.

173. Greece has taken some steps to address Recommendation 4(f). It explained that it initially failed to investigate the *Telecom Company* case because, following the procedure at that time, one investigative judge out of a pool of 20 judges was chosen to execute the MLA request. The judge who was chosen did not recognise that foreign bribery was an offence in Greece and hence failed to pass the case to a prosecutor for investigation. To prevent this from happening again, one investigative judge has been designated in Athens to execute all future MLA requests. This investigative judge has been informed that foreign bribery is an offence under Greek law.

174. These steps only partially implement Recommendation 4(f) because they do not address the wider problem that judges and prosecutors are generally not aware of the foreign bribery offence. The *Telecom Company* MLA request passed through at least four MOJ officials, prosecutors and judges before arriving at the investigative judge. (The procedure for executing requests is described at p. 47.) None of these four officials reported the matter to a prosecutor despite a legal obligation to do so (see p. 52). The prosecutors involved also did not start an investigation despite the principle of mandatory prosecution (see p. 27). These individuals took no action likely because they too were unaware that foreign bribery was a crime under Greek law.

175. Furthermore, the new arrangement introduced after Phase 3 may not be effective in preventing the problem in the *Telecom Company* case from happening again. This arrangement depends entirely on the single investigative judge in Athens responsible for executing all MLA requests to be aware of the foreign bribery offence in Greek law. If this judge is later replaced (e.g. on vacation, has been transferred or has retired), there are no guarantees that the replacement would be similarly aware of the offence. Moreover, Greece has admitted that many MLA requests (e.g. those from EU countries) are sent directly to local prosecutors and judges (see p. 47) and would therefore by-pass the Athens prosecutor. Indeed, the MLA request in the *Cypriot Paphos Waste Treatment Case* was sent directly to the prosecutor in Thessaloniki.

Commentary

The lead examiners are encouraged that Greece has taken some steps to address its failure to open a foreign bribery investigation in the Telecom Company case. What transpired in the case, however, points to a much wider lack of awareness of the foreign bribery offence among Greek public officials. This systemic deficiency has not been addressed as Greece continues not to explicitly address foreign bribery in its National Anti-Corruption Action Plan or in its awareness-raising activities (see pp. 49 and 51).

The lead examiners also note that Greece opened foreign bribery investigations in the State Tobacco Company cases based on information contained in an incoming MLA request. This is encouraging. However, to ensure that foreign bribery investigations are systematically opened based on information in MLA requests, Greece must address the general lack of awareness of foreign bribery among Greek judges and prosecutors.

The lead examiners therefore reiterate their recommendation at pp. 28, 50 and 52 of this report to raise awareness of the foreign bribery offence. In particular, awareness-raising efforts should include Greek officials involved in criminal law enforcement or in executing foreign MLA requests.

(f) Extradition

176. Since Phase 3, there have not been changes to Greece's extradition framework in foreign bribery cases. According to the Phase 3 Report (para. 130), Greece can seek and provide extradition in corruption cases based on bilateral treaties, multilateral treaties, the European Arrest Warrant (for EU members), and Articles 436-456 CPC. Greece does not extradite its nationals (except under a European Arrest Warrant) but will prosecute them in Greece for the same crime (*aut dedere aut judicare*). In the absence of an applicable treaty, the grounds for refusing extradition are stipulated in the CPC and are the same as those for refusing MLA.

177. In 2010-2014, Greece sent 69 and received 302 extradition requests (for all criminal offences, not only corruption). The Greek authorities stated that they refused only a small percentage of incoming requests, mostly due to concerns about human rights in the requesting state. One request was refused because the person sought was a Greek national.

10. Public Awareness and the Reporting of Foreign Bribery

178. This section considers Greece's general efforts to raise awareness of foreign bribery and to encourage reporting of foreign bribery to law enforcement. The Greek government has prioritised fighting domestic corruption over foreign bribery. This approach is particularly evident in the areas of the national anti-corruption policy, awareness-raising, reporting, and whistleblower protection. Awareness and reporting relating to external auditors, tax and public advantages are described at pp. 40, 43 and 56. The lack of awareness of law enforcement officials is discussed at pp. 24 and 47. Corporate compliance measures are examined in greater detail at p. 41.

(a) Absence of an Explicit Overarching Strategy to Fight Foreign Bribery

179. Greece has not had a national policy to specifically address foreign bribery. None was identified in Phase 2 or Phase 3. Since then, the "National Anti-Corruption Action Plan" was published in 2013 and was much heralded by the government as a major policy instrument in fighting corruption. The 119-page Plan does not mention foreign bribery save for one brief reference to the Convention. The "existing problems" identified in the Plan all concern domestic corruption and bad administration of the Greek government.

180. Greece has repeatedly stated that its general policies on fighting "corruption" are sufficient and that there is no need to expressly address foreign bribery. In Phase 3 (para. 135), the Greek authorities explained that foreign bribery need not be specifically mentioned because it "goes hand in hand" with domestic corruption. In Phase 3bis, the Greek authorities downplayed the omission of foreign bribery from the Anti-Corruption Action Plan. In their view, the Plan "considers corruption to be a pervasive phenomenon and as such it does not distinguish between domestic and foreign corruption. It operates on the assumption that a corrupt mechanism would behave in the same manner in every environment."

181. However, Greece's view that attacking "corruption" generally is sufficient to address foreign bribery overlooks the broader context in the country. Domestic corruption is perceived as widespread in Greece and dominates the nation's consciousness, as Greek officials have repeatedly emphasised. Given this backdrop, almost everyone in Greece is likely to interpret the term "corruption" in the government's anti-corruption policies as domestic corruption only (Phase 3 Report Commentary after para. 138).

182. Greece's position that foreign and domestic corruption are identical phenomena is also questionable. Companies have been known to behave differently when they go abroad. Unlike domestic corruption, fighting foreign bribery requires greater focus on the supply side of corruption. Furthermore, some Greek citizens might consider foreign bribery less objectionable because it may be a means to improve Greece's international economic competitiveness (Phase 3 Report para. 136). In Phase 3bis, one civil society representative stated that in a period of economic crisis the government has made substantial efforts to address domestic corruption but "would not touch the export sector".

183. The lack of specific attention to foreign bribery may also be caused by the fact that the government misapprehends Greek companies' exposure to this crime. At the on-site visit, the Greek authorities stated that "no area of the Greek economy is at risk" of committing foreign bribery. The position, however, was not based on a rigorous risk analysis and is at odds with other evidence. As noted at p. 8, Greece has substantial trade and investment links to the Balkans and the Middle East. As one Greek official at the on-site visit observed, Greece is "in a difficult region in terms of corruption". Greece's economy is also dominated by an internationally-active shipping industry that is in constant contact with foreign officials in customs, immigration, tax and environmental regulation. Even Greek SMEs have recently become more active overseas. In sum, the risk of the Greek companies committing foreign bribery is far from minimal.

Commentary

The lead examiners are concerned that Greece does not give sufficient priority to fighting foreign bribery. The risk of Greek companies committing foreign bribery is substantial, and needs to be squarely and explicitly addressed. It is very disappointing that the risk does not appear to be fully appreciated by the Greek authorities. Indeed, Greek government policies continue to only address "corruption" generally which is interpreted as referring only to domestic corruption. This sends an unfortunate message to the Greek public and businesses: that during an economic crisis, domestic corruption must be forcefully tackled, but foreign bribery is an acceptable means to win overseas business and improve Greece's economy. Greece's reluctance to expressly address foreign bribery is also difficult to comprehend. An explicit recognition of the need to fight foreign bribery would not detract from the cause of combating domestic corruption.

The absence of an explicit, prominent policy to fight foreign bribery has already led to undesirable consequences. As described below and elsewhere in this report, policy and legislative advancements in fighting domestic corruption have not been extended to foreign bribery in matters such as whistleblower protection and reporting. The under-emphasis of foreign bribery has resulted in a lack of awareness of this crime within the general public, the private sector and the public sector. This lack of awareness can be seen as the reason why Greece failed to initially investigate the Telecom Company case (see p. 27). It may also explain why the FIU initially did not refer foreign bribery allegations to Greek prosecutors for investigations (see p. 36).

For these reasons, urgent steps are needed to raise the priority of fighting foreign bribery and explicitly address foreign bribery in its current National Anti-Corruption Action Plan and its subsequent national anti-corruption strategies.

The lead examiners also note that Greece has created a Ministry of Anti-Corruption after a change in government in late January 2015. During this evaluation, the Greek authorities stated that it remains to be seen how this development would affect the fight against foreign bribery. It is also unclear whether and how the new government's priority in tackling vested

interests and tax crimes might impact the enforcement of foreign bribery laws. The Working Group should follow up developments in this regard.

(b) Raising Awareness of Foreign Bribery and the Convention

184. The Phase 3 Report (paras. 131-138) found that awareness of foreign bribery and the Convention in Greece was “unacceptably low”. Phase 3 Recommendation 13 therefore recommended that Greece proactively raise awareness of foreign bribery among Greek individuals, businesses and public officials.

185. As in Phase 3, Greece has principally made efforts to raise awareness of domestic corruption but not foreign bribery specifically. As stated above, the National Anti-Corruption Action Plan does not address foreign bribery explicitly. Conferences in 2013 and 2014 on corruption did not specifically address foreign bribery. Efforts by the Hellenic Police and SDOE to encourage citizens to report corruption did not point out that foreign bribery is also a crime that should be reported. As mentioned at p. 39, the private sector and the accounting and auditing profession could not describe any government awareness-raising measures that specifically addressed foreign bribery.

186. Governmental bodies that are in direct contact with internationally active Greek companies have also not made sufficient efforts to raise awareness. Enterprise Greece, the official trade promotion agency, helps Greek businesses to find new markets and business partners overseas.⁵⁵ It did not take any steps to address foreign bribery and did not attend the on-site visit. The Hellenic Capital Markets Commission (HCMC) regulates companies that are listed in Greece, many of which operate multinationally. Since Phase 3, HCMC has posted information about foreign bribery on its website. However, it has not taken any further steps to encourage companies to adopt corporate compliance measures to fight foreign bribery (see p. 41).

187. Of particular concern is the complete absence of efforts to raise awareness within the shipping industry. Companies in this sector are in constant contact with foreign officials. The solicitation of bribes and facilitation payments should naturally be of concern. Phase 3 Recommendation 13 therefore asked Greece to raise awareness of foreign bribery within the shipping industry. The Greek government, however, has not taken any action in this respect. Instead, it does not consider this sector - or any other sector in Greece - to be exposed to the risks of foreign bribery. The Ministry of Shipping and the Aegean is responsible for regulating the industry. It, too, did not attend the on-site visit.

188. Also of concern is the lack of efforts to raise awareness among SMEs, a matter that was also mentioned in Recommendation 13. Greek SMEs are increasingly active internationally (see p. 9). As in Phase 3, few SMEs have corporate compliance measures to address the foreign bribery risk that they face (see p. 41). The Directorate for Small and Medium-Sized Enterprises of the General Secretariat for Industry of the Ministry of Development and Competitiveness plays a key role in SME promotion. The Directorate has not taken measures specifically relating to foreign bribery and also did not attend the on-site visit.

