Greece-OECD Project:
Technical Support on Anti-Corruption

Review of Legal and Regulatory Asset Recovery Framework in Greece
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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 carried out with funding by the European Union and Greece.
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I. Introduction

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 plan for strengthening integrity and fighting corruption. Through its Greece Technical Assistance Project, the OECD has committed to supporting the Greek authorities and to provide technical guidance to implement the NACAP in a series of pre-identified areas. The Project was made possible with funding by the European Union.

This document has been produced under Outcomes 10.1, 10.2, and 10.7 of the Technical Assistance Project. It contains an analytical assessment of the current legal and regulatory framework relating to asset recovery in Greece. The document addresses both domestic and international recovery (i.e. recovery of assets located in Greece and abroad) because of overlap between the two areas. Information is drawn from independent research by the OECD; responses to a questionnaire submitted by Greek authorities in January-February 2017; consultation meetings with Greek authorities in Thessaloniki and Athens in mid-February 2017; and additional consultation workshops in Thessaloniki and Athens in November 2017. An assessment of Greece’s institutional framework for asset recovery (Outcomes 10.3 and 10.4) and guidelines to practitioners on asset recovery (Outcome 10.5) are covered in separate deliverables.

In addition to analysing the existing Greek framework, this document provides recommendations for improvement. The proposals for reform take into consideration international standards from the OECD, Council of Europe, the United Nations and other national and international bodies. A central tenet underlying the recommendations is to replace a fragmented Greek legislative and institutional framework with a common and co-ordinated approach towards asset recovery for all authorities. The analysis is divided according to the different phases of asset recovery: (i) asset tracing; (ii) freezing and seizure of assets; (iii) confiscation of assets; and, (iv) international asset recovery, which addresses the international dimensions of the three preceding topics. Draft legislative provisions are in the Annex.

I. TRACING ASSETS

A. International Standards on Tracing of Assets

International conventions on the fight against corruption provide that countries should take measures as may be necessary in order to identify and trace proceeds of corruption or other property the value of which corresponds to that of such proceeds or property, equipment or other instrumentalities used in or destined for use in corruption offences, for the purpose of eventual confiscation.1 The power to identify and trace property that is subject to confiscation, including the ability to access financial accounts and bank records, should be considered a basic investigative tool for all law enforcement agencies.2 In discharging their law enforcement duties, such entities should be able to carry out parallel and proactive financial investigations for the purpose of identifying the extent of criminal networks, identifying, tracing and securing proceeds of crime for eventual confiscation, as well as developing evidence that can be used in criminal proceedings.3

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1 UNCAC, Article 31; UNTOC, Article 12; Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention), Article 4.
Special investigative techniques are essential for identifying and tracing assets subject to confiscation.\(^4\) Special investigative techniques include wiretapping, tracking devices, video or physical surveillance, witness interviews, seizure orders, monitoring of bank accounts and online activity, and undercover operations (e.g., controlled deliveries).

International standards also establish the importance of tracing assets at an early stage of the investigation, and of the creation of an investigation plan.\(^5\) Additionally, it is vital that law enforcement authorities have access to databases such as bank account registers, real estate records, and vehicle and legal person registers to identify assets at the domestic level.\(^6\)

Lastly, robust and efficient international cooperation is essential to enabling law enforcement authorities to trace assets in foreign jurisdictions.\(^7\)

### B. Framework for Tracing Assets in Greece

This section provides an overview of the legislative framework for tracing assets in Greece. It first considers the overlapping tools available to investigators, prosecutors and investigative judges to trace assets. A streamlining of these provisions is recommended. The section then considers additional bodies with powers that may be useful for asset tracing, and the means for obtaining information regarding common types of assets. The last section considers law enforcement officials’ use of these asset tracing tools in practice.

#### 1. Tracing Tools Generally Available to Law Enforcement

In most corruption cases, the evidence necessary to trace assets is also needed to prove guilt. Tools for gathering evidence during an investigation are therefore also relevant to tracing assets. In criminal corruption investigations, Greek penal procedure may include a preparatory examination, preliminary investigation, and main investigation. The preparatory examination and the preliminary investigation are performed by general investigative officers\(^8\) and special investigative officers (e.g., SDOE, customs) listed in Articles 33-34 of the Greek Code of Penal Procedure (CPP). The Public Prosecutor may conduct the preparatory examination and the preliminary investigation him or herself (Article 31 CPP). The main investigation is conducted by the Investigative Judge.

**a) Seizure powers and access to bank records under Article 260(2) CPP**

According to Article 260(2) CPP, investigative judges and investigative officers (those entities listed in Article 251 CPP – including SDOE, and the Financial Police Division) can seize asset (securities) certificates in private or public banks and other institutions deposited in current accounts, and any other deposited item or document, even when contained in safe deposit boxes. Further, they may inspect the correspondence and activity logs held by these institutions to locate items to be seized or to further their investigation generally. If the institutions housing the assets refuse such inspections, the investigative agencies may search the institution and seize relevant assets and documents.

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\(^8\) This category includes examining magistrates, who are low ranking judges and low ranking civil judges who try petty offences (Πταισματοδίκες and Ειρηνοδίκες respectively), and police officers above a certain rank. These judges are general investigative officers according to Article 33 CPP and can conduct preliminary investigations and preparatory examinations pursuant to a prosecutorial order.
According to the Hellenic FIU, such information is normally obtained through the Registry System (described below).\(^9\)

Additionally, Article 3 of Legislative Decree 1059/1971 also allows for law enforcement authorities to access information subject to certain conditions: \(^10\)

It is exceptionally permitted to provide information about confidential money or other deposits with banks operating in Greece following a special reasoned order, an application or a decision of the body responsible for the penal prosecution, the preliminary investigation, the preparatory examination, or the main investigation through the court or judicial council in which the relevant proceedings are conducted, if providing such information is absolutely necessary for the detection and the punishment of a felony [...].

The “absolutely necessary” threshold is very high, particularly in light of the procedural nature of intelligence gathering efforts and investigations at their incipient stages. Requiring law enforcement authorities to justify that such a measure is absolutely necessary for the detection and punishment of a criminal offence makes investigations nearly if not impossible. Indeed, the purpose of such investigative efforts is to collect evidence that will eventually allow a prosecutor to meet a much higher burden of proof that justifiably exists at the trial phase.

\(b)\) **Access to bank records under Law 3691/2008 (AML Law)**

According to Law 3691/2008 (AML Law), prosecutors, investigative judges and courts have access to the books and records kept by obligated persons (Article 50). Obligated persons include entities such as credit and financial institutions.\(^11\) AML Law Article 35 requires obligated persons to keep the following documents and information:

i. customer identification information and data on its verification, upon the conclusion of any agreement;

ii. authorisation documents, photocopies of documents on the basis of which the identity of the customer was certified and verified, and originals or copies of the documentation of all kinds of transactions;

iii. internal documents concerning approvals or verifications or proposals in cases related to investigations into the above offences or cases reported or not reported to the FIU;

iv. data on business, commercial and professional correspondence with customers, as these may be specified by the competent authorities.

Information in (i)-(iii) must be kept for at least five years after the relevant transaction or business relationship with the customer has ended. The record keeping requirement applies to subsidiaries of credit and financial institutions and their foreign branches. When implemented in Greek law, the recent Fourth European Union Anti-Money Laundering Directive 2015/849 (Fourth EU AML Directive) will introduce further changes to customer due diligence.

There is overlap between Article 260(2) CPP and AML Law Article 50. Both provisions allow investigative judges to obtain the same types of evidence (e.g. documents, correspondence, etc.) from the same types of entities (i.e. financial institutions). This is inconsistent with international best

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\(^9\) Hellenic FIU Response to Asset Recovery Questionnaire, pp. 2-3.


\(^11\) Article 5 of Law 3691/2008 defines *inter alia* obligated persons as the following: (a) credit institutions; (b) financial institutions; (c) venture capital companies; (iv) companies providing business capital; (v) chartered accountants, audit firms, independent accountants and private auditors; (vi) tax consultants and tax consulting firms; (vii) casino enterprises; (viii) auction houses; (ix) notaries and other independent legal professionals who participate in (or assist) any financial or real estate transaction; and, (x) natural or legal persons providing services to companies and trusts.
practice. In general, a particular type of investigative measure should derive from a single legislative provision. Duplicate provisions offering the same investigative technique are unnecessary and risk being inconsistent, as the discussions below on the Greek provisions for freezing and confiscation of assets show. The location of investigative measures is also important. The most logical place for placing investigative measures for asset recovery in Greece is the CPP where other criminal investigative measures are found. The AML Law, on the other hand, should contain only anti-money laundering measures, such as customer due diligence, suspicious transaction reporting etc.

Greek authorities stated that there will be new draft legislation presented to the Greek National Parliament to implement the Fourth EU AML Directive which was enacted on 20 May 2015. The Fourth EU AML Directive covers the following areas: (i) measures that EU Member States must take with regard to identifying, assessing and mitigating the risks of money laundering and terrorist financing (Articles 7-8); (ii) customer due diligence practices (Articles 10-29); (iii) issues relating to beneficial ownership information (Articles 30-31); (iv) reporting obligations and activities of national financial intelligence units (Articles 32-39); (v) data protection, record-retention and statistical data (Articles 40-44); and (vi) Cooperation among national and international institutions across EU Member States (Articles 49-62).

The introduction of new legislation to implement the Fourth EU AML Directive could be an opportune moment to eliminate overlap between the CPP and the AML Law, including the duplication between Article 260(2) CPP and AML Law Article 50. The Directive deals with anti-money laundering (AML). It does not deal with criminal investigative tools for recovering or tracing assets, which are more natural in the CPP. The Greek authorities could thus amend the AML Law so that the Law only deals with AML issues (including those in the Fourth Directive). Asset recovery-related provisions currently enshrined in Greece’s AML Law (including Article 50) could then be moved to the CPP, thereby harmonising similar or overlapping provisions.

