BEST PRACTICES TO PROMOTE EFFECTIVE INTERNATIONAL CO-OPERATION IN CORRUPTION CASES
Best Practices to Promote Effective International Co-operation in Corruption Cases
About the OECD

The OECD is an international organisation in which governments compare and exchange policy experiences, identify good practices in light of emerging challenges, and promote decisions and recommendation to produce better policies for better lives. The OECD’s mission is to promote policies that improve economic and social well-being of people around the world.

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About the Greece-OECD Project

The Greek government is prioritising the fight against corruption and bribery and, with the assistance of the European institutions, is committed to taking immediate action. Under the responsibility of the General Secretariat against Corruption, Greece’s National Anti-Corruption Action Plan (NACAP) identifies key areas of reform and provides for a detailed action plan towards strengthening integrity and fighting corruption and bribery. The OECD, together with Greece and the European Commission, has developed support activities for implementing the NACAP. This project is scheduled for completion in January 2018 and is funded by the European Union and Greece.

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Introduction

Modern day corruption cases frequently have an international dimension. Companies and individuals sometimes bribe officials from other countries to win business and increase profits. The evidence and proceeds of corruption are therefore often spread across multiple jurisdictions. The ability to gather this evidence is thus often crucial to the successful investigation and prosecution of corruption cases.

Unfortunately, challenges to gathering evidence abroad are many. Greek law enforcement officials, like their counterparts in other countries, have faced problems such as different legal systems and cultures, language barriers, deficient legal and procedural frameworks, and inadequate resources. Overcoming these obstacles is vital to bringing the perpetrators of corruption to justice and deterring similar behaviour in the future.

Under the responsibility of the General Secretariat against Corruption, Greece’s National Anti-Corruption Action Plan (NACAP) identifies key areas of reform and provides for a detailed action plan towards strengthening integrity and fighting corruption and bribery. Through its Greece Technical Assistance Project, the OECD has committed to supporting the Greek authorities and to provide technical guidance for the purpose of implementing the reform agenda in a series of pre-identified areas.

Output 9.5 of the Technical Assistance Project aims to promote effective implementation of international co-operation tools and mechanisms that would ease the management of incoming and outgoing mutual legal assistance in criminal matters (MLA). Two documents have been prepared under this Outcome:

(a) The present document contains best practices on and recommendations to Greek authorities on handling incoming and outgoing MLA requests. The purpose is not to list every feature and best practice that relevant authorities should have since this would be too lengthy. Instead, the document focuses on issues and shortcomings that have been identified by Greek stakeholders.
(b) A second document contains guidelines to Greek prosecutors and investigative judges for seeking MLA from foreign authorities in corruption cases.

These two documents were prepared based on experiences and good practices available in other OECD countries and other international bodies. This material was then adopted to the Greek context by addressing issues that have been identified by Greek authorities in their responses to a questionnaire in January 2017, and during consultation meetings with OECD staff in Thessaloniki and Athens in February 2017.

These two documents focus mainly on practices at the operational level in the domain of MLA. An assessment of the legal framework will be covered by a third document under Output 9.3-9.4 of the Technical Assistance Project: “Mutual Legal Assistance - Assessment and revision of the current legal and regulatory framework”. These documents also do not address MLA to trace, freeze, confiscate and repatriate the proceeds of corruption. These topics are covered in a separate publication on international asset recovery.
Best Practices and Recommendations for Greek Authorities on Seeking and Providing Mutual Legal Assistance in Corruption Cases

Special Investigative Office for MLA

Greek authorities have faced substantial resource constraints in the area of MLA. Before 2015 the Investigative Judges of the Court of First Instance in Athens shared equal amount of MLA requests. However, the execution of MLA requests faced significantly delays due to a lack of expertise or training in the MLA legal tools, the absence of a sense of urgency, and greater priority given to Greek cases.¹