189. As for the public sector, civil service-wide awareness-raising efforts also addressed “corruption” but not foreign bribery specifically. As noted above, the Working Group has concluded since Phase 3 that this approach is ineffective as few people would associate “corruption” with foreign bribery in Greece’s context. Greek overseas diplomatic missions were advised to report foreign bribery allegations (see next section for details). Awareness-raising efforts by the authorities in tax and provision of public advantages are discussed at pp. 43 and 56.

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190. Overall, there continues to be a low level of awareness of foreign bribery within the general public, the private sector, and the public sector. Civil society representatives at the on-site visit agreed with this view. Furthermore, the Greek media has largely ignored foreign bribery allegations implicating Greek companies that have surfaced in the foreign press. Most of the journalists at the on-site visit appeared more interested in reporting domestic corruption. The Greek companies that attended the on-site visit stated that they were aware of the Convention. However, many Greek companies do not appear to have corporate compliance measures that specifically address foreign bribery (see p. 41). As mentioned at p. 47, the Greek authorities initially failed to investigate the *Telecom Company* case because of a lack of awareness. The FIU may also have failed to refer the *Cypriot PEP* case to prosecutors for the same reason (see p. 24). The absence of successful foreign bribery prosecutions contributes to the lack of awareness, as the Working Group has noted in other country evaluations.⁵⁶

Commentary

The lead examiners are concerned that the Greek authorities have not engaged in sufficient awareness-raising efforts that specifically refer to foreign bribery. Greece continues to take the view that it is sufficient to raise awareness of “corruption” generally. However, in the context of Greece, the term “corruption is interpreted to refer to domestic corruption but not foreign bribery, as evidenced by the low level of awareness of foreign bribery among Greek prosecutors, judges and the private sector.

The lead examiners are also extremely concerned that key government bodies have not engaged in awareness-raising. No efforts have been made viz. the shipping industry, despite the sector’s substantial exposure to the risks of foreign bribery. Equally inactive are bodies that deal with internationally active Greek companies, such as Enterprise Greece, HCMC, and the Directorate for Small and Medium-Sized Enterprises. These agencies’ failure to attend the on-site visit may indicate that fighting foreign bribery is not considered a priority.

For these reasons, the lead examiners consider that Greece has not implemented Phase 3 Recommendation 13. They reiterate this Recommendation and recommend that Greece proactively raise awareness in sectors at risk of committing foreign bribery, including the shipping, export and SME sectors. Awareness-raising efforts should specifically address foreign bribery and not merely “corruption” in general terms. Awareness-raising efforts should be made by all government bodies that are in direct contact with Greek companies which operate internationally, including HCMC, overseas diplomatic missions, Enterprise Greece, and the Directorate for Small and Medium-Sized Enterprises.

(c) Detection and Reporting of Foreign Bribery

(i) Reporting of Foreign Bribery by Public Officials Generally

191. Greek public officials are obliged to report crimes of which they become aware “in the exercise of their duties” (Article 37(2) CPC). Breach of this provision is punishable by imprisonment of up to two years, unless such act is punishable by another penal provision (Article 259 PC; Phase 2 Report para. 44).

192. The Phase 3 Report (para. 139) questioned whether the Civil Service Code (Law 3528/2007) may inhibit reporting. Article 26 of the Code appears to require civil servants to maintain confidentiality “in

⁵⁶ For example, see Phase 3 Reports of the Netherlands (Commentary after para. 144), South Africa (Commentary after para. 157) and Portugal (Commentary after para. 164).

respect to issues that are explicitly regarded as classified by the law, or if this is stipulated by common knowledge and sense, provided that he has obtained such knowledge by opportunity of or during the exercise of his duties”. Breach of this Article may lead to disciplinary sanctions. The Working Group was concerned that this provision would hinder the reporting of crimes by officials. Phase 3 Recommendation 14(a) thus asked Greece to clarify that Article 26 of the Civil Service Code does not hinder the reporting of crimes, including foreign bribery, by Greek public officials.

193. In Phase 3bis, Greece stated that Article 26 is not an obstacle to public officials reporting crimes. The provision “sets a limit to the disclosures of information obtained during the discharge of public service by a public official. The scope of this provision is to protect the privacy of individuals and the uninterrupted function of public service. Such interests though, cannot, in any case, prevail against the duty to prosecute a crime.” No legal authority was cited for this position. The Greek authorities added that the Hellenic Police received 512 reports of crime from Greek public officials in 2012-2014. The failure of Greek officials to report the *Telecom Company* case is discussed at p. 47.

Commentary

The lead examiners recommend that the Working Group follow up whether Article 26 of the Civil Service Code hinders the reporting of crimes, including foreign bribery, by Greek public officials. Greece should also enforce the obligation on its officials to report crime.

(ii) Reporting by Overseas Diplomatic Missions

194. Ministry of Foreign Affairs (MOFA) officials are subject to the duty to report crime in Article 37 CPC. In 2008, MOFA issued a circular instructing Greek overseas missions to report foreign bribery allegations involving Greek individuals or companies to the Greek competent authorities (Phase 3 Report para. 140). Phase 3 Recommendation 14(b) recommended that Greece remind its overseas missions of the obligation to report foreign bribery, and re-issue the guidance on how such reports should be made.

195. Recommendation 14(b) has been implemented. In 2012, the MOFA reissued the circular asking all overseas missions to report foreign bribery to the competent Greek authorities. Another circular in October 2014 stated that, in view of the upcoming Phase 3 evaluation, all missions were requested to forward information concerning foreign bribery incidents and actions taken in specific instances.

196. A significant concern is that these circulars have not resulted in actual reporting. Since Phase 3, several foreign bribery allegations involving Greek companies have surfaced. Greek law enforcement authorities did not learn of these cases from Greek diplomatic missions but from other sources such as the Working Group (which relies mainly upon media information). Prosecutors at the on-site visit confirmed that they did not receive any information from Greek embassies. This is troubling, since it demonstrates that the circulars that had been issued earlier were ineffective.

Commentary

The lead examiners are concerned that Greek embassies have failed to report foreign bribery allegations that had been circulated in the foreign media. They urge Greece to analyse the reason for this failure and take appropriate remedial action.

(iii) Reporting of Foreign Bribery by Other Individuals and Sources of Detection

197. Article 40 CPC obliges all persons who become aware of a crime to report the matter to the public prosecutor or any law enforcement authority. The CPC does not specify any penalties for persons

who breach this provision. Greece stated that failure to report may result in a conviction for being an accessory to the substantive offence but this position appeared doubtful (Phase 3 Report para. 142).

198. Since Phase 3bis, the reporting of foreign bribery and the sources for detecting this crime has not increased. Greece states that in 2012-2014 the Hellenic Police opened 119 cases (including 27 for corruption) based on information from the internet and the press. However, just one foreign bribery investigation (*Energy Company Case*) has been started based on these sources. Information that has led to the other foreign bribery investigations in Greece was largely provided by the Working Group to the Greek authorities. Since the Working Group relies on publicly available information, there is no reason why the Greek authorities themselves should not have obtained the information directly from the media. Allegations reported in the media have not resulted in investigations in the *Cypriot PEP* and *Cypriot Paphos Waste Treatment* cases. The allegations in the *State Tobacco Company* cases were contained in MLA requests from Algeria. Greece has therefore not implemented Phase 3 Recommendation 9, which recommended that Greece increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage both to increase sources of allegations and enhance investigations.

Commentary

The lead examiners note that Greece has relied almost exclusively on information provided by the Working Group as a source of foreign bribery allegations. In addition, reporting rates has increased substantially for domestic corruption but not foreign bribery. This is unsurprising given the higher priority given by the government to fighting domestic corruption and the resulting lack of awareness of foreign bribery. Greece has developed a strategy for detecting domestic corruption but not foreign bribery. Different strategies are needed for detecting these two types of crime because the individuals who are at risk of committing them and the contexts in which they are committed can be very different.

For these reasons, the lead examiners reiterate Phase 3 Recommendation 9 and recommend that Greece (a) increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage both to increase sources of allegations and enhance investigations; (b) develop and implement a strategy to detect cases of foreign bribery involving Greek individuals and companies; and (c) monitor the Greek and foreign media for allegations of foreign bribery committed by Greek individuals or companies.

(d) Whistleblowing and Whistleblower Protection

199. The Phase 3 Report (para. 145) noted that Greece did not have specific legislation to protect whistleblowers. Whistleblowing in practice was rare. Recommendation 14(c) asked Greece to put in place appropriate measures to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery.

200. In response, Greece enacted Article 45B CPC in April 2014. Under this provision, a prosecutor in a corruption case may designate a person as a “whistleblower” if that person (a) provides information that contributes substantially to the uncovering and prosecution of the corrupt acts, (b) did not aim to benefit him/herself by providing the information, and (c) was not involved in any way in the corrupt acts in question. If a person who has received such a designation is prosecuted for perjury, false accusation, slander or violation of official secrecy, and a prosecutor determines that this prosecution is not in the public interest, then the prosecutor may order the prosecution to cease.

201. This provision offers extremely limited protection to whistleblowers. First, it only provides protection against prosecution for false accusation etc. and not discriminatory or disciplinary retaliation, e.g. dismissal from employment or workplace harassment. Second, the threshold for designation as a “whistleblower” is quite high, e.g. no involvement in the crime, and substantial contribution to the uncovering of the crime. Individuals such as co-conspirators would not qualify. Third, protection is at the discretion of a prosecutor, and is also only available if there is a criminal prosecution.

202. The Civil Service Code (Law 3528/2007) was amended at the same time to provide further protection to whistleblowers in the public but not the private sector. An official who has been designated as a “whistleblower” under Article 45B CPC cannot be subject to disciplinary measures, passed for promotion, and suffer any adverse discrimination directly or indirectly (particularly regarding career development, placement etc.) because of their whistleblowing (Article 110(6)). If such an official is subject to disciplinary measures, the disciplinary body must demonstrate that the measures are not retaliatory in nature (Article 139(4)). Officials who report corruption may be transferred upon their request (Article 73(6)). The anonymity of officials who contribute substantially to revealing corruption is guaranteed during preliminary investigations and in certain circumstances thereafter (Article 125).

203. The main shortcoming with the Civil Service Code provisions is that they only protect whistleblowers in the public sector (namely individuals who are “officials” under the Code). They are therefore of limited application to foreign bribery cases, since the crime is usually committed by individuals and companies in the private sector. Even for whistleblowers in the public sector, the principal protection (in Articles 110(6) and 139(4)) applies only to individuals who have been designated as “whistleblowers” under Article 45B CPC. As noted above, the threshold for such a designation is too high. Designation is also at the discretion of a prosecutor and available only if there is a prosecution.

204. In the absence of legislation, private sector whistleblowers must turn to their employers for protection. It is unclear how robust Greek corporate whistleblower protection measures are. The seven Greek companies who attended the on-site visit were invited to provide copies of their whistleblowing policies to the evaluation team. The four that did so had policies that address reporting to some degree, though an in depth assessment of the measures is beyond the scope of this report.