### Recommendation

- Implement the Fourth EU AML Directive by amending the AML Law to provide only AML measures, and relocating the provisions on investigative tools for asset recovery – including asset tracing – from the AML Law to the CPP.

c) General Search Warrants under Article 253 CPP

The execution of a search warrant can allow investigative authorities to gather evidence of assets. Article 253 CPP allows an investigative judge, a prosecutor, and general and special investigative officers to conduct a search if: (i) there is an investigation in progress (preliminary investigation, preparatory examination, and main investigation); (ii) the investigation should concern felonies or misdemeanours (and not petty violations); and, (iii) it can be reasonably assumed that such a search will assist investigative authorities in discovering and/or arresting the individuals involved in the commission of the crime(s) or otherwise advance efforts that would allow for restitution and/or compensation relating to said crime(s).

d) Account Monitoring

An account monitoring order is an ex parte order issued by an investigative judge requiring a financial institution to provide information about the future activity of an account over a specified period of time. The information sought must be given to an appropriate official in a specific manner or at a specified time. The order allows real-time surveillance of transactions which can help establish typologies of activity, identify additional accounts, and may provide grounds for a further order to disclose, freeze, or search and seize assets.

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Article 28 of EU Directive 2014/41/EU (concerning the European Investigation Order in criminal matters) provides for the monitoring of banking or other financial operations that are being carried out through one or more specified accounts. In September 2017, the Hellenic Parliament passed Law 4489/2017 transposing EU Directive 2014/41/EU into Greek Law. However, Greece seems to currently lack the necessary infrastructure to fully implement the Directive, but has stated that it plans to address these issues by improving the existing Registry System of Bank and Payment Accounts (see section below).

Recommendations

- Implement in practice Article 30 of Law 4489/2017 (which transposed Article 28 of the EU Directive 2014/41/EU) as soon as possible.
- Make account monitoring also available for domestic investigations.

e) Special Investigative Techniques

Article 253B CPP allows special investigative techniques (SITs) (e.g. covert investigations, wiretapping) to be used to investigate corruption offences, except when the offence is committed by a criminal or terrorist organisation:

Especially for the punishable acts of Articles 159, 159A, 235, 236, 237 and 237A Penal Code-PC, provided they are not committed in the framework of a criminal or terrorist organization, the investigation can include and the conduct of: …” [said special investigative acts follow in the text].

However, there are no known examples where SITs have been used for asset recovery in corruption cases. Further, some stakeholders are unsure as to whether SITs listed in Article 253B CPP can be used for such a purpose.

Two further issues described in a separate project output also limit the use of SITs for asset tracing. First, Article 253A CPP allows for certain SITs to be used in cases involving offences listed in Article 187 PC, which does not include corruption offences (i.e. Articles 159, 159A, 235, 236, 237 and 237A PC). Second, Article 253B CPP is not yet operational because a Joint Ministerial Decision defining the details and the procedure for “covert investigations” has yet to be issued.

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14 See Article 62 of Law 4170/2013 (which transposed the EU Directive 2011/16 on administrative cooperation in the field of taxation into national legislation), the Article 11 of Law 4211/2013, Article 71 of Law 4446/2016, and Article 107 of Law 4387/2016.
15 See Technical Proposals and Reference Materials for Building Capacity and Mobilisation of Greek Law Enforcement Authorities, Chapter 5 “Use of special investigative techniques (SITs) in corruption investigations”.
Recommendations

- Issue the Joint Ministerial Decision foreseen in Article 253B CPP regarding covert investigations as soon as possible.
- Include the crimes of corruption listed in Article 253B CPP (i.e. Articles 159, 159A, 235, 236, 237 and 237A PC) in the list of crimes that fall under Article 187 PC, thereby ensuring that SITs listed in Article 253A apply in cases of corruption.
- Once Article 253B CPP is operational, raise awareness among practitioners that the SITs foreseen by the provision can be used for asset recovery in corruption cases.

2. Asset Tracing by Specific Bodies

In addition to tools available to criminal law enforcement bodies generally, there are additional asset tracing provisions applicable to the Hellenic FIU and SDOE.

a) Hellenic FIU

Under Article 7B of the AML Law, the FIU may require obligated persons to provide all information required for the performance of its duties, including grouped information about certain categories of transactions or activities of domestic or foreign natural or legal persons or entities. In serious cases and at its own discretion, the FIU may also carry out unannounced checks of public services or in organizations and enterprises of the public sector, co-operating, if necessary, with the relevant competent authorities.

Financial intelligence gathered by the FIU can also reveal financial flows and help trace assets. Under AML Law Article 7(A), the FIU is responsible for collecting, investigating, and evaluating (1) suspicious transaction reports filed by obligated persons, and (2) information received from other sources (including foreign authorities) concerning transactions or activities potentially linked to economic crime and money laundering. After its evaluation, the FIU decides whether to archive the case16 or to refer it, with a reasoned findings report, to the competent Public Prosecutor.17 However, law enforcement officials cannot compel the FIU to provide information for an investigation or asset tracing.

b) SDOE18

Under Article 30(5)(b) of Law 3296/2004, SDOE may search and seize relevant evidence and documents19 at places that do not concern the professional occupation of an investigated person, when elements or well-founded suspicions for the commission of economic offences exist. Searches require the prior consent of the investigated person, a prosecutor, or a judge. House searches must be conducted in the presence of a judge.

According to Article 30(5)(c) of Law 3296/2004, SDOE may: (i) arrest and interrogate persons; (ii) carry out searches of transportation, goods, persons, stores, warehouses, houses and other areas; and, (iii) execute special investigative techniques. Article 30(5)(d) of Law 3296/2004 also

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16 An archived case may be revived at any time in order for the investigation to be resumed or for the case to be correlated with any other investigation.
17 Hellenic FIU Response to Asset Recovery Questionnaire, p. 9.
18 Article 30(14) of Law 3296/2004 provides that the rights and duties of the SDOE personnel are determined in detail by a Presidential Decree18, which is issued by a proposal of the Ministers of Interior, Public Administration and Decentralization and Finance, and the provisions of Article 2(6)-(7) of Law 2343/1995, as well as Article 25(2) of Law 820/1978 (Off. Gaz. 174 A’).
19 Article 30 para. 5 of Law 3296/2004, Articles 107-113 of Presidential Decree 111/2014, and Article 253 CPP.
enables SDOE officials to seize books, documents, goods, transportation means and other elements, including electronic means of data storage and transfer.

Additionally, Article 30(6) of Law 3296/2004 provides that SDOE officers may access and obtain any information or element related to or in order to perform their tasks, following a relevant official order issued by their Service i.e. SDOE, not falling under restrictions of provisions on secrecy.20

3. Means for Obtaining Specific Types of Information

This section describes the means by which law enforcement authorities may obtain certain types of information necessary for tracing assets.

a) Obtaining Bank Information through Registry of Bank and Payment Accounts

The General Secretariat of Information Systems of the Ministry of Finance houses a Registry System of Bank and Payment Accounts (Registry).21 Banks are required by law to maintain account information for five years22 though many do so for longer. The following information up to ten years’ old can be requested through the Registry: account holder information; account balances; and transaction amounts, dates and currency. The law gives the following Greek authorities access to the Registry: (i) the Economic Crime Prosecutor (ECP); (ii) the Public Prosecutors against Crimes of Corruption (PPACC) in Athens and Thessaloniki; (iii) all Services of the General Secretariat for Public Revenue (now Independent Authority for Public Revenue-AADE); (iv) all Services of the Special Secretariat of the Financial & Economic Crime Unit - SDOE; (v) the Financial Police Division, and (vi) the Hellenic FIU.

Law enforcement authorities that have access to the Registry must send their requests for bank information through the Registry. The requested information is also returned via the Registry. The transmission of requests and information may take place outside of the Registry only where the investigated person does not have a Tax Registry Number (TIC), where it is technically impossible to do so, or for information that is older than ten years.

A significant shortcoming with the Registry is inaccessibility.23 Investigative judges of Law 4022, who play an essential role in the fight against corruption, are unable to access the Registry. The law gives the PPACC access, but in practice this has not been implemented for the Thessaloniki PPACC.24 Additionally, the following bodies currently do not have access to the Registry: the General Inspector of Public Administration (GEDD), Inspectors-Controllers Body for Public Administration (SEEDD), the Internal Affairs Directorate of the Hellenic Police (Police IAD), and the Ministry of Shipping and Island Policy Internal Affairs Service. However, during the consultation meetings, these bodies stated that access to the Registry would be significantly advance their investigative efforts.

The Registry also contains two technical deficiencies. First, it does not allow a query for information relating to one individual over multiple years. For example, if an investigator seeks information spanning several years relating to several different accounts belonging to a single

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20 However, SDOE officials are obliged to observe the provisions on secrecy and discreetness of Article 26 of the Clerical Code (Law 2683/1999, Off. Gaz. 19 A’).
21 See Article 62 of Law 4170/2013 (which transposed the EU Directive 2011/16 on administrative cooperation in the field of taxation into national legislation), the eleventh Article of Law 4211/2013, Article 71 of Law 4446/2016, and Article 107 of Law 4387/2016.
22 AML Law Article 35.
23 Based on information obtained from various stakeholders in the consultation meetings and questionnaire responses.
24 As stated in the questionnaire (Q.15), and at the workshop in Thessaloniki.
individual, he or she is required to make separate queries for each account for each year.25 Second, the Financial Police Division (FPD) identified a malfunction in the search algorithm that leaves some relevant transactions unidentified. To overcome this problem, the FPD requests bank information in writing through the Bank of Greece. Having to resort to such a practice is time-consuming and defeats the purpose of the Registry.