Since 2015, a Special Investigative Office has been set up² at the Court of First Instance in Athens, the biggest First Instance Court in Greece, to deal exclusively with incoming MLA requests in criminal matters. Within the two years the Office has reportedly managed to execute all pending requests received before 2015. The OECD Working Group on Bribery has praised the Office for significantly contributing to the streamlining of the process for executing incoming MLA requests.³

The Office faces significant resource pressures, however. As of February 2017 the Office had approximately 500 ongoing cases but is equipped with just one investigative judge and a secretary. This creates serious constraints in terms of resources given that approximately 80-85% of incoming MLA is for execution in Athens. Additionally, if this investigative judge is unavailable or transferred, or retires, much experience and expertise would be lost. A replacement would require time to get up to speed, thus resulting in even more delays and backlogs.

³ Greece Phase 3bis Evaluation (2017): Two-Year Written Follow-up.
**Recommendations**

- Reinforce the Special Investigative Office with at least one more investigative judge and a secretary to execute incoming MLA requests.

**MLA Database**

The current MLA database operated by the Greek Central Authority allows for a substantial number of functions including, among others: (i) the recording of correspondence and updates relating to each case; (ii) the attachment of relevant documents to case files; and, (iii) the ability to search the database according to criminal activity, country, type of assistance requested, individual responsible for case, and so forth. The database would benefit from modernisation and the addition of features described below.

The MLA database could be improved by allowing officials using the database to set reminders for carrying out relevant actions required for the execution of MLA requests. For example, when cases have been pending for several months and have not been subject of any correspondence or activity, setting a reminder earlier on in the process can often prevent stagnation and spur some movement. Configuring the database to generate such reminders is therefore crucial for ensuring that MLA requests remain on track and that important or urgent requests are dealt with accordingly.

The MLA database could also be more useful if it was capable of providing statistics on MLA requests directly sent and received among judicial and prosecutorial authorities (e.g. requests under the Schengen Convention). Such statistics are currently unavailable, making it difficult to evaluate the performance of MLA sent directly among judicial and prosecutorial authorities. However, asking law enforcement authorities to provide detailed information about the case could require changes to the law on investigative secrecy (Article 241 of the Greek Code of Penal Procedure (CPP)). A compromise could be for the Court of Appeals Prosecutor to provide on yearly basis only anonymised basic information such as the requesting/requested state, Greek authority seeking/executing
the request, underlying treaty or legal basis, underlying offence, type of assistance, date of opening/closing of the matter.4

The MLA database should at a minimum, generate statistics for the following: (i) number of outgoing requests and incoming requests for each country; (ii) treaty or legal basis for requests; (iii) type of MLA sought and provided; (iv) average time taken to execute a request generally and for each country (both incoming and outgoing MLA requests); (v) length of time required for execution according to category of assistance requested; and (vi) if possible, specific data relating to each region (perhaps divided by each Court of Appeal region).

Recommendations

- Modernise and update the MLA database of the Central Authority with functions that allow the generation of valuable statistics.
- Provision from the Court of Appeals Prosecutor on a yearly basis of compiled anonymised data on MLA requests directly sent and received among judicial and prosecutorial authorities.

Translation of MLA Requests

The discussions resulting from the consultation meetings and questionnaires affirmed that nearly all MLA practitioners in Greece encounter significant difficulties with regard to the translation of MLA requests. Currently, most requests are translated by the Ministry of Foreign Affairs translation service, which results in delay due to the centralisation of translation responsibilities, overwhelming number of requests which need translation or the fact that many requests come in languages for which translators are limited or non-existent. Additionally, practitioners will at times translate the requests themselves to save time. The following are some proposals to alleviate these concerns.

As proposed in the MLA Assessment report, the CPP should be amended to make clear that Greece provides non-treaty MLA on

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the basis of reciprocity. Applying the principle of reciprocity to the issue of translation would ensure that translation into the Greek language is a condition for the admissibility for non-treaty MLA requests and thus reduce number of the requests that need translation.