205. Of even greater concern is that all private sector representatives at the on-site visit mistakenly believed that the recent legislative amendments protected private sector whistleblowers from all forms of reprisals. Companies might therefore lessen their efforts to protect whistleblowers because of a mistaken belief that legislation will serve this purpose. Many private sector whistleblowers will then have even less protection than they do now.

Commentary

The lead examiners are encouraged that Greece has enacted legislation to provide greater protection to whistleblowers in the public sector. However, they are concerned that similar measures have not been enacted for whistleblowers in the private sector. The measures that have been enacted for the public sector are of limited use to fighting foreign bribery since the crime is usually committed by individuals and companies in the private sector. Phase 3 Recommendation 14(c) is therefore only partially implemented. The lead examiners urge Greece to amend its legislation and put in place appropriate measures to protect from discriminatory or disciplinary action private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery.

11. Public Advantages

206. This section concerns the efforts to fight foreign bribery by Greek agencies involved in public procurement, officially supported export credits, and official development assistance (ODA).

(a) Public Procurement

207. There have been several developments in the area of public procurement since the Phase 3 Report. Greece states that the Single Public Procurement Authority (SPPA) is now fully functional and regularly provides guidance to other government procuring authorities. Some aspects of e-procurement (e.g. announcements, tender documents, submissions and document) for contracts over EUR 60 000 are operational and are expected to be extended to all public contracts by October 2015. A new Law 4281/2014 on public procurement has replaced the provisions in other laws on public procurement described in the Phase 3 Report.

208. This new legislative scheme nevertheless contains gaps. Articles 68 and 153 provide for debarment of anyone who has been definitively convicted of “Corruption, as defined in Article 3 of the [European] Council Act of 26 May 1997 (OJ C 195, 25.6.1997, p. 1)”. However, “corruption” in this provision only covers bribery of officials of the European Community or of an EU member State. The provision cannot be used to debar someone convicted of bribing public officials of other States or public international organisations.

209. Where a tenderer is a legal person, this shortcoming is partially remedied in theory though not necessarily in practice. As described at p. 23, legal persons involved in foreign bribery may be subject to “final or provisional exclusion from public grants, aids, subsidies, awarding of contracts for public works or services, procurement, advertising and tenders of the public sector or of the legal persons belonging to the public sector” (AML Law Articles 51(1)(a)(iv) and 51(1)(b)(iv)). However, procuring officials are likely not aware of this provision. SPPA officials at the on-site visit did not refer to the AML Law. Nor did the portion of Greece’s questionnaire responses dealing with debarment. There have not been efforts to raise awareness of these provisions among procuring authorities. It is also unclear how debarment decisions under the AML Law would be communicated to procuring authorities for enforcement. These provisions in the AML Law and Law 4281/2014 on public procurement also results in duplication, which was the subject of Phase 3 Recommendation 15(d).

210. Article 68(3) of the new Law 4281/2014 sets out documentary requirements for seeking public procurement contracts. Greek citizens seeking procurement contracts must provide an extract from a judicial record (or an equivalent issued by a competent authority) certifying that he/she has not been convicted of an offence that would trigger debarment. Foreign citizens are required to submit an equivalent document issued by a competent authority. However, legal persons, whether Greek or foreign, are not subject to a similar requirement. Instead, the chief executive officer (CEO) of a company – not the company itself – must provide a certificate stating that he/she has not been personally convicted of foreign bribery or other relevant offences, according to Greek officials at the on-site visit.

211. The Phase 3 Report (paras. 149-150) noted that these requirements are unlikely to be effective for enforcing debarment against legal persons. A company that has been sanctioned for foreign bribery could avoid debarment by employing a CEO who does not have a foreign bribery conviction. This could happen frequently since companies implicated in bribery scandals often try to turn over a new leaf by changing its management. As in Phase 3, Greek procuring authorities continue not to verify whether a company has been blacklisted by a multilateral development bank for corrupt misconduct. Greece also could not provide statistics on the number of natural and legal persons that have been debarred. Phase 3 Recommendation 15(a) is therefore not implemented.

Commentary

The lead examiners recommend that Greece consider allowing natural and legal persons that have engaged in foreign bribery may be debarred from obtaining public procurement contracts where appropriate. They further reiterate Phase 3 Recommendation 15(a) and recommend that Greece amend its legislation to require a legal person seeking a public procurement contract to provide documentation demonstrating that it has not been found guilty of foreign bribery. All authorities involved in procurement should receive training to ensure that debarments are imposed in practice whenever appropriate.

(b) Official Development Assistance

212. The Phase 3 Report (paras. 154-155) noted that Greece had only a modest official development assistance (ODA) programme. Hellenic Aid within the Ministry of Foreign Affairs manages Greece's ODA programme. Hellenic Aid had a limited role in preventing, detecting and sanctioning foreign bribery, given its modest ODA budget, and little or no direct funding to NGOs and companies.⁵⁷ Nevertheless, Greece intended to resume direct ODA funding to companies and NGOs. Phase 3 Recommendation 15(c) therefore recommended that Greece ensure that future funding to NGOs or companies for ODA projects are accompanied by adequate measures to prevent, detect and report foreign bribery. NGOs and companies that have engaged in foreign bribery should also be denied ODA funding where appropriate.

213. Since Phase 3, Hellenic Aid has made some efforts to address foreign bribery. Officials at the on-site visit indicated that the private sector is still not involved in the ODA programme. However, the delivery of ODA through NGOs has resumed and accounted for 13-14% of assistance funds. The main measure to prevent these NGOs from engaging in foreign bribery is through a clause in the project agreement between Hellenic Aid and the NGO. This provision requires the NGO to refrain from any action contrary to the provisions of the Convention, UNCAC, and the now-repealed Greek foreign bribery offence in Law 2656/1998. Greece is currently reviewing its ODA projects and regulatory framework. Phase 3 Recommendation 15(c) has therefore only been partially implemented.

Commentary

The lead examiners are encouraged that Hellenic Aid's project contracts require NGOs to refrain from foreign bribery. Nevertheless, Hellenic aid could do more to prevent and detect foreign bribery, e.g. through project audits, and training its staff on detection and reporting of this crime. The lead examiners therefore reiterate Phase 3 Recommendation 15(c) and recommend that Greece ensure that future funding to NGOs or companies for ODA projects are accompanied by adequate measures to prevent, detect and report foreign bribery. NGOs and companies that have engaged in foreign bribery should also be denied ODA funding where appropriate.

(c) Export Credits

214. The 2009 Anti-Bribery Recommendation (para. XII.ii) asks member countries to support the efforts of the OECD Working Party on Export Credits and Credit Guarantees (ECG) to implement and to

⁵⁷ In 2012 (the last year for which data is publicly available), bilateral ODA amounted to EUR 83.48 million. Albania was by far the biggest recipient. Most of the assistance was for educational support (Hellenic Aid (October 2013), [Annual Report of the Greek Bilateral and Multilateral Official Development Co-operation and Assistance](#)).

monitor the implementation of the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits (2006 Export Credits Recommendation). Greece has adhered to the 2006 Export Credits Recommendation. The Export Credit Insurance Organisation (ECIO) is Greece's officially supported export credit agency. ECIO is a non-profit organisation that is supervised by the Ministry for Regional Development and Competition and holds EUR 1.47 billion of state-guaranteed capital.⁵⁸

215. In Phase 3, the Working Group was seriously concerned about ECIO's efforts to combat foreign bribery. ECIO provided limited information, but what it did provide contradicted many of its responses to an earlier survey conducted by ECG in 2010. This suggested poor implementation and insufficient awareness of ECIO's anti-bribery measures. It also cast doubt on whether the measures described in the survey responses existed at all in practice. Phase 3 Recommendation 15(b) therefore recommended that ECIO take steps to implement all aspects of the 2006 Export Credits Recommendation, including measures to prevent, detect and report foreign bribery; denial of support as a sanction for foreign bribery; and raising awareness among its staff and the private sector.

216. ECIO has made some improvements since Phase 3. ECIO's application forms for support require the applicant to declare that he/she or someone on his/her behalf has not engaged in and will not engage in acts that constitute foreign bribery as defined in the Convention. The applicant also declares that ECIO may terminate support and demand reimbursement of any support paid if the applicant or someone on his/her behalf commits foreign bribery in relation to the supported transaction. At the on-site visit, ECIO stated that its standard contracts contain corresponding clauses to terminate support when the export transaction in question is tainted by foreign bribery. Copies of the contracts were requested but not provided. ECIO also stated that it would verify whether an applicant has been debarred by a multilateral development bank.

217. Whether ECIO has made additional efforts to detect and prevent foreign bribery is unclear. In its responses to the 2010 ECG Survey, ECIO stated that it would conduct enhanced due diligence before approving support under certain circumstances. At the Phase 3bis on-site visit, ECIO was unable to provide details on these measures. ECIO also stated at the on-site visit that it may provide support for third party agents but had rarely done so recently. However, it could not provide any details about measures to prevent and detect bribes paid by agents. ECIO was invited to but did not provide excerpts of its written policy on these issues after the on-site visit.

218. ECIO could also do more in the areas of training and awareness-raising. Its website contains the 2009 Anti-Bribery Recommendation but not the 2006 Export Credits Recommendation, which contains more detailed anti-bribery measures specific to export credits. ECIO stated at the on-site visit that its staff was aware of its anti-foreign bribery measures, the Convention, and the 2006 Exports Credit Recommendation. However, it did not describe any specific training or other efforts to make staff aware of these matters. ECIO also stated that it has not raised awareness of the Convention among companies. The ECG Survey stated that ECIO would report cases of foreign bribery to competent authorities. But in this evaluation, ECIO did not provide any information on its reporting policy and procedure.

Commentary

The lead examiners are encouraged that ECIO has introduced anti-corruption clauses in its application forms and standard contracts. Nevertheless, other aspects of Phase 3 Recommendation 15(b) have not been implemented. They therefore reiterate the Recommendation and recommend that ECIO take steps to implement all aspects of the 2006

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ECIO Website (www.oaep.gr).

Export Credits Recommendation, including by (a) adopting measures to prevent and detect foreign bribery, such as enhanced due diligence and scrutiny of payments to agents; (b) raising awareness of these measures among its staff and the private sector, including by training its new and existing staff; and (c) developing a written policy for ECIO staff to report foreign bribery to law enforcement authorities.

C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

219. Since its Phase 3 evaluation in 2012, Greece has significantly enhanced some aspects of its implementation of the Convention but there remains ample room for improvement in others. Greece has rationalised and reduced duplicate legislative provisions on the foreign bribery offence, corporate liability, false accounting and confiscation. Greece also has seven on-going foreign bribery investigations. These are welcome developments. However, some of the foreign bribery allegations that have surfaced were not proactively and sufficiently investigated. Most of the allegations were provided by the Working Group and not detected by the Greek authorities. Furthermore, Greece has not given sufficient priority to fighting foreign bribery. As a result, advancements in fighting domestic corruption have not been extended to foreign bribery. There is also very low awareness of the foreign bribery offence.