Additional problems relate to the Registry’s scope. First, a public database of all institutions (banks, etc.) covered by the Registry is foreseen by Article 62(7) of Law 4170/2013 but has yet to be created. Second, the Registry does not allow requests for information regarding safe deposit boxes, loans or credit cards. Third, account transactions are available for some but not all institutions.27 Fourth, there has been discussion about including information about securities and derivative products in the Registry. Currently, such information is provided by the Athens Exchange Group28 which includes the Athens Securities Depository S.A. The Hellenic Capital Market Commission29 also responds to requests for information about securities and mutual funds. Requests for information regarding life insurance policies can be sent to the Department of Private Insurance Supervision (DEIA) of the Bank of Greece.30

**Recommendations**

The Registry is an indispensable tool for efficient asset tracing. To fully exploit its potential, Greece should address the following deficiencies:

- Grant access to the Registry to Law 4022/2011 investigative judges, Thessaloniki PPACC, GEDD, SEEDD, Internal Affairs Directorate of the Hellenic Police, and Ministry of Shipping and Island Policy Internal Affairs Service (the control and law enforcement bodies should act pursuant to a prosecutorial order). This should entail not only legislative amendments to provide access, but should also ensure that these bodies have the technical capability to access the Registry.

- Address technical shortcomings in the Registry, namely by: (1) allowing for a query for information relating to one beneficiary (in relation to one and/or multiple accounts) for a multiple-year period, and (2) rectifying the malfunction in the search algorithm identified by the FPD.

- Expand the scope of the Registry to include: (1) a public database of all institutions (banks, etc.) covered by the Registry as foreseen by Article 62(7) of Law 4170/2013; (2) information regarding safe deposit boxes, loans and credit cards; (3) transactional information for up to 10 years, for all institutions; and (4) securities, derivatives and mutual funds.

**b) Tax-Related Information**

The databases of the Independent Authority for Public Revenue (AADE), which include annual tax declarations, also contain information on movable items with a value in excess of EUR 10,000. All taxpayers are obliged to declare in their annual tax declarations: (a) new purchases in the respective year and (b) leases of movable items, if these items exceed EUR 10,000. The same obligation exists for (irrespective of the value/price): vehicles, vessels, aircrafts, shares, businesses, companies, securities, real estate including swimming pools, loans given to any party, grants given to any party (other than the state) of EUR 300 or more, and loans repayments. Additionally, taxpayers

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25 The ECP, Athens PPACC and SDOE identified this shortcoming in the consultation meetings and/or questionnaire responses.
26 Article 62(7) of Law 4170/2013 was added by Article 71(2) of Law 4446/2016.
27 Some financial and credit institutions do not provide transactional data for the entire 10-year period; this has to do with mergers and takeovers, as in some cases transactional data cannot be given for a period prior to the date of the merger or takeover.
28 [https://www.helex.gr/web/guest/home](https://www.helex.gr/web/guest/home)
have to justify/prove the legitimate source of the respective funds. Failure to declare constitutes a tax violation and potentially a penal offence.

A major midterm reform pillar for achieving Strategic Objective 2 “Fight Against Tax Evasion and Smuggling” of the Strategic Plan 2017-2020 of the Independent Authority for Public Revenue (AADE) is the establishment of an electronic assets database including all taxpayers (ηλεκτρονικό περιουσιολόγιο). It has been announced that this database will become fully functional in March 2019.

The electronic assets database of AADE including all taxpayers (ηλεκτρονικό περιουσιολόγιο) will also be a source of information for investigators in order to trace assets, especially regarding movable items with a value in excess of EUR 10 000.

A Joint Ministerial Decision foreseen in Article 44 of Law 4249/2014 giving the Financial Police Division (FPD) access to the databases of the Ministry of Finance (AADE) has not been issued. FPD stated that this creates problems and delays in investigating organised economic crime and corruption cases.

**Recommendation**

- Take necessary measures to give judicial and prosecutorial authorities as well as the Financial Police Division access to the databases of the Ministry of Finance/Independent Authority of Public Revenue-AADE.

c) **Asset Declarations**

Individuals obligated to submit asset declarations (e.g. public officials, members of the judiciary) also have to provide information regarding:

- **High value movable items**: The individuals obligated to submit asset declarations have to report high value movable items (e.g. paintings, jewellery, etc.) that exceed EUR 30 000.
- **Cash**: The individuals obligated to submit asset declarations have to report cash of EUR 15 000 or more (or the equivalent in foreign currencies).

This information is stored in a database controlled by the Source of Funds Investigation Unit (SFIU) of the Anti-Money Laundering, Counter-Terrorist Financing and Source of Funds Investigation Authority (“Ant-Money Laundering Authority”). Law enforcement, prosecutorial, and judicial authorities may request – but not compel – the SFIU to provide the information. Currently, AML Law Article 7(B)(2) stipulates that the three units of the Anti-Money Laundering Authority must provide law enforcement entities in Greece with relevant information unless providing such information would impede upon the confidentiality of Authority’s investigations or would otherwise impede the exercise of the Authority’s duties. This may be one reason why law enforcement officials had difficulties obtaining information from the FIU. This is very unfortunate, since the information in asset declarations can be extremely useful for asset recovery in corruption cases. The FIU’s investigations also should not take precedence over those of criminal law enforcement authorities.

Article 7(B)(2) was taken into consideration when drafting the present asset recovery framework analysis. Nevertheless, the drafters considered that the below recommendation was appropriate.

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33 The Union of Judges and Prosecutors has appealed before the Council of the State their obligation to report high value movable items and cash.
34 Information provided during consultation meetings.
35 Information from consultation meetings with Greek law enforcement authorities.
Consideration that asset declaration information gathered by the SFIU, including information on cash and other valuable items, is often a valuable source of information, the SFIU should be required, upon request, to provide information to law enforcement authorities.

**d) Real Estate Data**

There is no single real estate electronic database (πρωτογενής) in Greece covering the whole country. The real estate & property tax electronic database (E9 – ENFIA) of the Independent Authority for Public Revenue (AADE - ΙΑΠΡ) allows fast real estate inquiries at the national level. However, this is a “derivative” database whose accuracy also depends on taxpayer declarations.

A new Cadastre system is foreseen to be completed in 2020.36 Cadastre is much more effective than the old system of Registrations and Mortgages which was often time-consuming and unreliable. When registering properties in the Cadastre, full registration of information is achieved related to each property individually, combining both spatial and legal details. Cadastre is run by the company “National Cadastre & Mapping Agency S.A.”,37 whose sole shareholder is the Ministry of Environment and Energy.

**Recommendation**

- Priority should be given to the timely completion of the Cadastre system.

**e) Information Regarding Vessels and Aircrafts**

The Civil Aviation Authority (YPA)38 has a public database (νηολόγιο αεροσκαφών) of civil aircrafts (including helicopters), their owners and commercial users.39 Unlike its counterparts in other countries,40 the Ministry of Shipping & Island Policy has no electronic database regarding vessels. Hence it is not possible to obtain reliable information from a database on whether a natural or legal person owns a vessel in the country.

**Recommendation**

- Establish an electronic vessels database covering all of Greece.

**f) Lack of a Single Assets Database**

Currently there is a lack of a single, reliable database covering all types of assets. The creation of such a database would significantly help investigators in efficiently and effectively identifying and tracing the proceeds of the crime(s). It would also address the Hellenic FIU’s concern41 that, to trace assets, it has to turn to a high number of parties each with its own particularities.

**Recommendation**

36 [http://www.ktimatologio.gr/aboutus/Pages/htSwFsW1ELgXiYD8.aspx](http://www.ktimatologio.gr/aboutus/Pages/htSwFsW1ELgXiYD8.aspx)
38 [http://www.ypa.gr/](http://www.ypa.gr/)
40 For examples, authorities in Argentina maintain a national register of boats under its flag (Prefectura Naval de Argentina). The French Customs maintains a public register of boat owners in that country.
41 Questionnaire response, p.8.
4. Proactive Use of Available Tracing Tools

According to the Financial Action Task Force’s Recommendation 30 and the accompanying interpretative note, at least in all cases related to major proceeds-generating offences, designated law enforcement authorities should develop a proactive parallel financial investigation when pursuing money laundering, associated predicate offences and terrorist financing. One of the purposes of financial investigations is to identify and trace the proceeds of crime, terrorist funds and other assets that are, or may become, subject to confiscation.

However, it is not clear that Greek authorities are using the asset tracing tools described above to conduct proactive and parallel financial investigations alongside or in the context of the criminal corruption investigations. According to a Europol study, Greece ranks 18th in the European Union in terms of suspect money transactions and confiscated just 1% criminal proceeds in the EU in 2006-2014.

Recommendation

- Encourage authorities to conduct a parallel and proactive financial investigation, alongside or in the context of the criminal investigation into the corruption crime(s), with a view to:
  (i) identifying and tracing the proceeds of crime or the equipment or instrumentalities used in or destined for use in criminal activity; and (ii) freezing such proceeds before they disappear or are dissipated, injected into the legal economy, or used to commit other offences.
- Authorities should receive training on how to develop proactive parallel investigations and the tools that are made available in such contexts.

II. SECURING ASSETS – FREEZING & SEIZURE

Once assets have been traced, law enforcement authorities must secure such assets to prevent their transfer or dissipation. Methods for securing assets include: (i) freezing or restraining assets, by blocking access to assets or restricting how they are dealt with; and, (ii) seizing assets, by transferring their possession from the individual to the authorities.