Moreover, Greece would benefit from submitting a declaration to the 1959 European MLA Convention so that incoming MLA requests under this Convention are in the Greek language. Many Parties to the Convention – but not Greece – have made such a declaration under Article 16 of the Convention. As a result, Greece shoulders a double burden of translating incoming requests from these countries into Greek and outgoing requests into these countries’ language. Article 16 states that the declaration should be made when a country signs, ratifies or accedes to the Convention. Nevertheless, late declarations are permitted under international law and the practice of the Council of Europe.⁵

Finally, the present reports recommends that all requests are drafted based on the concise template provided in the OECD MLA guidelines. As mentioned in the latter guidelines the more concise a request, the less time it takes to translate it and also the more likely it will be executed successfully.

⁵ Note for example that Netherlands has submitted a declaration regarding Article 16 contained in a Note Verbale from the Permanent Representative of the Netherlands in 1993 i.e. 18 years after acceding to the Convention (1959); Portugal in 1997 while it acceded in 1979, San Marino in 2007 while it acceded in 2000 etc.
**Recommendations**

- Amend the CPP to stipulate that translation into the Greek language is a condition for the admissibility for non-treaty MLA requests based on the principle of reciprocity.
- Submit a declaration to the 1959 European MLA Convention so that incoming MLA requests under this Convention are in the Greek language.
- Use consistently the template provided in the OECD Guidelines to Practitioners on Seeking MLA in Corruption Cases for all outgoing MLA requests.

**Training and Support for Greek MLA Practitioners**

Greek MLA practitioners, especially those outside of Athens, have consistently highlighted the need for more training and support. The Central Authority currently does not have sufficient resources to play this role. However, its experience in dealing with MLA issues and contact with foreign authorities leaves it ideally placed to provide training and impart its knowledge to other Greek practitioners. Training can be conducted jointly with other stakeholders such as the Eurojust member and EJN contact for Greece, and the Athens Court of Appeal Prosecutor responsible for executing MLA requests.

The OECD Guidelines to Practitioners on Seeking MLA in Corruption Cases are an excellent starting point for training. The guidelines should be updated regularly in the future. They can be disseminated with a short annual report describing latest trends, good practices, and other information relevant for MLA practitioners when requesting and executing requests. Practitioners should be reminded to inform the Central Authority of requests sent and received directly from foreign law enforcement authorities that are not based on a treaty that allows direct transmission between law enforcement authorities. The guidelines and annual report should be made available on the Central Authority’s website.

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The Central Authority could also develop additional resources to aid practitioners. For instance, it could prepare profiles of countries, including contact information for important individuals and entities, and description of important legal or procedural issues. These documents can then be provided to practitioners who send or receive MLA requests from these countries and uploaded in electronic form also to the website of the Central Authority. To make better use of resources, (a) profiles should only be prepared for countries with which Greece exchanges many MLA requests, and (b) should not duplicate existing efforts, e.g. by Eurojust.

**Recommendations**

- Disseminate widely the OECD Guidelines to Practitioners on Seeking MLA in Corruption Cases and update them regularly in the future.
- Develop profiles of countries, including contact information for important individuals and entities, and description of important legal or procedural issues. Disseminate the profiles to practitioners and upload them on the website of the Central Authority.
Consultation with Foreign Authorities

Resources permitting, the Greek Central Authority should carry out bilateral consultations with its foreign counterparts on a regular basis to (i) address specific obstacles; (ii) discussing pending requests and how to move them forward; (iii) discuss recent developments; and (iv) build relationships and trust. To make better use of resources, (a) consultations should only be held with countries with which Greece exchanges many MLA requests, (b) could be conducted by videoconference if possible.

Recommendations

- Carry out bilateral consultations with foreign Central Authorities or judicial/prosecutorial authorities that are relevant for executing or sending MLA to Greece.

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