220. The impact of recent developments on Greece's fight against foreign bribery is not yet known. Greece created a Ministry of Anti-Corruption after a change in government in late January 2015. Whether and how this development would affect the fight against foreign bribery remains to be seen. It is also unclear whether and how the new government's priority in tackling vested interests and tax crimes might impact the enforcement of foreign bribery laws.

221. Regarding recommendations from its Phase 3 evaluation (see Annex 1), Greece has fully implemented Recommendations 1, 2, 3(a), 3(d), 4(d), 4(e), 6(b), 6(c), 6(d), 12(a), 12(d), 12(e), 14(a), 14(b), 15(d); partially implemented Recommendations 3(c), 4(a), 4(b), 4(f), 5(a), 5(b), 6(a), 7, 11(a), 12(c), 14(c), 15(c); and not implemented Recommendations 3(b), 4(c), 8, 9, 10, 11(b), 11(c), 12(b), 13, 15(a), 15(b).

222. In conclusion, based on the findings in this report on Greece's implementation of the Convention, the 2009 Recommendation and related OECD anti-bribery instruments, the Working Group (1) makes the following recommendations in Part 1 to enhance implementation of these instruments; and (2) will follow up the issues identified in Part 2. The Working Group invites Greece to report orally within one year (i.e. by March 2016) on (i) the impact of the Ministry of Anti-Corruption and other new policy or legislative developments on the fight against foreign bribery, (ii) the on-going and new foreign bribery enforcement actions, and (iii) the implementation of Recommendations 1, 4(c), 4(d), 12(a), 12(b) and 13(a). Greece is further invited to submit a written follow-up report within two years (i.e., by March 2017) on its foreign bribery enforcement actions, implementation of all Phase 3bis Recommendations, and developments concerning follow-up issues.

1. Recommendations of the Working Group

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

1. With regards to the priority given to fighting foreign bribery, the Working Group recommend that Greece urgently raise the priority given to this matter and explicitly address foreign bribery in its current National Anti-Corruption Action Plan and its subsequent national anti-corruption strategies (Convention Article 5; 2009 Recommendation II, V and Annex I.D).

2. With regards to the foreign bribery offence, the Working Group recommends that Greece:
 - (a) while acknowledging its legislation and jurisprudence indicate that the foreign bribery offence does not require proof of an agreement between the parties, take appropriate measures, such as through circulars or training, to clarify to or remind law enforcement authorities and judges that the foreign bribery offence does not require such proof (Convention Article 1(1) and 2009 Recommendation III.i and Annex I.A);
 - (b) clarify that its foreign bribery offence does not take into account factors such as the value of the advantage, perceptions of local custom, and the tolerance of local authorities in the country of the foreign public official (Convention Article 1(1) and Commentary 7);
 - (c) amend the definition of a foreign public official to ensure that it covers officials and agents of public international organisations of which Greece is not a member (Convention Article 1(4)(a) and Commentary 17); and
 - (d) amend its legislation and eliminate the effective regret defence in Article 263B(1) PC for the active foreign bribery offence (Convention Article 1(1)).

3. With regards to the liability of legal persons, the Working Group recommends that Greece:
 - (a) issue guidance or provide training on what amounts to adequate supervision and control to prevent foreign bribery (Convention Articles 2 and 3; 2009 Recommendation Annex I.A and B);
 - (b) ensure that the liability of legal persons is not restricted to cases where the natural person(s) who perpetrated the offence is prosecuted, and that proceedings against legal persons may be commenced in the absence of criminal investigation against a natural person (Convention Articles 2 and 3; 2009 Recommendation Annex I.B);
 - (c) clarify the procedure for investigations and proceedings against legal persons, including which body would launch and conduct such investigations (Convention Article 5; 2009 Recommendation Annex I.D); and
 - (d) take steps to clarify that the PPACC and other prosecutors who investigate foreign bribery cases will inform the Minister of Justice or the competent AML supervisory authorities of a legal person's involvement in a foreign bribery case, as required by Article 51(5) of the AML Law. (Convention Article 5; 2009 Recommendation Annex I.D).

4. Regarding investigations and prosecutions, the Working Group recommends that Greece:
 - (a) ensure that the bodies responsible for investigating and prosecuting foreign bribery have sufficient human and technical resources, including by providing PPACC with a case management system and the ability to track the status of a criminal in real time (Convention Article 5; 2009 Recommendation Annex I.D);
 - (b) take all necessary measures to ensure that foreign bribery can be investigated by SDOE, Hellenic Police and EPS where appropriate, and set out a mechanism that would allow prosecutors to decide which investigative body should have conduct of specific foreign bribery investigations (Convention Article 5; 2009 Recommendation Annex I.D);

- (c) take all necessary measures to ensure that it assesses credible allegations of foreign bribery and seriously investigates complaints of this crime (Convention Article 5 and Commentary 27; 2009 Recommendation, Annex I.D));
- (d) use proactive steps to gather information from diverse sources to increase allegations and enhance foreign bribery investigations, including by taking all necessary steps to gather evidence in Greece (Convention Article 5; 2009 Recommendation Annex I.D); and
- (e) intensify training to judges and law enforcement officials on the Convention and the foreign bribery offence, including by providing training on the practical aspects of foreign bribery investigations (Convention Article 5; 2009 Recommendation Annex I.D).

5. With regards to sanctions, the Working Group recommends that Greece:

- (a) increase the maximum fines available against natural persons for foreign bribery (Convention Article 3);
- (b) amend its legislation so that the sanctions against “non-obligated” legal persons for foreign bribery are equivalent to those for “obligated” legal persons (Convention Article 3); and
- (c) substantially increase the maximum fines available against legal persons, especially for foreign bribery resulting from company management’s failure to exercise supervision or control (Convention Article 3).

6. With regards to the statute of limitations, the Working Group recommends that Greece take steps to ensure that the limitation period for foreign bribery offences qualified as misdemeanours is sufficient to allow adequate investigation and prosecution, at a minimum by allowing outstanding MLA requests to interrupt the limitation period (Convention Article 6).

7. Regarding mutual legal assistance, the Working Group recommends that Greece:

- (a) amend its legislation to explicitly provide for certain the types of assistance (e.g. special investigative techniques, asset freezing and confiscation) for MLA requests that are not based on a treaty (Convention Article 9; 2009 Recommendation XIII.iv); and
- (b) streamline the process for executing incoming MLA requests with a view to reducing delay in providing MLA (Convention Article 9; 2009 Recommendation XIII.iv).

8. With regards to statistics, the Working Group recommends that Greece maintain detailed statistics on (i) foreign bribery enforcement actions against natural and legal persons; (ii) sanctions and confiscation imposed in foreign bribery cases; (iii) criminal cases (particularly those involving corruption) that are barred by the statute of limitations; and (iv) MLA requests, including the offence underlying requests, time required for execution, and nature of assistance sought (Convention Articles 3, 5, 9 and Commentary 27; 2009 Recommendation Annex I.D).

Recommendations for ensuring effective prevention, detection, and reporting of foreign bribery

9. With regards to money laundering, the Working Group recommends that Greece:

- (a) ensure that all stakeholders involved in the fight against money laundering are adequately aware that foreign bribery is a predicate offence for money laundering, and provide

awareness-raising and training to FIU officials on detecting bribery-related money laundering cases (Convention Article 7; 2009 Recommendation III.i and Annex I.A);

- (b) take steps to ensure that the FIU is adequately resourced to effectively detect money laundering cases predicated on foreign bribery (Convention Article 7); and
- (c) take steps to ensure that the FIU promptly refers suspicions of foreign bribery to Greek prosecutors for investigation (Convention Article 7; 2009 Recommendation IX.ii).

10. With regards to accounting and auditing, corporate compliance, internal control and ethics, the Working Group recommends that Greece:

- (a) ensure the same body can prosecute both foreign bribery and the false accounting offence in Law 4254/2014 (Convention Articles 5 and 8; 2009 Recommendation X.A and Annex I.D);
- (b) raise awareness of the false accounting offence in Law 4254/2014 among law enforcement agencies that may investigate and prosecute this offence (Convention Article 8; 2009 Recommendation III.i and Annex I.A);
- (c) raise awareness of Greece's foreign bribery laws among Greek accountants and auditors, and encourage accountants and auditors to take an audited company's risk of committing foreign bribery into account when performing audits (Convention Article 8; 2009 Recommendation III.i and Annex I.A);
- (d) take steps to clarify an external auditor's duty to report foreign bribery internally to the audited company's management, and externally to competent authorities, including by clarifying the inter-relationship of Company Law 2190/1920 Articles 22a(3) on an external auditor's duty of confidentiality; Article 40 CPC on the duty to report crimes; the STR provisions of the AML Law; and the provisions on reporting in the ISAs (2009 Recommendation X.B); and
- (e) encourage companies (especially SMEs) to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance (2009 Recommendation X.C).

11. With regards to tax-related measures, the Working Group recommends that Greece:

- (a) translate and distribute the latest OECD Bribery Awareness Handbook to all tax examiners (2009 Recommendation VIII.i);
- (b) ensure that Greek tax authorities include bribery in their risk assessments and audits, including by incorporating the Handbook into the tax authorities' tax audit manual (2009 Recommendation VIII.i); and
- (c) ensure that measures to detect bribes are incorporated into any future tax amnesties (2009 Recommendation VIII.i).

12. With regards to raising awareness of the foreign bribery offence, the Working Group recommends that Greece:

- (a) ensure that its awareness-raising efforts specifically address foreign bribery and not merely “corruption” in general terms (2009 Recommendation III.i and Annex I.A);
- (b) enhance its efforts to further strengthen and institutionalise the awareness of foreign bribery as a criminal offence among all authorities responsible for detection, investigation and prosecution of foreign bribery, and for executing MLA requests (2009 Recommendation III.i and Annex I.A); and
- (c) proactively raise awareness in sectors at risk of committing foreign bribery, including the shipping, export and SME sectors, and ensure all government bodies that are in direct contact with Greek companies which operate internationally engage in awareness-raising activities, including the Hellenic Capital Markets Commission, overseas diplomatic missions, Enterprise Greece, and the Directorate for Small and Medium-Sized Enterprises (2009 Recommendation III.i and Annex I.A).

13. With regards to detection and reporting, the Working Group recommends that Greece:

- (a) develop and implement a strategy to detect cases of foreign bribery involving Greek individuals and companies (2009 Recommendation III.i);
- (b) monitor the Greek and foreign media for allegations of foreign bribery committed by Greek individuals or companies (2009 Recommendation III.i);
- (c) analyse why Greek embassies have failed to report foreign bribery allegations that had been circulated in the foreign media and take appropriate remedial action (2009 Recommendation III.i, IX.ii and Annex I.A);
- (d) enforce the obligation of Greek officials to report crime (2009 Recommendation IX.ii); and
- (e) amend its legislation and put in place appropriate measures to protect from discriminatory or disciplinary action private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery (2009 Recommendation IX.iii).