A. International Standards

International conventions establish that countries should enable law enforcement bodies to freeze and seize (1) proceeds of corruption or other property the value of which corresponds to that of such proceeds; and (2) equipment or other instrumentalities used in or destined for use in corruption offences. In order to obtain a freezing or seizure order, authorities must establish that the assets sought are connected to or derive from criminal activity. Due to the provisional nature of freezing and seizure, the standard of proof is generally not as stringent as the standard required at trial. Law enforcement authorities should be able to quickly and effectively freeze and seize assets related to criminal activity. A seizure can result directly from an action by law enforcement or an order directing

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43 See Technical Proposals and Reference Materials for Building Capacity and Mobilisation of Greek Law Enforcement Authorities, Chapter 8 “Systematic Provision of Training to Greek Law Enforcement Authorities”.
44 UNCAC, Article 31; UNTOC, Article 12.
an investigator to seize. Additionally, law enforcement authorities should be required by law to obtain judicial authorisation prior to freezing assets that are connected to criminal activity. In emergency situations however, authorities should be able to freeze (e.g. bank accounts) seize assets (e.g. cash) without prior judicial authorisation but be obligated to obtain authorisation subsequently.

International instruments provide that authorities should also be able to freeze and/or seize assets belonging to third parties as well as illicitly obtained assets that have been intermingled with legitimately acquired property. With regard to the former, the freezing and seizure must not prejudice the rights of bona fide third parties.

B. Provisions in Greek Law on Freezing Assets


1. Article 48 of the AML Law

Article 48(1) of the AML Law allows the freezing of suspected proceeds of crime found at a credit or financial institution:

- During a main investigation for the offences referred to in Article 2, the investigating judge may, with the consent of the public prosecutor, freeze any accounts, securities or financial products kept at a credit or financial institution, as well as any safe deposit boxes of the accused, including those owned jointly with any other person, provided that there are well-founded suspicions that these accounts, securities, financial products or safe deposit boxes contain money or things derived from the commission of the offences referred to in Article 2. [...] In case of a preliminary examination or investigation such freezing is ordered by the Judicial Council. The order of the investigating judge or the decree of the Judicial Council shall have the power of a seizure report and shall be issued without prior summoning of the accused or third person [...].

Article 48(1) meets some international standards relating to freezing. The provision permits Greek law enforcement to freeze assets and accounts either belonging to individuals involved in criminal activity or jointly owned with third parties. Freezing can be ordered without the presence of the asset’s owner (i.e. ex parte) to prevent tipping off suspects. There must be “well-founded suspicions” that the assets derived from the commission of a corruption offence. However, Article 48(1) does not explicitly provide for the freezing of (1) property that has been intermingled

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47 See German Code of Criminal Procedure (Strafprozessordnung – stop), Section 111c, paragraph 2; United Kingdom Proceeds of Crime Act of 2002 (POCA), Articles 40-43; United States Department of Justice Policy Manual on Asset Recovery (2016), Chapter 1, Section II.B.
49 UNODC, Article 31; UNTOC, Article 12(8); Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism (Warsaw Convention), Article 5.
50 UNODC, Article 31(9); UNTOC, Article 12.
52 During the consultation meetings, investigative judges of Law 4022/2011 explained that well-founded suspicions exist when there is serious evidence that the accused committed the offence.
with legitimately acquired assets or (2) instrumentalities or property used to commit corruption offences.

To freeze assets, prosecutors are required to apply to the competent Judicial Council (during preparatory and/or preliminary investigations) which consists of a panel of three judges. Decisions on such applications by the Judicial Council can take up to three months, which could lead to the loss of the asset. In the context of a main investigation, investigative judges may freeze with the consent of a prosecutor.

Under Article 48(4), individuals whose assets are frozen pursuant to Article 48(1) have 20 days to appeal the freezing order:

The accused as well as third parties shall have the right to appeal a freezing order or decree by submitting an application [...] within twenty (20) days from the service of the order or the decree. The appeal does not have a suspensive effect. The order or the decree may be revoked if there is new evidence.

Article 48(5) gives the Hellenic Financial Intelligence Unit (FIU) freezing powers in emergency situations:

Where the FIU conducts an investigation, in emergencies, the President of the FIU may order the freezing of accounts, securities, financial products or safe deposit boxes, or order the prohibition of sale or transfer of any asset [...] and shall subsequently transmit the case file to the competent prosecutorial body.

Article 48(5) does not explicitly set out a timeline or procedure for obtaining subsequent judicial authorisation for the order.

2. Article 2(6) of Law 4022/2011

Article 2(6) of Law 4022/2011 gives investigative judges in charge of serious corruption offences (listed under Article 1 of the Law) similar freezing powers as those found in Article 48 of the AML Law. The two provisions nevertheless differ in several respects. First, Article 48 gives the aggrieved party 20 days to appeal a freezing order, whereas Article 2(6) only allows 10 days. Secondly, Article 48 explicitly states that freezing orders can be issued ex parte but Article 2(6) is somewhat vague on regarding when the accused is to be notified of the order. Lastly, unlike Article 48, Article 2(6) does not allow investigative judges of Law 4022/2011 to impose imprisonment and/or a fine on managing officers of financial or credit institutions who fail to comply with freezing orders.

3. Article 17A(8) of Law 2523/1997

Article 17A(8) of Law 2523/1997 gives the ECP the power to freeze assets for one year that is renewable with judicial authorisation:

During a preliminary investigation, the Economic Crime Prosecutor and his deputy prosecutors may freeze bank accounts, contents of safe deposit boxes and immovable and movable assets, if doing so is in the public interest. The freezing order shall only

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53 Consultation meeting with Thessaloniki PPACC, February 2017.
54 The head of the FIU is a public prosecutor.
55 Article 232A of the Greek Penal Code provides that anyone who intentionally fails to comply with a provisional court order may be punished by up to one year’s imprisonment. This provision would therefore apply to a manager of a financial institution who fails to comply with a freezing order issued pursuant to Article 2(6). However, because Article 48 of the AML Law allows for such penalties to be imposed and Article 2(6) does not, it is possible that Article 232A will not be applied in cases involving the failure to comply with freezing orders issued pursuant to Article 2(6).
be valid for one year. The accused may appeal the order within thirty (30) days of being notified, and the appeal does not have a suspensive effect.

If the preliminary investigation is not completed within the one-year time period, the freezing order may be extended by a decree issued by the Judicial Council upon a showing of good cause. The accused must be notified within twenty (20) days of the order’s extension. The freezing order may be amended or revoked if new evidence is found.

Unlike the PPACC, in preliminary investigations, the ECP does not have to apply to the Judicial Council for a freezing order. During the February 2017 consultation meetings, the ECP stated that at any given time it has about 400 to 500 freezing orders in place, and the Judicial Council regularly approves requests to extend the ECP’s freezing orders.

4. **Article 30(5)(e) of Law 3296/2004**

The Financial and Economic Crime Police (SDOE) under the Ministry of Finance has its own power to freeze assets pursuant to Article 30(5)(e) of Law 3296/2004:

Freezing, in special cases of securing the interests of the State or in cases of economic crime and extensive tax evasion and smuggling, of bank accounts and assets by a document of the head of the competent Regional Directorate of SDOE informing about this action, within twenty-four (24) hours, the competent public prosecutor.

SDOE stated that the language “secure the interests of the State” and “economic crime” applies to corruption offences. Additionally, although the Council of State (the supreme administrative court in Greece) has declared Article 30(5)(e) unconstitutional, SDOE continues to apply the provision because it has yet to be repealed by new legislation. In light of the foregoing, the continued application of the provision by SDOE is problematic in particular because such freezing measures are not time limited or subject to judicial oversight.

5. **Article 6(3) of Law 2713/1999**

The Internal Affairs Directorate of the Hellenic Police, when conducting a preliminary investigation or a preparatory examination, also has the authority to request the freezing of assets pursuant to Article 6(3) of Law 2713/1999. In such cases, the order of the competent prosecutor or the decree of the competent Judicial Council is executed on an ex parte basis.

6. **Article 2 (2) of Law 4312/2014**

The provision is relevant for both freezing and seizure. It does not affect or influence the powers of the State as such or provide for a new freezing or seizure procedure and it is therefore applicable only if a freezing and/or seizure order has already been issued. Article 2(2) stipulates that if the suspect or accused consents on a voluntary basis to pay the sum of money to the Greek State that was initially the object of the freezing or seizure order, the freezing or seizure is lifted.

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56 Questionnaire responses and consultation meetings with SDOE.
57 See Decisions No. 3316/2014 and 1260/2015. The Council of State found the provisions unconstitutional because: (i) there are no specific requirements in the provisions to order SDOE to proceed to the freezing of bank accounts and assets; (ii) the wording of the provisions is vague; (iii) there are no time limits for the duration of the freezing; (iv) there are no requirements regarding proportionality (i.e., the value of the bank accounts/assets that SDOE can freeze in relation to the potential damage/loss of the State); and, (v) there is no set procedure to lift the freezing.
58 SDOE Questionnaire Responses (Question 9 & Question 26).
C. Need for Uniformity in Provisions on Freezing

It is evident that these five provisions on freezing differ in important respects. For example, the time to appeal a freezing order is 20 days under AML Law Article 48, 10 days under Article 2(6) of Law 4022/2011, 30 days under Article 17A(8) of Law 2523/1997 and no limit under Article 30(5)(c) of Law 3296/2004. Only Article 48 explicitly states that freezing orders can be issued ex parte, provides for emergency freezing orders, and prescribes penalties against managers of financial institutions for violating freezing orders.

Such fragmentation is undesirable. Provisions with different scope and requirements are more difficult to apply since practitioners have to be aware of each provision’s nuances. Inconsistencies are also arguably arbitrary and unfair. There is no justification why the owner of an asset should have greater rights when freezing is ordered under the AML Law instead of Law 4022/2011 or vice versa. As mentioned in the section on tracing, the best practice is that each investigative measure derives from a single legislative provision.