14. With regards to public advantages, the Working Group recommends that Greece:

- (a) (i) consider allowing natural and legal persons that have engaged in foreign bribery may be debarred from obtaining public procurement contracts where appropriate; (ii) require a legal person seeking a public procurement contract to provide documentation demonstrating that it has not been found guilty of foreign bribery; and (iii) train all authorities involved in procurement to ensure that debarments are imposed in practice whenever appropriate (Convention Article 3(4); 2009 Recommendation XI.i);
- (b) ensure that future funding to NGOs or companies for ODA projects are accompanied by adequate measures to prevent, detect and report foreign bribery, and that NGOs and companies that have engaged in foreign bribery are denied ODA funding where appropriate (Convention Article 3(4); 2009 Recommendation XI.i and XI.ii); and

- (c) take steps to implement all aspects of the 2006 Export Credits Recommendation, including by (i) adopting measures to prevent and detect foreign bribery, such as enhanced due diligence and scrutiny of payments to agents; (ii) raising awareness of these measures among its staff and the private sector, including by training its new and existing staff; and (iii) developing a written policy for ECIO staff to report foreign bribery to law enforcement authorities (Convention Article 3(4); 2009 Recommendation XI.i and XII; 2006 Export Credits Recommendation).

2. Follow-up by the Working Group

15. The Working Group will follow up the issues below as case law and practice develop:

- (a) the role of the Ministry of Anti-Corruption in the implementation of the Convention (Convention Article 5; 2009 Recommendations II and III);
- (b) issues concerning the liability against a legal person for foreign bribery, namely (i) where the legal person obtains an indirect benefit; (ii) the principal offender committed foreign bribery in the interest of him/herself or a third party but the legal person benefits coincidentally; (iii) a legal person's subsidiary commits foreign bribery; (iv) an individual in a senior position in the legal person "directs" or "authorises" a lower level individual to commit foreign bribery; (v) whether the effective seat theory provides a sufficiently broad jurisdictional base for imposing liability against legal persons for foreign bribery; and (vi) availability of confiscation against legal persons; (vii) whether sanctions imposed against legal persons for foreign bribery are influenced by Article 5 factors (Convention Articles 2-5; 2009 Recommendation Annex I.B);
- (c) whether features in Greece's system for investigating and sanctioning legal persons for foreign bribery may be influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of natural or legal persons involved (Convention Article 5; 2009 Recommendation Annex I.D);
- (d) whether sanctions imposed against natural persons for foreign bribery are effective, proportionate and dissuasive, in light of the system of converting and suspending sentences of imprisonment (Convention Article 3(1));
- (e) Greece's capacity to investigate complex financial crimes, including large domestic corruption cases (Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
- (f) whether Greek tax authorities can spontaneously provide information covered by tax secrecy that relates to a foreign bribery offence (2009 Recommendation IX.ii);
- (g) whether Greece routinely re-examines the tax returns of individuals and companies that have engaged in bribery to verify whether bribes had been deducted (2009 Recommendation VIII.i); and
- (h) whether Article 26 of the Civil Service Code hinders the reporting of crimes, including foreign bribery, by Greek public officials (2009 Recommendation IX.ii).

ANNEX 1 WORKING GROUP PHASE 3 RECOMMENDATIONS TO GREECE

1. Recommendations of the Working Group

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

1. Regarding duplicate statutory provisions, the Working Group recommends that Greece rationalise and eliminate its multiple legislative provisions that apply to (i) the offence of foreign bribery, (ii) liability and fines against legal persons for foreign bribery, (iii) confiscation in foreign bribery cases, and (iv) accounting misconduct described in Article 8(1) of the Convention (Convention Articles 1, 2, 3 and 8).
2. With regard to the offence of foreign bribery, the Working Group recommends that Greece clarifies that its foreign bribery offence covers (i) all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competence, and (ii) bribery committed by a best-qualified bidder (Convention Article 1).
3. With regard to the liability of legal persons for foreign bribery, the Working Group recommends that Greece:
 - (a) ensure consistency in its laws on liability of legal persons for foreign bribery by replacing "the fault of the legal person's manager" in Article 5 of the OECD Convention Law with alternate language found in other laws (Convention Article 2; 2009 Recommendation, Annex I.B);
 - (b) issue guidance on what amounts to adequate supervision and control to prevent foreign bribery (Convention Article 2; 2009 Recommendation, Annex I.B);
 - (c) clarify that the liability of legal persons is not restricted to cases where the natural person(s) who perpetrated the offence is prosecuted or convicted, and that proceedings against legal persons may be commenced in the absence of criminal charges against a natural person (Convention Article 2 and 2009 Recommendation, Annex I.B); and
 - (d) clarify that the Joint Decision of the Ministers of Finance and Justice to ensure that proceedings against legal persons may be commenced in the absence of criminal charges against a natural person, and that the Decision applies to all laws that could result in corporate liability for foreign bribery, including the OECD Convention Law (Convention Article 2 and 2009 Recommendation, Annex I.B).
4. With respect to investigation and prosecution, the Working Group recommends that Greece:
 - (a) take all necessary measures to ensure that it assesses credible allegations of foreign bribery and seriously investigates complaints of this crime, and proceed proactively and without delay against both natural and legal persons in a foreign bribery-related case whenever appropriate (Convention Article 5 and 2009 Recommendation, Annex I.D));
 - (b) provide additional training to judges, prosecutors and law enforcement officials on the Convention and the foreign bribery offence, including the practical aspects of foreign bribery investigations (Convention Article 5);
 - (c) take steps to ensure that the limitation period for foreign bribery offences qualified as misdemeanours is sufficient to allow adequate investigation and prosecution (Convention Article 6);
 - (d) amend its legislation to exclude the application of Article 30(2) of the Code of Penal Procedure from all foreign bribery offences (Convention Article 5);
 - (e) make the special investigative techniques in Article 253A CPC available to all foreign bribery offences and take steps to ensure that its prosecutors and law enforcement officials have the capacity to investigate complex financial crimes (Convention Article 5);
 - (f) ensure that foreign bribery allegations provided to Greek officials through MLA or in multilateral fora on international co-operation (e.g. Eurojust), or otherwise, are promptly forwarded to Greek law enforcement authorities and that domestic investigations are subsequently opened as appropriate (Convention Article 5 and 2009 Recommendation, Annex I.D).

5. Regarding the attribution and assignment of cases, the Working Group recommends that Greece:
 - (a) take all necessary measures to ensure that foreign bribery can be investigated by SDOE, Hellenic Police and EPS where appropriate, and establish procedures for co-ordination, sharing information and resolving conflicts of competence among these authorities (Convention Article 5); and
 - (b) consider issuing guidelines to prosecutors on how to decide which investigative body should have conduct of specific foreign bribery investigations (Convention Article 5).
6. With respect to sanctions, the Working Group recommends that Greece:
 - (a) increase the maximum fines available against natural persons for foreign bribery and ensure that fines are available in all foreign bribery cases, regardless of whether the crime “emanates from causes of profit” (Convention Article 3);
 - (b) lower the felony threshold for foreign bribery offences, and allow the consideration of other mitigating and aggravating factors in determining whether an offence is a misdemeanour or felony (Convention Article 3);
 - (c) ensure that a fine may be imposed against a legal person for foreign bribery irrespective of whether a benefit is achieved or intended, or whether the benefit is a contract or other types of business advantages (Convention Article 3); and
 - (d) ensure that law enforcement authorities and prosecutors routinely seek confiscation in corruption cases (Convention Article 3(3)).
7. Regarding mutual legal assistance (MLA), the Working Group recommends that Greece improve its system for seeking and providing MLA, and clarify the types of assistance available for requests that are based on the Criminal Procedure Code rather than a treaty (Convention Article 9).
8. Regarding statistics, the Working Group recommends that Greece maintain detailed statistics on (i) enforcement actions against natural and legal persons in foreign corruption; (ii) sanctions, confiscation and interim measures against natural and legal persons, especially in corruption and foreign bribery cases; (iii) criminal cases (particularly those involving corruption) that are barred by the statute of limitations; and (iv) MLA requests, including the offence underlying requests, time required for execution, and nature of assistance sought (Convention Articles 3, 9).

Recommendations for ensuring effective prevention and detection of foreign bribery

9. With respect to detection generally, the Working Group recommends that Greece increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage both to increase sources of allegations and enhance investigations (Convention, Article 5 and Commentary 27; 2009 Recommendation IX.i and Annex I.D).
10. With respect to money laundering, the Working Group recommends that Greece ensure that all stakeholders involved in fighting money laundering are adequately aware that foreign bribery is a predicate offence for money laundering, and provide guidance and training to the FIU on detecting and reporting foreign bribery (Convention Article 7).
11. Regarding accounting requirements, external audit, and corporate compliance, the Working Group recommends that Greece:
 - (a) give, SDOE, the EPS and Economic Crime Prosecutor concurrent jurisdiction to investigate and prosecute foreign bribery-related accounting offences under the OECD Convention Law, and raise awareness of the offences and ensure co-ordination among all law enforcement agencies that may investigate and prosecute this offence (Convention Article 8 and 2009 Recommendation X.A);
 - (b) raise awareness of Greece’s foreign bribery laws among Greek accountants and auditors, with particular emphasis on detecting and reporting foreign bribery among all Greek companies, and clarify that the Company Law does not impede external auditors from reporting foreign bribery to law enforcement authorities (Convention Article 8 and 2009 Recommendation X.A and X.B.v);
 - (c) encourage companies (especially SMEs) to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance (2009 Recommendation X.C.i).

12. With respect to tax-related measures, the Working Group recommends that Greece:

- (a) expressly prohibit Greek shipping companies from deducting bribe payments from their taxes, and establish a written policy of re-examining the tax returns of all individuals and companies that have engaged in bribery to verify whether bribes had been deducted (2009 Recommendation VIII.i);
- (b) ensure that its tax authorities include bribery in their risk assessments and audits and that measures to detect bribes are incorporated into future tax amnesties (2009 Recommendation VIII.i);
- (c) consider translating and distributing the OECD Bribery Awareness Handbook to all tax examiners (2009 Recommendation VIII.i);
- (d) ensure that all law enforcement officials who could be involved in foreign bribery cases may access information protected by tax secrecy in the course of a foreign bribery investigation or prosecution (Convention Article 5); and
- (e) fully and promptly implement and ratify the Convention on Mutual Administrative Assistance in Tax Matters of the OECD and Council of Europe (2009 Recommendation VIII.i).

13. With respect to awareness-raising, the Working Group recommends that Greece (including its overseas diplomatic missions) proactively raise awareness of foreign bribery among Greek individuals, businesses and public officials, with particular emphasis on the shipping, export, and SME sectors (2009 Recommendation III.i).

14. Regarding reporting foreign bribery, the Working Group recommends that Greece:

- (a) clarify that Article 26 of the Civil Service Code does not hinder the reporting of crimes, including foreign bribery, by Greek public officials (2009 Recommendation IX.ii);
- (b) remind its officials in overseas diplomatic missions of their obligation to report foreign bribery, and re-issue the guidance on how to make such reports (2009 Recommendation IX.ii); and
- (c) put in place appropriate measures to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery (2009 Recommendation IX.iii).