One area of inconsistency that poses particular concern is the absence of judicial authorisation for freezing. The ECP can freeze for up to one year without such authorisation; other prosecutors such as the PPACC cannot. Unlike other police bodies, SDOE can freeze for 24 hours before referring the matter to a prosecutor. The absence of judicial authorisation for freezing in these cases removes a vital check and balance that helps ensure the infringement of an individual’s rights are lawful and justified. The recent EU Directive 2014/42 provides that freezing orders should not be maintained longer than necessary and that such orders should be reviewed by a court in order to ensure that the purpose of preventing the dissipation of the property remains valid.59 Other prosecutorial bodies such as the PPACC and first instance prosecutors in Athens and Piraeus have stated that such powers would be helpful but are not essential, arguing that a judicial filter is necessary when deciding to freeze assets. In addition, the legal systems of a number of OECD countries – including Germany, 60 the United Kingdom, 61 and the United States 62 – require prior judicial authorisation to freeze assets that are linked to criminal activity.

The choice of the judicial forum for issuing a freezing order and its subsequent review should also be streamlined and made consistent. The current framework is overly bureaucratic and cumbersome for practitioners seeking to carry out freezing measures in a timely manner, which in turn negatively affects their ability to stay one step ahead of sophisticated criminal actors. Under AML Law Article 48, prosecutors conducting a preliminary or preparatory examination are required to apply to the competent Judicial Council (which is a three-judge panel) to obtain freezing orders. In main investigations, investigative judges may obtain a freezing order with the consent of the competent public prosecutor. In either case, interested parties may appeal a freezing order to the competent Judicial Council. As stated above, the convening of a three-judge panel to hear applications engenders delay, sometimes up to three months. Law enforcement bodies involved in the fight against corruption in Greece – in particular both PPACC offices in Athens and Thessaloniki – state that this specific issue creates significant obstacles for their work. Such bureaucracy and delay hamper not only the effectiveness of freezing orders but also the protection of the rights of interested parties. Instead, a single judge of the competent court is sufficient for hearing these applications.

One last issue is the length of time freezing orders should be valid. Currently, freezing orders do not expire, with the exception of those issued by the ECP. Given the slow pace of corruption investigations, assets can be frozen for several years, which can be unfair and also create hardship for interested individuals. Mandatory regular reviews of freezing orders would better balance the rights of interested individuals with the State’s interest in securing assets for eventual confiscation.

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60 German Code of Criminal Procedure (Staatsprozessverordnung – stop), Section 111e, paragraph 1.
61 Proceeds of Crime Act 2002 (POCA), Articles 40-43.
Recommendation

Greece should consider amending its legislation so that a single provision in the CPP applies to freezing of assets. It is recommended that the new consolidated freezing provision of the CPP meet the following requirements:

- The provision should apply to at least all corruption and related offences (such as money laundering).
- The provision should explicitly allow the freezing of assets that are reasonably suspected to be proceeds or instrumentalities of crime. Freezing should also be available when such property (1) has been intermingled with legitimately acquired assets, or (2) belongs to non-bona fide third parties.
- In order to minimise bureaucracy in freezing proceedings and ensure prosecutorial and investigative efficiency, in preliminary or preparatory examinations, the competent prosecutor shall apply for a freezing order before a single judge of the competent Court of First Instance who has been designated to hear freezing applications. To ease the burden, this designation should rotate regularly among judges. Such a procedure will reduce the regular significant delays highlighted by numerous Greek stakeholders which result from the obligation to request such orders before a three-judge panel of the Judicial Council. In main investigations, an investigative judge may obtain a freezing order with the consent of the competent prosecutor.
- An interested party may seek a review of the freezing order. If the issuing authority dismisses the review, then a further appeal is available to a single judge of the Court of Appeal.
- The new CPP provision should also allow for emergency freezing in specific cases without prior judicial authorisation. Judicial authorisation by the competent Court of First Instance or by consent of a competent prosecutor should be obtained within 72 hours of such emergency freezing measures. Given that freezing constitutes a measure that limits the peaceful enjoyment of property by an individual, a freezing order should be automatically lifted if authorization or consent is not granted. The new CPP provision should also provide for the regular review of freezing orders by the issuing authority every 18 months. Bureaucratic delays may be avoided through recourse to a designated single judge.
- Other current features in AML Law Article 48 that should be merged into the new CPP provision include expressly allowing a freezing order to be issued ex parte; a 20-day period for an individual to appeal a freezing order; and sanctions against officers of financial institutions for non-compliance with freezing orders.

A draft text of the new CPP provision is in Annex A.

D. Seizure of Assets in Greece

1. Article 243(2) of the Greek Code of Penal Procedure (CPP)

Article 243(2) CPP also provides investigative officers with seizure powers in the absence of judicial authorisation:

If an immediate danger arises due to the delay, or if it is a red handed felony or misdemeanour, all investigative officers under Articles 33 and 34 (CPP) are obliged to conduct all preliminary investigative acts that are necessary in order to attest the act and to discover the perpetrator, even without a prior order of the Public Prosecutor. In

that case they shall notify the public prosecutor by the fastest means possible, and shall submit to him, without delay, the reports that have been drafted. The public prosecutor, after receiving the reports, acts in accordance with the provisions of Articles 43 et seq.

Article 243(2) obligates investigative officers to carry out preliminary investigative acts, such as seizures, when a criminal offence has been committed or when an individual has been caught in the act of committing a crime. After carrying out a seizure, an investigative officer must immediately report the seizure to the prosecutor who will then determine the appropriate next steps. Article 243(2) meets some international standards. Specifically, best practices allow seizures to be carried out in the absence of judicial authorisation when exigent circumstances exist. Article 243(2) allows for this but does not explicitly require that investigative officers have a reasonable basis to believe that a crime has been committed in order to act.

However, Greek judges appear to define “immediate danger” under Article 243(2) on a case-by-case basis. For example, in Decision 298/2017 issued by the Athens Court of Misdemeanours, the judges reasoned that under Article 243(2) the mere commission of a criminal offence - such as money laundering – would not be sufficient on its own to create an imminent danger. Rather, there must be an additional element present that would create such a danger, such as a risk that evidence may be destroyed or lost. Additionally, Greek authorities also refer to relevant bibliography on the matter (e.g. Χαράλαμπος Σεβαστίδης, ανάλυση ΚΠΔ σελίδα 2839).

2. Articles 260 et seq. CPP

Article 260(1) CPP is the primary provision governing asset seizures in Greece in all types of criminal cases:

Authorities referred to in Article 251 (i.e. investigative judges and the general and special investigative officers mentioned in Articles 33 and 34) may seize asset (securities) certificates in banks and other institutions, private and public, in quantities deposited in current accounts, and any other deposited thing or document, and when contained in safe deposit boxes, even if such items do not belong to the accused or are not registered in his or her name, so long as they are related to the crime.

According to Article 260 CPP, investigative officers (such as the Hellenic Police and SDOE) may seize assets with the approval of a public prosecutor or investigative judge. Unlike AML Law Article 48(1), Article 260 does not provide an explicit standard for issuing a seizure order. Article 260 also does not explicitly provide for the seizure of instrumentalities of the offence or of assets belonging to third parties (although this may very well be the case in practice), and therefore does not meet international standards relating to seizure.

Article 263(1) CPP enables the competent judge – regardless of the procedural phase of a case – to order the seizure of assets, documents or other types of objects when necessary:

If the seizure of objects or documents related to the crime was either not possible or not believed to be necessary during the course of the investigation, seizure may be ordered by the court at any stage of the proceedings, even ex officio, in which case the seizure should be executed as soon as possible.

64 A precondition for seizures foreseen by Article 260 CPP is the lifting of (bank) secrecy as foreseen by Article 3 of Legislative Decree 1059/1971 – Charalamos Sevastidis, Code of Penal Procedure-Explanation/2015, Volume III, p. 3095.
3. **Article 147(8) of Law 2690/2001 (Hellenic Customs Code)**

Article 147(8) of Law 2690/2001 allows the discretionary seizure by the competent customs authority of cash over EUR 10,000 entering or leaving the European Community that has not been disclosed under Article 3 of Regulation 1889/2005. The cash may be held for three months while an investigation takes place. There is no explicit provision allowing for an extension of the seizure period. This provision is particularly important to Greece as it is the entry point to Europe from non-Schengen countries.

III. **CONFISCATION OF ASSETS**

After tracing and securing assets, the next step is to confiscate assets, i.e. transfer title to the assets from a private individual to the state. This section considers international standards on confiscation in corruption cases before examining the different types of confiscation available under Greek law.

A. **International Standards on Confiscation in Corruption Cases**

Most international conventions on corruption and money laundering require parties to be able to confiscate the direct and indirect proceeds of corruption, as well as property, equipment or other instrumentalities for committing this crime. Confiscation must be available against not only a corrupt official but those who corrupt them. In a case of bribery, this would include confiscation of not only the bribe but the gains from the crime, such as revenues or profits from a bribery-tainted contract. If it is not possible to confiscate the property in question, then parties must confiscate property of equivalent value or impose monetary sanctions of comparable effect. Confiscation property in the possession of non-bona fide third parties may also be required.66 The recent EU Directive 2014/42/UE on the freezing and confiscation of instrumentalities and proceeds of crime further requires additional measures such as extended confiscation. International best practices further suggest that countries provide additional measures such as non-conviction based confiscation and civil recovery.

B. **Conviction-based Confiscation**

As its name suggests, conviction-based confiscation allows property to be confiscated when an individual has been convicted of a criminal offence. Greece has three provisions that provide for conviction-based confiscation, namely Penal Code (PC) Articles 76 and 238, and Article 46 of Law 3691/2008 on anti-money laundering (AML Law). Further, Law 4312/2014 contains provisions regarding funds whose title is passed to the State.

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1. **Article 76 of the Penal Code**

Article 76 Penal Code (PC), which was amended in late June 2017, is the general provision for confiscation:

76(1). Objects or assets that are proceeds from a felony or an intentional misdemeanor, as well as the value of such proceeds, anything acquired through such proceeds directly or indirectly, and additionally objects that were of use or were destined to be used in the performance of such an act may be confiscated if they belong to the principal or to any one of the accomplices. As far as other punishable acts are concerned, this measure may be taken only when the law specifically provides so. If the above objects or assets have been mixed with property acquired from legal sources, the property concerned is subject to confiscation up to the specified value of the assets.

Article 76 meets many aspects of international standards. The provision allows confiscation in cases of corruption since such crimes qualify as felonies or misdemeanours. Direct and indirect proceeds as well as instrumentalities are covered. The provision addresses confiscation against the offender and accomplices. Confiscation is available for property that “belongs” to the convicted offender. In other words, proof of ownership is necessary; it is not enough that the offender had possession of the property. Proceeds of crime that are intermingled with lawfully acquired assets can be confiscated if the amount confiscated does not exceed the value of the proceeds. Value confiscation (Article 76(3)) and a pecuniary penalty in lieu of confiscation (Article 76(4)) are available. Where confiscation would be disproportionate or result in hardship to the accused or a third party (e.g. excessive and irreparable damage), Article 76(2) allows the court to order limited confiscation or impose a pecuniary penalty.

Article 76(5) addresses confiscation of property in the possession of non-bona fide third parties, i.e. individuals who have received the property knowing that it was proceeds of crime and that the purpose of the transfer of property to the third party was to avoid confiscation. Knowledge may be inferred from, for example, the transfer was for a price substantially below market value. However, such confiscation can only be ordered when confiscation cannot be imposed against the offender. Additionally, unlike relevant freezing provisions, Article 76 does not explicitly provide for how a third party may appeal or otherwise challenge a confiscation order. Lastly, under Article 76(7), in any case of confiscation, the court decides whether the confiscated assets are to be destroyed or whether they can be used in the public interest or for social purposes or for the satisfaction of the victim.

2. **Article 46 of Law 3691/2008**

A second provision on confiscation was introduced when Law 3691/2008 (AML Law) was enacted:

Article 46(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 offences, 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 party, provided that such party 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 attempt to commit the above offences.

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68 Amended by Article 6 of Law 4478/2017.
(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.

AML Law Article 46 overlaps and is, at times, inconsistent with Article 76 PC in corruption cases. The provision allows confiscation of proceeds of not only money laundering but also listed predicate offences. These include domestic and foreign bribery (Articles 235-237 PC). Article 46 provides for confiscation against non-bona fide third parties but only Article 76 requires that the purpose of the transfer to the third party be to avoid confiscation. Both provisions allow value confiscation and monetary sanctions with comparable effect to confiscation.

AML Law Article 46 allows the confiscation of both direct and indirect proceeds though the language is not the most clear. Direct proceeds are covered by the language “Assets derived from a predicate offence or the offences referred to in Article 2”. Indirect proceeds, i.e. the proceeds of proceeds, are covered as “Assets […] acquired directly or indirectly out of the proceeds of such offences”.

3. Article 238 PC

A third provision in Article 238 PC applies to bribery offences:

Article 238(1). In cases covered by articles 235-237B, the decision orders the confiscation of gifts and any other assets given, as well as those acquired directly or indirectly through them. If such proceeds have been intermingled with property acquired from legitimate sources, such property shall be liable to confiscation up to the assessed value of the intermingled proceeds. Income or other benefits derived from such proceeds, from property through which such proceeds have been acquired or from property with which such proceeds have been intermingled shall also be liable to forfeiture to the same extent as proceeds of crime.

(2) If the assets subject to forfeiture in accordance with the preceding paragraph, no longer exist, have not been found, cannot be seized or belong to a third party against whom it is not possible to impose confiscation, assets of the liable person, of equal value to those in the time of the conviction, as specified by the court, are confiscated. The court may also impose a fine up to the amount of the value of assets, if it considers that there are no additional assets for confiscation or the existing are of less value than of those subject to forfeiture.

Article 238 PC also overlaps and is inconsistent with the other provisions on conviction-based confiscation. Unlike Article 76(1) PC, it applies to bribery but not other corruption offences in Chapter 12 PC. Article 238 PC also differs from the other provisions because it is silent on instrumentalities of crime. It contains special provisions on intermingled assets not found in the other provisions. It provides for value confiscation if the assets belong to a third party and cannot be confiscated. However, it does not state affirmatively whether confiscation can be imposed against a third party (e.g. a non-bona fide party).

Because these provisions have different requirements and scope, it is important to determine which provision applies to which offences, but the answer to this question is not always clear. For example, Greek authorities have stated that for the bribery offences under Articles 235-237 PC,
Article 238 PC would apply in lieu of Article 76 PC by reason of lex specialis.69 Furthermore, would the lex specialis principle also exclude the application of Article 46 AML Law in bribery cases even though this Law expressly refers to Articles 235-237 PC? If not, which provision (Article 238 PC or Article 46 AML Law) takes precedence?

**Recommendation**

Current Greek law contains three different provisions that allow conviction-based confiscation in corruption cases, each with different scope and requirements. In order to ensure legislative clarity and certainty, Greece should instead consolidate these into Article 76 PC to meet all international requirements on confiscation described at p. 21 (see Annex B at p. 36 for a draft provision), which would make conviction-based confiscation easier to apply. A single provision would also be more visible and hence likely to be used by practitioners and should be in the Penal Code, which is the natural place for criminal sanctions and remedies. Additionally, due to forthcoming Greek legislation implementing the Fourth EU AML Directive, it would also advisable for AML-related provisions to be consolidated into an amended AML Law.

C. **Extended Confiscation**

Extended confiscation applies where a person has been convicted of an offence that produces an economic benefit. In such cases, any of his/her property may be confiscated on the basis that it is the proceeds of criminal conduct, including conduct that has not been the subject of the conviction. Article 5 of EU Directive 2014/4270 defines extended confiscation as follows:

> Article 5(1). Member States shall adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal conduct.

AML Law Article 471 provides limited extended confiscation when an individual has been convicted of one offence but prosecution of – and confiscation for – a second offence is not possible:

> Article 47(1) The State may, on an opinion from the State Legal Council, raise a claim before the competent civil courts against anyone irrevocably convicted to at least three years of imprisonment of an offence referred to Article 47(2) AML Law, in order to any other assets acquired by him through another offence referred to in the same paragraph (i.e. para 2), even if no criminal proceedings were instituted for such offence because of death of the offender or if prosecution was terminated or declared inadmissible.

Article 47(3) further provides for value extended confiscation and extended confiscation of property in the possession of third parties.

D. **Non-Conviction Based Confiscation**

According to international best practice, countries should establish a wide range of asset recovery mechanisms that includes non-conviction based confiscation or equivalent mechanisms.72

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70 Directive 2014/42/EU was transposed into the Hellenic legislation by Law 4478/2017.
71 Article 47 of the AML Law, as it was replaced by para. 3 of Article 7 of Law 4478/2017.
As its name suggests, non-conviction based confiscation does not require criminal proceedings or a conviction. There must still be proof that the property in question is the proceeds or instrumentalities of crime, but the standard of proof may be lower than the criminal standard:

A criminal confiscation requires a criminal trial and conviction, followed by the confiscation proceedings; [non-conviction based] confiscation does not require a trial or conviction, but only the confiscation proceedings. In many jurisdictions, [non-conviction based] confiscation can be established on a lower standard of proof (for example, the “balance of probabilities” or “preponderance of the evidence” standard), and this helps ease the burden on the authorities. Other (mainly civil law) jurisdictions require a higher standard of proof - specifically, the same standard required to obtain a criminal conviction.73

The justification for the lower standard of proof is because the confiscation is seen as a property-based action against an asset, not a person with possession or ownership. Furthermore, the liberty of an individual is not at stake in the proceedings. A number of other jurisdictions, such as the United Kingdom, Ireland, and the United States, regularly use non-conviction based civil proceedings to recover unlawfully obtained assets. For example, Part 5 of the UK Proceeds of Crime Act of 2002 (POCA) allows the government to apply for orders for recoverable property (e.g., property obtained through unlawful conduct, intermingled, converted or transformed proceeds, etc.) and associated property (e.g., interest in property, partial ownership of property).74 Additionally, international standard-setting bodies, such as the Financial Action Task Force, recommend that countries adopt measures to allow for illicit assets to be confiscated without requiring a criminal conviction or that at least require an offender to demonstrate the lawful origin of the property believed to subject to confiscation.75

Non-conviction based confiscation has pros and cons. It allows confiscation when criminal prosecution is not possible, such as when an offender has fled or died, is unknown, or has immunity. If a lower standard of proof applies, then confiscation may occur even when there is insufficient evidence to seek a criminal conviction. On the other hand, non-conviction based confiscation is not a shortcut for avoiding an effective investigation because there must still be sufficient evidence to prove that the property in question is proceeds or instrumentalities of crime. Furthermore, the lower evidentiary standard and multiplicity of proceedings may be seen by some as unjust. For this reason, some jurisdictions allow non-conviction based confiscation only after the criminal investigation and/or proceedings have been completed or exhausted.76

In Greece, non-conviction based confiscation is available under AML Law Article 46(3) when the offender has died, or the prosecution has concluded or is “inadmissible” (e.g. time-barred):

Article 46(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 by a decision of the court that terminated the prosecution or declared it as inadmissible, and if no criminal proceedings have been instituted, confiscation shall be ordered by a decree of the competent judicial council of misdemeanours. 77 The provisions of Articles 492 and 504(3) of the Code of Penal Procedure shall also apply by way of analogy to this case.

74 Section 304(1) of the POCA provides that the unlawful conduct need not be that of the person holding the recoverable property but could be that of another person whether identified or not.
77 Misdemeanours are criminal offences punishable by a term of imprisonment from one to five years.
This provision, like its conviction-based counterpart in Article 46(1)-(2), applies to proceeds of listed offences. This includes domestic and foreign bribery but not all corruption offences in Chapter 12 PC.