15. Regarding public advantages, the Working Group recommends that Greece:

- (a) amend its legislation to require a legal person seeking a public procurement contract to certify that it has not been found guilty of foreign bribery; and train all authorities involved in procurement to impose debarments in practice whenever appropriate (2009 Recommendation XI.i);
- (b) ensure that the Export Credit Insurance Organisation (ECIO) implements all aspects of the 2006 Export Credits Recommendation, including measures concerning preventing, detecting, reporting and sanctioning foreign bribery, as well as raise awareness of these measures among its staff and the private sector, including by training its new and existing staff (2009 Recommendation XII.i);
- (c) ensure that future funding to NGOs or companies for ODA projects are accompanied by adequate measures to prevent, detect and report foreign bribery, and that NGOs and companies that have engaged in foreign bribery are denied ODA funding where appropriate (2009 Recommendation XI.ii); and
- (d) amend its legislation or provide guidelines to clarify how the provisions on administrative sanctions in various laws that apply to foreign bribery are implemented in practice, and clarify that “permanent exclusions” under Article 8 of the EC Financial Interests Law are not limited to two years in duration (2009 Recommendation XI.i).

2. Follow-up by the Working Group

16. The Working Group will also follow up the issues below as case law and practice develop:

- (a) whether Greece imposes liability against a legal person for foreign bribery where (i) the legal person benefits indirectly from the bribery, (ii) the legal person obtains a non-pecuniary benefit such as an improved competitive situation, (iii) the principal offender committed foreign bribery in the interest of him/herself or a third party but the legal person benefits coincidentally, and (iv) whether a parent company would be liable if its subsidiary commits foreign bribery (Convention Article 2; 2009 Recommendation, Annex I.B);

- (b) whether sanctions imposed against natural persons for foreign bribery are effective, proportionate and dissuasive, in light of Greece's system of converting and suspending sentences of imprisonment (Convention Article 3); and
- (c) the FIU's functioning, including the priority and resources given to corruption cases (Convention Article 7).

ANNEX 2 PARTICIPANTS AT THE ON-SITE VISIT

Public Sector

- Ministry of Justice, Transparency and Human Rights
- Public Prosecutor's Office, including:
 - Public Prosecutor against Crimes of Corruption
 - Public Prosecutor for Economic Crime
- Ministry of Finance, including:
 - Financial and Economic Crime Unit (SDOE)
 - General Secretariat of Public Revenue
 - Directorate of International Economic Relations
- Hellenic Police of the Ministry of Public Order and Citizen Protection, including:
 - Economic Police Service
 - Internal Affairs Division
 - Police Academy
- National Co-ordinator Against Corruption
- General Secretariat of Transparency & Human Rights
- Ministry of Foreign Affairs
- Ministry of Public Order and Citizen Protection, Hellenic Police
- Independent Authority for Combating Money Laundering
- Hellenic Capital Markets Commission
- Bank of Greece
- Hellenic Single Public Procurement Authority
- Hellenic Aid
- Export Credit Insurance Organisation
- Ministry of Development and Competitiveness: General Secretariat of Commerce
- Tax Office of Piraeus for Ships

Judiciary

- Court of First Instance in Athens
- Court of First Instance in Thessaloniki
- Court of First Instance in Piraeus
- Court of Appeal in Athens
- Supreme Court of Audit
- National School of Judges

Private Sector

Private Enterprises

- COSTAMARE Shipping Company S.A.
- Danaos Shipping Co. Ltd.
- Hellenic Petroleum S.A.
- Navios Maritime Holdings
- SIDENOR Holdings S.A.
- Space Hellas
- Titan Cement Company S.A.
- National Bank of Greece
- Piraeus Bank
- Alpha Bank
- Eurobank

Business Associations

- Athens Chamber of Commerce and Industry (EBEA)
- Chamber of Commerce and Industry of Thessaloniki (EBETH)
- Hellenic Bank Association
- Hellenic Federation of Enterprises
- Hellenic Exchanges Group (HELEX)
- International Chamber of Commerce (ICC)
- Panhellenic Exporters Association (PSE)

Legal Profession and Academics

- Athens Bar Association
- Faculty of Law, University of Athens
- I.G Anagnostopoulos Law Firm, Athens
- Kyriakides Georgopoulos Law Firm, Athens

Accounting and Auditing Profession

- Hellenic Institute of Internal Auditors (HIIA)
- Institute of Certified Public Auditors (SOEL)
- Institute of Certified Public Auditors (SOL)
- KPMG
- Deloitte
- Pricewaterhouse Coopers
- Ernst & Young

Civil Society

- Transparency International Greece
- Citizens' Movement for an Open Society
- Journalists from Kathimerini (newspaper)

ANNEX 3 LIST OF ABBREVIATIONS AND ACRONYMS

AML	anti-money laundering	MLA	mutual legal assistance
ASE	Athens Stock Exchange	MOFA	Ministry of Foreign Affairs
CBR	Code of Books and Records	MOJ	Ministry of Justice, Transparency and Human Rights
CPC	Criminal Procedure Code	NGO	non-governmental organisation
EC	European Communities	ODA	official development assistance
ECG	OECD Working Party on Export Credits and Credit Guarantees	PC	Penal Code
ECIO	Export Credit Insurance Organisation	PD	Presidential Decree
ELTE	Accounting and Auditing Oversight Board	PEP	politically exposed person
EPS	Economic Police Service, Hellenic Police	PPACC	Public Prosecutor against Crimes of Corruption
EU	European Union	SDOE	Body for the Prosecution of Economic Crime
EUR	euro	SME	small- and medium-sized enterprise
FATF	Financial Action Task Force	SOE	state-owned or state-controlled enterprise
FCPA	U.S. Foreign Corrupt Practices Act 1977	SOL	Institute of Certified Public Auditors
FYROM	Former Yugoslav Republic of Macedonia	SPPA	Single Public Procurement Authority
GRECO	Council of Europe Group of States against Corruption	STR	suspicious transaction report
HCMC	Hellenic Capital Markets Commission	UNCAC	United Nations Convention against Corruption
IFRS	International Financial Reporting Standards	USD	United States dollar
ISA	International Standards on Auditing		
MER	mutual evaluation report (FATF)		

ANNEX 4 EXCERPTS OF RELEVANT LEGISLATION

Translation provided by Greece except where indicated.

Penal Code

Article 159 Passive bribery of political functionaries

[As amended by Law No 4254/7.4.2014 and modified by Law No 4258/14.4.2014.]

1. The Prime Minister, members of government, deputy ministers, prefects, deputy prefects and mayors shall, if they request or receive, directly or through a third party, for themselves or for another person, an undue advantage of any nature, or accept the promise to provide such an advantage for an action or omission on their part, future or already completed, related to the performance of their duties, shall be punished by incarceration and a fine of EUR 15 000 to 150 000.
2. The same penalty shall apply to punish members of Parliament, local government councils and their committees if in relation to any election or vote carried out by the above bodies or committees they accept the offer or promise of any nature of an undue advantage for themselves or for a third party, or request such an undue advantage to refrain from taking part in such election or vote, to support a specific issue subject to vote or to vote in a certain way.
3. Paragraphs 1 and 2 shall apply accordingly also when the act is committed by members of the European Commission or the European Parliament.
4. The provisions of Articles 238, 263(1) and 263B(2-5) shall apply also to the crimes referred to in the previous paragraphs.”

Article 159A Active Bribery of political functionaries

[As amended by Law No 4254/7.4.2014 and modified by Law No 4258/14.4.2014.]

1. Whosoever promises or offers an undue advantage of any nature, directly or through a third party, to the persons mentioned in Article 159, for or through a third party, to the persons mentioned in Article 159, for themselves or for another person, for the purposes referred to respectively therein, shall be punished by incarceration and a fine of EUR 15 000 to 150 000.
2. A head of business or any person who are vested with a decision-making or control power in a business shall also be punished by imprisonment, if the act is not punished more severely under another criminal provision, if by negligence they failed to prevent a person under their command or subject to their control from committing, to the benefit of the business, the act under paragraph 1.
3. The provisions of Articles 238, 263(1) and 263B shall apply also to the crime referred to in paragraph 1.

Article 235 Passive bribery of an official

[As amended by Law No 4254/7.4.2014 and modified by Law No 4258/14.4.2014]

1. An official who requests or receives, directly or through a third party, for himself/herself or for another person, an undue advantage of any nature, or accepts the promise to be provided with such an advantage, for any action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by at least one year of imprisonment and a fine of EUR 5 000 to 50 000.
If the offender commits the act of the previous section in a professional or a habitual way or if the undue advantage is of a significantly high value, he shall be punished by incarceration of up to ten years and a fine of EUR 10 000 to 100 000.
2. If the aforementioned action or omission of the offender contravenes his/her duties, it shall be punished by up to ten years' incarceration and a fine of EUR 15 000 to 150 000.
If the offender commits the act of the previous section in a professional or a habitual way or if the undue advantage is of a significantly high value, he shall be punished by incarceration of up to fifteen years and a fine of EUR 15 000 to 150 000.
3. An official who requests or receives, directly or through a third person, for himself/herself or for another person, any undue provision of a financial nature by taking advantage of his/her status, shall be punished by imprisonment if the action is not punished more severely by another criminal provision.
4. A head of a public service or an inspector or any person who is vested with a decision-making or control power in government services, local government authorities and legal entities referred to in Article 263A, shall be punished by

imprisonment, if the act is not punished more severely by another criminal provision, if he/she, by negligence, in breach of a certain official duty, failed to prevent a person under his/her command or subject to his/her control from committing any act of the preceding paragraphs.

Article 236 Active Bribery of an official

[As amended by Law No 4254/7.4.2014 and modified by Law No 4258/14.4.2014.]

1. Whosoever offers, promises or gives to an official, directly or through a third party, an undue advantage of any nature, for himself/herself or for another person, for an action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by at least one year imprisonment (φυλάκιση) and a fine of EUR 5 000 to 50 000.
2. If the aforementioned action or omission contravenes the duties of the official, the offender shall be punished by up to ten years incarceration (κάθειρξη) and a fine of EUR 15 000 to 150 000.
3. A head of business or any other person who is vested with a decision-making or a control power in business shall be punished by imprisonment, if the act is not punished more severely by another criminal provision, if he/she by negligence failed to prevent a person under his/hers command or subject to his/hers control from committing, to the benefit of the business, any act of the preceding sections.
4. With regard to the applicability of this Article to acts committed abroad by a Greek national, it is not necessary that the conditions under Article 6 are satisfied.

Article 237 Active and passive bribery of judges

[As amended by Law No 4254/7.4.2014 and modified by Law No 4258/14.4.2014.]

1. Whosoever invited under the law to perform judicial duties or an arbitrator who requests or receives, directly or through a third party, for himself/herself or for another person, an undue advantage of any nature, or accepts the promise to provide such an advantage for an action or omission on his/her part, future or already completed, related to the performance of his/her duties in the administration of justice or in the resolution of a dispute, shall be punished by incarceration and a fine of EUR 15 000 to 150 000.
2. The same penalties shall apply to punish any person who for the above purpose promises or provides such advantages, directly or through a third party, to the persons in the previous paragraph, for themselves or for another person.
3. A head of business or any other person who is vested with a decision-making or control power in a business shall be punished by imprisonment, if the act is not punished more severely under another criminal provision, if he/she by negligence failed to prevent a person under his/hers command or subject to their control from committing, to the benefit of the business, the act under the paragraph 1.”

Article 238 Sequestration of gifts

1. In cases covered by Articles 235 and 237B, the court decision orders the confiscation of gifts and other assets given, as well as those acquired directly or indirectly from them.
2. If the assets subject to sequestration, as per previous paragraph, do not exist anymore, have not been found, are not subject to sequestration or belong to a third party, against whom no sequestration may be ordered, are subject to sequestration assets belonging to the perpetrator of equivalent value with those at the time of the verdict, as specified by the court. The court may also impose a financial penalty of up to the value of such assets, if it considers that there are no additional assets to sequester or the existing assets are of lesser value than the assets to be sequestered.⁵⁹

Article 263A

1. In so far as Articles 235, 236, 239, 241, 242, 243, 245, 246, 252, 253, 255, 256, 257,258, 259, 261, 262 and 263 are concerned, the term “official” includes also any person serving permanently or temporarily and under any capacity or relation:
 - (a) in enterprises or organisations belonging to the State, in organisations of local government or legal entities established under public or private law that through exclusive or privileged exploitation serve the supply of water, light, heat, power or means of transport or communication or mass media to the public,
 - (b) in banks seated within Greece according to the law or their Articles of association,

⁵⁹

Article 238 was thus amended by Article 12 paragraph 1 of Law 3849/2010.

- (c) in legal entities organised under private law and established by the state or in legal entities organised under public law or legal entities listed in the previous paragraphs, provided that such establishing legal entities participate in their administration or, in cases of corporations, in their capital, or that the established legal entities are assigned with the execution of state programs of financial reconstruction or development, and
- (d) in institutions or bodies of the European Union, including the members of the European Commission and the Court of Justice and the Court of Auditors of the European Union organs or in organizations of the European Union.

2. For the implementation of Articles 235(1) and (2) and 236 officials shall also mean:

- (a) the servants or other officials, under any contractual relationship, of any public international or supranational organisation to which Greece is a member, and any person authorised by such organisation to act on its behalf;
- (b) the members of parliamentary assemblies of international or supranational organisations to which Greece is a member;
- (c) those who perform judicial or arbitrator duties in international courts, whose jurisdiction is recognised by Greece;
- (d) any person performing a public function or service for a foreign country, including judges, jurors and arbitrators; and
- (e) members of parliaments and local government assemblies of other states.

3. With regard to the applicability of Article 237 judges shall also mean members of the Court of Justice and the Court of Auditors of the European Union.

Article 263B leniency for those who uncover corruption acts

(Machine translated)

As amended by Law 4254/2014 [Google Translate]

1 Acts of Article 236, paragraphs 1, 2 and 3, 237 paragraphs 2 and 3 and 237B Fri the 1st unpunished if the perpetrator by his own will and certainly before examination for his act, announced to the public prosecutor or investigating officer or any other competent authority, encheirizontas written report or orally, so recorded.

2 If the perpetrator of the acts of Article 236, paragraphs 1, 2 and 3 and 237 par. 2 and 3, or participate in the operation of Articles 235 Fri the 1st, 2 and 3, 237 Fri the 1st and 239-261, and Article 390, when committed by an employee contributes substantially by announcement at the beginning, the disclosure of employee participation in these acts, shall be punished with a penalty reduced as far as Article 44 Fri the 2nd paragraph first. The court may order the suspension of that sentence, regardless whether the conditions of Articles 99 and 100 The Judicial Council issued a decree on the proposal of the competent prosecutor, ordering the suspension of criminal proceedings brought against the person responsible for a certain period time in order to confirm the truth of the assets transferred. Suspension of prosecution may be ordered by the court and, if the data contributed by the decision on appeal. By the same decree or judgment may be ordered and the removal or replacement of the measures of procedural coercion imposed.

If after the suspension of prosecution arises Since the contribution of the perpetrator was not sufficient for the prosecution against the employee, the relevant decree or decision shall be revoked and the offender continues in the suspended prosecution.

3 official, guilty of perpetrating acts of Articles 235-261 and Article 390, participation in these acts, which contributes substantially, with announcement at the beginning, the disclosure of participation in these acts of other officials, punishable with the provisions of the previous paragraph, if the person prevails denounced his own, and he has delegated to the State all assets acquired, directly or indirectly, from the commission of or participation in the commission of these crimes. If, exceptionally, the transfer is not completed until the stage of sentencing, the court may be reserved for the judgment of sentence, for interrupting this process for a specific date without the time limit under Article 352 Fri the 1st of the Code of Criminal Procedure. In this case also sets out the specific transfers or other actions to be taken by the offender to obtain the relevant benefit. With the decision to stop the trial, the court may order and the removal or replacement of the measures of procedural coercion imposed.

4 a) If one of those responsible for the crimes of Articles 235-261 and 390 acts or money laundering derived directly from these criminal activities, contributed evidence for the participation in these acts of persons serving or served as members of the Cabinet or Deputy The Judicial Council, issued a decree on a proposal from the Advocate General, order the suspension of the application against the prosecution. The above suspension may be ordered by the court

and when the data contributed to the decision on appeal. By the same decree or judgment may be ordered and the removal or replacement of the measures of procedural coercion that have come out.

b) If the Chamber finds, in accordance with the provision of paragraph 3 of Article 86 of the Constitution, that the evidence is not sufficient for the prosecution against the Minister or Deputy Minister, the decree or judgment is revoked and the suspended prosecution continues. If the House decides the prosecution against the Minister or Deputy Minister in accordance with Article 86 of the Constitution, on conviction by the Special Court in the previous paragraph participant who contributed the evidence is punishable by reduced as far as Article 44 para. 2 first paragraph. The court may order the suspension of that sentence as defined in paragraph 2.

5 If the initiation of criminal proceedings is not possible due to elimination of criminality, as defined in subparagraph b of paragraph 3 of Article 86 of the Constitution, the accused penalty reduced as far as Article 44 Fri the 2nd paragraph first. The court may order the suspension of enforcement of that penalty, as specified in paragraph 2.

Article 371 Violation of professional secrecy

1. Clergymen, lawyers and all kinds of legal counsel, notaries, doctors, midwives, nurses, pharmacists and others in which some trust usually because of their profession or their status, private secret, and assistants of such persons, punishable by a fine or with imprisonment up to one year if private reveal their secrets or trusted them because they learned their profession or their status.

2. Similarly punished, after the death of one of the persons described in paragraph 1 and from this cause is holder of notes or documents relating to the deceased pursuit of his profession, or his position of private secrets are revealed.

3. The prosecution is only accusation.

4. The act is unfair and goes unpunished if the perpetrator intended to fulfil his duties or to safeguard legitimate or otherwise justified or substantial public interest or that of another, which could not otherwise be preserved.

Law 3691/2008 (AML Law)

Article 3 Criminal activities – Predicate offences

“Criminal activities” shall denote the commission of one or more of the following offences (hereinafter referred to as “predicate offences”):

[...]

c) passive bribery (Article 235 of the Penal Code);

d) active bribery (Article 236 of the Penal Code);

e) bribery and corruption of politicians and judges (Articles 159, 159A and 237 of the Penal Code);

[...]

Article 46 Confiscation of assets

1. Assets derived from a predicate offence or the offences referred to in Article 2 or acquired directly or indirectly out of the proceeds of such offence, or the means that were used or were going to be used for committing these offences shall be seized and, if there is no legal reason for returning them to the owner according to Article 310(2) and the last sentence of Article 373 of the Code of Criminal Procedure, shall be compulsorily confiscated by virtue of the court’s sentence. Confiscation shall be imposed even if the assets or means belong to a third person provided that such person was aware of the predicate offence or the offences referred to in Article 2 at the time of their acquisition. The provisions of this paragraph shall also apply in cases of attempts to commit the above offences.

2. Where the assets or proceeds referred to in para. 1 above no longer exist or have not been found or cannot be seized, assets of a value equal to that of the said assets or proceeds as at the time of the court sentence shall be seized and confiscated according to the conditions of para. 1. Their value shall be determined by the court. The court may also impose a pecuniary penalty up to the value of the said assets or proceeds if it rules that there are no additional assets to be confiscated or the existing assets fall short of the value of the said assets or proceeds.

3. Confiscation shall be ordered even where no criminal proceedings have been initiated because of death of the offender or where prosecution was terminated or declared inadmissible. In these cases, confiscation shall be ordered by a decree of the competent judicial council or the court decision terminating prosecution or declaring prosecution inadmissible. If no criminal proceedings have been instituted, confiscation shall be ordered by a decree of the council of misdemeanours court judges having competence *ratione loci*. The provisions of Articles 492 and 504(3) of the Code of Criminal Procedure shall also apply by way of analogy to this case.

4. The provisions of Article 310(2) and the last sentence of Article 373 of the Code of Criminal Procedure shall also apply by way of analogy where confiscation has been ordered against the assets of a third person who was not tried or summoned to the trial.

Article 51 Liability of legal entities

1. Where any of the money laundering offences or any of the basic offences under Article 3(c), (d) and (e) is committed for the benefit of a legal person by a physical person acting either individually or as part of an organ of the legal person and who holds a leading position within the legal person based on a power of representation of the legal person or an authority to take decisions on behalf of the legal person or an authority to exercise control within the legal person, the following sanctions are imposed to the legal person, cumulatively or alternatively:

- a. Regarding obligated legal persons, the following sanctions are imposed by a decision of the competent authority referred to in Article 6 of the present Act:
 - i) An administrative fine of fifty thousand (50 000) up to five million (5 000 000) euros;
 - ii) final or provisional - for a period from one month up to two years - withdrawal or suspension of the permit for the operation of the legal person or prohibition from carrying out its business;
 - iii) prohibition from carrying out specific business activities or from the establishment of branches or capital increase, for the same period of time;
 - iv) final or provisional exclusion from public grants, aids, subsidies, awarding of contracts for public works or services, procurement, advertising and tenders of the public sector or of the legal persons belonging to the public sector;

The administrative fine referred to in item i) above shall always apply, irrespective of the imposition of other sanctions.

The Hellenic Capital Market Committee shall be the competent authority for the imposition of the above sanctions on the companies listed in a regulated market, which are not supervised by other competent authorities referred to in Article 6 above.

- b. Regarding non-obligated legal persons the following sanctions shall be imposed by a joint decision issued by the Minister of Justice, Transparency and Human Rights and the competent Minister in each case:
 - i) An administrative fine of twenty thousand (20 000) up to two million (2 000 000) euros;
 - ii) the sanctions listed in subparagraph a) items ii) iii) and iv) above.

Competent Minister in each case shall be considered the Minister who is in charge of a Ministry, which has, in priority order, the following powers:

- to supervise the proper and legitimate operation of the legal person and to impose sanctions;
- to grant the required permit for the operation of the legal person;
- to keep a registry, in which the legal person is registered;
- to fund and grant subsidies or provide financial aid.