Article 76 PC also provides non-conviction-based confiscation and thus overlaps with AML Law Article 46. Article 76(6) provides that where there is no prior conviction or a prosecution was not possible, confiscation may, at the prosecutor’s request, be ordered by the court that handled the case or the court of first instance.

**Recommendation**

- Criminal sanctions and remedies most naturally belong in the Penal Code. The introduction of new legislation in Greece to implement the Fourth EU AML Directive presents an opportune moment to eliminate overlap between the abovementioned provisions in the CPP and the AML Law. This could be achieved by moving legislative provisions on extended confiscation and non-conviction-based confiscation from the AML Law to the PC (said provisions should be consolidated into the provision on conviction-based confiscation described above) and by amending the AML Law so that the Law only deals with AML issues (including those in the Fourth Directive). A draft provision is in Annex B at p. 34.

**E. Confiscation against Legal Persons**

It is vital that confiscation be available against legal persons. Where companies engage in corruption to win business, the resulting revenues or profits are proceeds of crime. Disgorgement of these illegal gains, which in major cases can amount to tens and hundreds of millions of euros, is essential.

Unfortunately, current Greek law does not clearly provide for confiscation against legal persons in corruption cases. As noted in a previous deliverable in this project,78 the regime of corporate liability for corruption in Article 51 of the AML Law79 is not yet operational. Even if these provisions are in force, however, it is unclear whether confiscation could be imposed against legal persons for corruption. Article 51 provides for a range of sanctions against legal persons including fines; withdrawal or suspension of a permit to operate; ban on specific business activities; and debarment from public procurement. Confiscation is not listed as an available sanction.

However, Article 76(5) provides for confiscation against a legal person when a legal person received the property knowing that it was proceeds of crime and that the purpose of the transfer of property was to avoid confiscation. To determine knowledge, the competent court should assess if such knowledge was shared by one of the following individuals: (i) the legal representative of the legal person; (ii) the natural person authorised to make decisions on the exercise of control; or, (iii) a natural person who exercises, on a de facto basis, the responsibilities mentioned in the first two categories.

Additionally, Greek authorities have stated that confiscation may be ordered against a legal person under AML Law Article 46(1) which like Article 76(5) allows confiscation against a third person, but this position is doubtful.80 Article 46(1) permits confiscation only if the third person “was aware of the [foreign bribery offence] at the time of [the assets’] acquisition”. Unlike Article 76(5),

79 Article 51 of Law 3691/2008 has been replaced by the 6th Article of the Law passed in the Parliament on 5 December 2017. The new Article does not require a Joint Ministerial Decision in order to become operational. The foreseen penalties include: fines up to 10 million euros, permanent or withdrawal or suspension of a permit to operate, ban on specific business activities, and debarment from public procurement, state subsidies, etc. If the legal person is an obligated person the sanctions are imposed by the competent supervising Authority. If the legal person is not an obligated person the sanctions are imposed by SDOE. The Article refers to money laundering and all the predicate offences.
80 OECD (2015), Phase 3bis Report on Greece, para. 76.
nothing in the provision, however, indicates how knowledge would be attributed to a legal person. Moreover, this approach is counterintuitive. A legal person that engages in corruption is liable as a first party, not third.

F. Court of Audit

As the auditor of the public sector in Greece, the Court of Audit performs functions such as monitoring State revenues and compliance with public accounting regulations, and auditing of public bodies and projects. More importantly for the purposes of recovering criminal assets, audit units of government bodies that detect irregularities in the asset declaration of an official may refer the case to the Court of Audit. Article 12 of Law 3213/2003 provides that if the official cannot justify the origin of the assets belonging to him/her or his/her minor child, then the Court may impose a charge in an amount up to the value of said assets. The charge is then passed to the tax authorities for collection.

G. Civil Proceedings

A country’s legal framework should ideally allow the recovery of criminal assets (e.g., proceeds of crime, instrumentalities of crime, etc.) through civil proceedings. Such causes of action may include: (i) proprietary claims for assets that have been misappropriated and bribes accepted by officials; (ii) tort claims; (iii) breach of contract; and, (iv) illicit or unjust enrichment.

Civil proceedings may be an effective option when law enforcement authorities are unable to obtain criminal confiscation, non-conviction based confiscation, or mutual legal assistance for the enforcement of confiscation orders. Additionally, from a procedural standpoint, initiating civil recovery proceedings may offer additional advantages such as a lower standard of proof or the possibility of carrying out proceedings in the absence of a defendant who has been properly notified.

Greek civil law recognises tort claims arising from the commission of unlawful acts. As such, the Hellenic State can bring a civil action for asset recovery of criminal assets: (i) as a civil plaintiff in penal proceedings; or (ii) as a plaintiff in civil proceedings.

With regard to the first category, the Hellenic State may, through the Legal Council of State, participate as a civil plaintiff in a penal trial to claim compensation against a defendant. According to Article 65(2) CPP, the penal court is required to consider and rule on the civil claim. In exceptional circumstances, the court may refer the civil action to the civil courts if the claimed damages exceed 15 000 drachmas (EUR 44). Additionally, a criminal court may not rule on a civil claim if it decides that a prosecution cannot go forward or acquits the defendant for any reason.

Secondly, the act of paying a bribe may be considered as an unlawful act in the sense of Articles 914 and 932 of the Civil Code. This would enable the Hellenic State to file a civil action – also through the Legal Council of State – seeking financial compensation from the alleged wrongdoer. However, such a practice is seldom and almost never occurs in practice. Rather, the Hellenic State usually chooses to participate in penal proceedings as a civil plaintiff. Lastly, if the Hellenic State indeed decides to seek compensation via civil proceedings but the civil court does not issue a final decision, it may then file the same claim before a penal court upon the conclusion of the civil proceedings.

81 Court of Audit Response to Asset Recovery Questionnaire, p. 3, q. 1 and p. 5, q. 6.
82 Article 53(a) of UNCAC provides that States Parties should allow requesting jurisdictions to claim compensation for damages by initiating civil actions to establish title to or ownership of property acquired through corruption.
84 Articles 914 and 932 of the Greek Civil Code allow plaintiffs to seek compensation for pecuniary or moral harm or mental anguish (in case of death).
85 From research and discussions with Judges.
86 Supreme Court (Areios Pagos) decisions: (penal) 268/1989, 489/1996.
**Recommendation**

- Greece should consider launching civil proceedings under the Civil Code before the Civil Courts to seek compensation for corruption, especially where penal proceedings cannot be instituted or a prosecution does not go forward (e.g. due to the statute of limitations or the death of the defendant).

**IV. INTERNATIONAL ASSET RECOVERY**

Greek authorities dispose of a number of resources, networks and international legal instruments to identify, trace, freeze, seize and ultimately confiscate assets obtained through criminal activity. In large part, the process involves mutual legal assistance (MLA) but may also be carried out through informal co-operation.

**A. Tracing Assets in Foreign Jurisdictions**

The tracking of assets located overseas is an aspect of MLA in corruption cases. Much of what is said in two deliverables on MLA in the OECD Greece Anti-corruption Technical Assistance Project87 is therefore also applicable and will not be repeated in detail here. In brief, assistance can be sought through bilateral and multilateral treaties; non-treaty based co-operation; and informal co-operation and information exchange.

**1. Treaty-Based and EU Instruments**

**a) Bilateral MLA Treaties**

Greece has 14 bilateral MLA treaties.88 Some treaties specifically provide for assistance to trace, locate or identify assets connected to criminal activity. Other treaties provide for general investigative assistance but do not refer to asset tracing or identification measures. Practitioners have two options in such cases. They can inquire with their treaty partners whether and to what extent the types of assistance that are available can be used to trace assets (e.g. whether general search and seizure provisions could nevertheless be used to obtain bank records). Alternatively, practitioners should use other channels, such as the multilateral instruments described below.


The Warsaw Convention of 2005 was transposed into Greek legislation through Law 4478/2017. Article 16 of the Convention requires relevant authorities in Member States to

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87 See Deliverables on Output 9.3-9.4: “Mutual Legal Assistance - Assessment and revision of the current legal and regulatory framework” and Output 9.5: “Guidelines to Practitioners on Seeking Mutual Legal Assistance in Corruption Cases”.
88 Greece currently has bilateral MLA relations with the following countries: Albania, Armenia, Australia, Canada, China, Cyprus, Egypt, Georgia, Lebanon, Mexico, Russia, Syria, Tunisia, and the United States of America. Additional bilateral treaties are not in use because cooperation with those countries is predicated on the 1990 Convention applying the Schengen Agreement or the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959.
89 For example, Greece’s treaties with Australia (Article 17(1)), Canada (Article 13(1)) and US (Article 13(2)).
90 See for example the Greece-Mexico MLA treaty.
91 Law 4478/2017 ratified the Warsaw Convention (Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism - 2005), and transposed into Hellenic legislation EU Council Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or
assist with the identification and tracing of instrumentalities, proceeds and other property subject to confiscation.\textsuperscript{92} The Convention also stipulates that Member States provide, upon request, information regarding bank accounts (Article 17), banking transactions (Article 18), and even monitoring of bank transactions (Article 19). Greek authorities are also required to provide the reasons for which they seek the information as well as additional details regarding the overall investigation.