The above powers may be exercised by agencies or other bodies subordinated to or supervised by the relevant Ministry.

2. Where the lack of supervision or control by a physical person referred to in paragraph 1 has made possible the commission, by a physical person under its authority, of the money laundering offences for the benefit of a legal person, the following sanctions shall, cumulatively or alternatively, apply:

- a. In the case referred to in paragraph 1 subparagraph a) above:
 - An administrative fine of ten thousand (10 000) up to one million (1 000 000) euros;
 - the sanctions listed in subparagraph a) items ii) iii) and iv) above, for a period up to six months.
- b. In the case referred to in paragraph 1 subparagraph b) above:
 - An administrative fine of five thousand (5 000) up to five hundred (500 000) euros;
 - The sanctions listed in subparagraph a) items ii) iii) and iv) above, for a period up to six months.

3. For the cumulative or alternative imposition of the sanctions listed in the previous paragraphs and the determination of such sanctions, the following shall inter alia be taken into account: the gravity of the offence, the degree of culpability, the financial condition of the legal person, the amount of illegal profits or any likely acquired benefit and any recidivism of the legal person. No sanction is imposed without prior summoning of the legal

representatives of the legal person to provide explanations. The summons is served on the interested party at least ten (10) days prior to the date of the hearing. In any other respect, the provisions of paragraphs 1 and 2 of Article 6 of 2690/1999 Act (Code of Administrative Procedure) shall apply.

4. The implementation of the provisions of the preceding paragraphs shall be independent of any civil, disciplinary or criminal liability of the physical persons mentioned therein.

5. The prosecuting authorities shall immediately inform the competent authority or, if this is a non-obligated legal person, the Minister of Justice, Transparency and Human Rights, of criminal proceedings in cases involving a legal person within the meaning of paragraphs 1 and 2, as well as about the relevant court judgements issued. By joint decision the Minister of Finance and the Minister of Justice, Transparency and Human Rights shall lay down the procedure for imposing sanctions, the competent services for collection, and all necessary details for the implementation of this Article.

6. The liability of legal persons regarding the offences of paragraph 6 of Article 187A of the Penal Code is determined in Article 41 of 3251/2004 Act.

Law 4022/2011 (Public Prosecutor against Crimes of Corruption - PPACC)

Article 1

This law's provisions shall apply to:

a) Felonies falling under the competence of the Court of Appeals, acting as a first instance court, which are outside the scope of paragraph 1, Article 86 of the Constitution and are committed by Ministers or Deputy Ministers or by members of the Greek Parliament during their service, even if the perpetrators have ceased to have this position;

b) Felonies falling under the competence of the Court of Appeals, acting as a first instance court, which are committed by General and Special Secretaries of ministries, governors, deputy governors or presidents or managing directors or executive directors of public entities, public corporations, public institutions and private entities the administration of which is, directly or indirectly, appointed by the State, or by officials according to the provisions of Articles 13A and 263A of the Greek Penal Code, provided that the above mentioned perpetrators commit these felonies during the exercise of their duties or have benefited from their status;

c) Felonies falling under the competence of the Court of Appeals, acting as a first instance court, which are of high social interest or high public interest, provided that the case is defined as such (of high social interest or high public interest) by a relevant act of the Public Prosecutor at the Supreme Court.

Criminal Procedure Code (International Co-operation)

Article 457 Requests for investigative acts

1. Requests by Greek judicial authorities to foreign authorities for the examination of witnesses and defendants, for onsite inspections and expert opinions and for the seizure of evidence shall be transmitted by the competent prosecutor at the court of appeal to the Ministry of Justice, which shall cause their execution via the Ministry of Foreign Affairs, also pursuant to international conditions and customs. In case of emergency, such requests can also be transmitted directly to the local consular authorities that perform investigative duties; the Ministry of Justice must, however, be notified.

2. Subpoenas to witnesses and defendants shall be transmitted in the same manner.

Article 458 Requests by foreign judicial authorities for investigative acts

1. Requests by foreign judicial authorities for the investigative acts referred to in Article 457, para. 1, shall be transmitted by the Ministry of Justice and executed, by order of the competent prosecutor at the court of appeal, by the investigative judge in whose region the investigative act shall be carried out, unless it runs contrary to the provisions of the code or regulations of courts. Witnesses shall always take an oath before examined. The relevant provisions of the code, the international conditions and customs shall be observed in all other matters.

2. Subpoenas to witnesses, experts and defendants, judgments or other documents of the criminal proceedings shall be served by the prosecutor at the first instance court, pursuant to Articles 155-164. Where the relevant request relates to the subpoena of witnesses or experts, it shall be accepted only if the submitting foreign judicial authority explicitly undertakes not to prosecute or detain the subpoenaed person for offences committed before his/her presentation to the subpoenaing foreign authority.

3. The Minister of Justice may, with the consent of the competent council of appeals judges, refuse to execute the requests referred to paragraphs 1 and 3 if (a) pursuant to the provisions of Articles 437 and 438, the defendant cannot be extradited for the offence investigated by the foreign judicial authority, or (b) pursuant to the provisions of a convention with the requesting country, extradition is not mandatory.

Article 459 Transfer of the defendant for examination

1. The Minister of Justice may, with the consent of the competent council of appeals judges, order, at the request of a foreign judicial authority transmitted via diplomatic channels, the transfer thereto of a person under custody, in order to be examined as witness and be interrogated face-to-face with witnesses or defendants, on condition that such person shall be immediately returned.

2. Such transfer may be ordered only in a state that, by law or convention, provides the same legal assistance to the Greek state. The costs of transfer and return shall be incurred by the requesting state and shall be paid in advance by such state or the competent Greek authority, if such facility is also afforded to the Greek state by the requesting country. The provision of paragraph 2 of Article 458 shall apply here mutatis mutandis.

Article 460 Witnesses' and experts' expenses

When a foreign judicial authority requests the service of subpoenas to witnesses and experts, the amount required to be paid to the subpoenaed person for travel and accommodation expenses must be noted. Part of such amount shall be paid in advance by the competent domestic authority by order of the Minister of Justice, as soon as the witness or expert declares his/her intention to attend, on condition that the requesting country reimburses such amount. The person who received such advance payment and did not attend due to disobedience shall be punished with the sentence provided for by the penal code for disobedience. The provision of paragraph 2 of Article 458 shall apply here mutatis mutandis.

Article 461 Transmission of exhibits

1. Requests by foreign authorities for the transmission of exhibits or other evidence in the possession of Greek judicial authorities shall be executed by delivery of the exhibits to the Ministry of Foreign Affairs, if there are no special grounds excluding such delivery and on condition that the transmitted items will be immediately returned. In case of documents, photocopies shall be transmitted.

2. This form of legal assistance shall be executed on condition of reciprocity.

Law 4254/2014, Paragraph IE, subparagraph IE.19 (False Accounting)

Whoever, in order to facilitate, hide or obscure any of the acts referred to in Articles 159A Fri the 1st 236 paragraphs 1 and 2, 237 Fri the 2nd, 237A par. 2 and 237B paragraph 1 of the Penal Code:

- a) the creation and maintenance of off-the-books accounts,
- b) the carrying-out of off-the-books or inadequately identified transactions,
- c) the recording of non-existent expenditures, or
- d) the creation or use of an invoice, document or record that contains false financial statement disclosures for the purpose of concealing or disguising a bribery offence under the Greek Penal Code,

is punishable with imprisonment up to three years if not punished more severely by another penal provision.

Debarment from Public Procurement

Law 4281/2014

Article 68 Personal situation of the candidate or tenderer (Article 45 of Directive 2004/18/EC)

1. Any candidate or tenderer who has been the subject of a conviction by final judgement of which the contracting authority is aware for one or more of the reasons listed below, shall be excluded from participation in a public contract:

- a) Participation in a criminal organisation, as defined in Article 2(1) of Joint Action 98/773/JHA of the Council (OJ L 351, 29.1.1998, p. 1).
- b) Corruption, as defined in Article 3 of the Council Act of 26 May 1997 (OJ C 195, 25.6.1997, p. 1) and in Article 3(1) of Joint Action 98/742/JHA of the Council (OJ L 358, 31.12.1998, p. 2).

- c) Fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995, pp. 48).
- d) Money laundering, as defined in the Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309/15/25.11.2005) and the provisions of the Directive 2006/70/EC of the European Commission (OJ L 214/29/04.08.2006), which were transposed with the law 3691/2008 (A' 166) and amended by law 2331/1995 (A' 173).

Contracting authorities ask candidates or tenderers to supply the documents referred to in paragraph 3 of that Article. They may also, where they have doubts as to the personal situation of such candidates/tenderers, be addressed to the competent authorities to obtain any information they consider necessary on the personal situation of the candidates or tenderers. Where the information concerns a candidate or tenderer established in another State, the contracting authority may seek the cooperation of the competent authorities. These requests concern, in accordance with the legislation of the Member State of establishment of the candidate or tenderer, legal and/or natural persons, including, if appropriate, company directors and any person having powers of representation, decision or control in respect of the candidate or tenderer.

[...]

3. Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in paragraphs 1 and 2 (a), (b), (c), (e) and (f) applies to the economic operator:

a) as regards paragraph 1 and paragraph 2 (a), (b) and (c), the production of an extract from the judicial record or, failing that, equivalent document and any other document issued by the competent judicial or administrative authority in the country of origin or provenance, showing that those requirements are satisfied.

[...]

Article 153 Grounds for exclusion

1. The reasons for the exclusion of a tenderer or applicant, are set out in the procurement documents.

2. A tenderer or candidate shall be excluded from participation in a public contract award procedure if:

- a) any of the mandatory exclusion grounds listed in paragraph 1 of Article 68 occurs, either at the time of the declaration of Article 155, or at the time of notification of the written notice referred to in paragraph 1 of Article 170.
- b) any of the optional grounds for exclusion listed in paragraph 2 of Article 68 occurs, defined in the procurement documents, either at the time of the declaration of Article 155, or at the time of notification of the written notice referred to in paragraph 1 of Article 170.
- c) convicted by final judgment for one of the offences of misappropriation, fraud, extortion, forgery, bribery and perjury, fraudulent bankruptcy, either at the time of the declaration of Article 155, or at the time of notification of the written notice referred to in paragraph 1 of Article 170.

European Council Act of 26 May 1997 (Corruption of EC Official)

(Official Journal C 195, 25-06-1997)

Article 1 Definitions

For the purposes of this Convention:

- (a) '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 official or other contracted employee within the meaning of the Staff Regulations of officials of the European Communities or the Conditions of Employment of other servants of the European Communities,
 - any person seconded to the European Communities 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 'official' or 'public officer' in the national law 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.

Nevertheless, in the case of proceedings involving a Member State's official initiated by another Member State, the latter shall not be bound to apply the definition of 'national official' except insofar as that definition is compatible with its national law.

Article 3 Active corruption

1. For the purposes of this Convention, the 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.

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.

Constitution of Greece

Article 28(1) The generally recognised rules of international law, as well as international conventions as of the time they are ratified by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.