The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (1990) (Convention of 1990) facilitates international co-operation and mutual assistance in investigating crime and tracking down, seizing and confiscating the proceeds thereof. Much like Article 16 of the Warsaw Convention, Articles 8 and 9 of the Convention of 1990 provides that Member States shall provide each other, upon request, the widest measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation.\textsuperscript{93}

d) United Nations Convention against Corruption (UNCAC)

Article 46(3) of UNCAC provides that MLA may be requested for, among other things: (i) examining objects and sites; providing information; and, (ii) identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes. In urgent situations, Article 46(14) enables States Parties to make requests orally with subsequent written confirmation.

e) United Nations Convention against Transnational Organised Crime (UNTOC)

Articles 13(2) and 18(g) of UNTOC allow Greece to request another State Party to take measures to identify and trace proceeds of serious transnational organised crime, property, equipment or other instrumentalities for the purpose of eventual confiscation to be ordered either by Greece or by the requested State Party.

f) OECD Anti-Bribery Convention

Greece and 42 other countries are Parties to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Convention covers only the bribery of foreign public officials in international business transactions and related money laundering and accounting offences. Article 9 of the Convention requires Parties to provide prompt and effective MLA to another party for the purpose of investigations and proceedings relating to offences in the Convention. Article 9(3) states that “A Party shall not decline to render mutual legal assistance for criminal matters within the scope of this Convention on the ground of bank secrecy.”

g) European Investigation Orders

Article 28 of EU Directive 2014/41/EU (concerning the European Investigation Order in criminal matters) provides for the monitoring of banking or other financial operations that are being carried out through one or more specified accounts. Under the Directive, EU Member States are

\textsuperscript{92} Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the property sought.

\textsuperscript{93} Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the property sought.
obligated to recognise and carry out investigative requests from other EU Member States, just as they would with a decision coming from their own authorities. The Directive provides practitioners with guidance regarding the scope of an EIO (Article 3), the types of proceedings for which an EIO can be issued (Article 4), the content and form of an EIO (Article 5), and the procedures and conditions for issuing and transmitting an EIO (Articles 6-8). In September 2017, the Hellenic Parliament passed Law 4489/2017 transposing EU Directive 2014/41/EU into Greek Law.

2. **Non-Treaty Based MLA**

   Article 457 CPP governs outgoing requests for non-treaty MLA. Article 457(1) only explicitly allows Greek judicial authorities to seek the following types of MLA: (i) examination of witnesses and defendants; (ii) onsite inspections; (iii) expert opinions; and, (iv) seizure of evidence.

   **Recommendation**
   - Amend legislation to enable Greek authorities to seek MLA involving the tracing and identification of direct and indirect proceeds of crime.

3. **Informal Co-operation and Information Exchange**

   Greek practitioners may resort to three informal channels of co-operation when tracing assets: the Asset Recovery Office under the Camden Assets Recovery Interagency Network (CARIN); the International Police Co-operation Division; and the Hellenic FIU.

   a) **Asset Recovery Office (ARO)**

   Greece’s National ARO is housed within SDOE. Under Article 108(3) of Presidential Decree 111/2014, the ARO is responsible for carrying out, among others, the following functions: being the national ARO according to European law, and a CARIN contact point, cooperating with domestic and foreign competent parties for the detection of products and other assets originating from criminal activities and which may be the subject of mutual legal assistance for freezing or seizure or confiscation in criminal cases, handles Mutual Administrative Assistance requests from and to the counterparts of the Member States of the European Union, the European Anti-Fraud Office (OLAF) as well as third countries, collects and transmits Irregularity Factsheets and Irregularity Reports, as well as any other data deemed necessary, in accordance with European law, within the framework of its anti-fraud powers and has the coordination responsibility on behalf of SDOE regarding the operation of the Antifraud Information System (AFIS).

   Greece’s ARO also serves the national contact point for CARIN, which allows Greek law enforcement officers (e.g., police, customs), prosecutors and judges to request information from foreign jurisdictions through the Greek ARO. When the Greek ARO receives a response from the foreign CARIN contact point, it provides the information to the requesting Greek authority. The Hellenic Police also serves as a CARIN contact point for Greece.

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94 Article 30 of Law 4489/2017 transposed Article 28 of EU Directive 2014/41/EU. Greece seems to currently lack the necessary infrastructure in order to fully implement the Directive, and in particular Article 28 of the Directive (Article 30 of the implementing Law 4489/2017) regarding the monitoring of banking of other financial operations that are being carried out through one or more specified accounts (i.e. real time account monitoring). Greece has stated that will implement real time account monitoring, as foreseen by Article 28 of the Directive and Article 30 of Law 4489/2017, in the context of the Central Registry of Bank and Payments.

95 Established pursuant to Article 88(2) of Law 3842/2010 (amended by Article 1 of Law 4254/2014).

96 CARIN is an informal network of contacts and a cooperative group focused on tracing and confiscating the proceeds of crime. It is a network of practitioners from 53 jurisdictions.
Recommendation

- Encourage Greek ARO to identify areas deserving improvement with respect to obtaining information from foreign jurisdictions and engage in regular dialogue with key partners to streamline the exchange of information between AROs and CARIN contact points.

b) International Police Co-operation Division

Through the International Police Cooperation Division (IPCD) of the Hellenic Police, Greek law enforcement authorities may seek information from foreign partners and organisations for the purpose of tracing and identifying assets. Article 8 of Presidential Decree 178/2014, governs practitioners’ access to three channels: (i) INTERPOL; (ii) EUROPOL; and, (iii) SIRENE (Supplementary Information Request at the National Entries).

Articles 8(5)(c) and (k) permit Greek law enforcement authorities to request information from foreign INTERPOL agencies to determine the location and ownership of assets. Such requests may involve the exchange of financial information and registration records for vehicles, property, and other types of assets believed to be connected to criminal activity.

Articles 8(6)(b) and (g) enable Greek authorities to, through the IPCD, submit requests for information and intelligence to other EUROPOL national units and EUROPOL itself. Additionally, pursuant to Article 9(3) of the Europol Convention, Greece’s liaison officer assigned to EUROPOL may offer and seek access to other national units and facilitate the rapid exchange of information, including requests to trace assets or other types of financial activity. Article 9 even permits liaison officers to exchange information that covers crimes outside the competence of Europol, as far as allowed by national law.

Lastly, Article 8(4)(i) enables the SIRENE bureau (operated by the IPCD) to access and search the Schengen Information System (SIS II) and if necessary, request more detailed information from the Member State concerned. SIS II alerts often include information essential for tracing assets and furthering criminal investigations, such as activity involving vehicles, boats, aircrafts, containers, firearms, stolen documents, banknotes, and other types of property.

c) Hellenic FIU

Article 7A(v) of Law 3691/2008 (AML Law), provides that the Hellenic FIU shall exchange information with its foreign counterparts, in particular the EU Financial Intelligence Units Network (FIU-Net) and the Egmont Group. Article 40(2) enables the Hellenic FIU to exchange information with foreign counterparts, although the modalities for such exchange may be subject to relevant memoranda of understanding (MOUs). Currently, the Hellenic FIU has entered into 11 such MOUs. FIU representatives have previously stated that they do not consider the existence of an MOU essential in order to exchange information with foreign FIUs. However, the practice of foreign FIUs may very well differ.

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101 https://www.egmontgroup.org/
102 Ukraine, Italy, France, Belgium, Romania and Singapore, among others.
B. Freezing, Seizure and Confiscation

Once the assets located overseas have been identified, the next step is for Greek authorities to freeze, seize and confiscate the assets. In this respect, Greece has adhered to a number of other multilateral treaties pursuant to which Greek authorities may seek the execution of freezing and confiscation orders overseas. Greece has adhered to a number of other multilateral treaties pursuant to which Greek authorities may seek the execution of freezing, seizure, and confiscation orders overseas. The process generally involves MLA channels. In general, such orders by Greek authorities are either: (i) enforced directly by the requested foreign jurisdiction; or, (ii) incorporated into an order issued by the competent domestic entity within the foreign country and then executed pursuant to that country’s domestic legislation. The latter option is somewhat less common, however, and depends on the several factors such as the requested country’s legal framework and the familiarity of its judges with the procedure.

With regard to bilateral MLA treaties, as stated above, some bilateral MLA treaties contain specific provisions that require Greek governmental authorities and their counterparts to freeze or confiscate assets resulting from criminal activity. Where no bilateral MLA treaty provides for such assistance, Greek authorities should resort to multilateral instruments described below.

With regard to non-treaty based requests seeking the execution of freezing or confiscation orders, the CPP does not provide for these types of assistance (please see the Recommendation in the International Tracing section above).

Lastly, Greek authorities dispose of several multilateral conventions for the purpose of executing freezing and confiscation measures overseas.

Pursuant to the Warsaw Convention of 2005, Greek authorities may also seek to freeze or confiscate the proceeds of crime pursuant to Articles 21 and 23 of the Convention, respectively. Additionally, Articles 11 and 13 of the Council of Europe Convention of 1990 provide for the execution of Greek freezing and confiscation orders, respectively (the latter Article being identical to Article 23 of the Warsaw Convention). Additionally, Article 47 enables FIUs to submit urgent requests to counterpart FIUs to freeze specific transactions that are related to money laundering. The requested FIU blocks the transaction for a specified amount of time while the requesting FIU submits an official MLA request seeking further action as appropriate (e.g. extension of the freezing or confiscation).

Greek authorities may also seek assistance with respect to the execution of freezing and confiscation orders by the competent authorities of other EU Member States. For example, Framework Decision 2003/577/JHA allows authorities of EU Member States to recognise and execute freezing orders issued for the purposes of securing evidence or the subsequent confiscation of property. Additionally, EU Framework Decision 2006/783/JHA establishes the rules under which a Member State shall recognise and execute in its territory a confiscation order issued by a court competent in criminal matters of another Member State. Such execution does not require additional recognition formalities or procedures. The abovementioned EU Framework Decisions apply to cases involving corruption, fraud, money laundering, and participation in a criminal organisation, among other offences.

Greek authorities may also resort to United Nations instruments such as UNCAC and UNTOC in order to freeze or confiscate assets overseas so long as the relevant request involves criminal activity falling within the instruments’ scope of application. Article 46(1) of UNCAC provides that MLA may be requested for, among other things, search and seizure and freezing proceeds of corruption. Additionally, Article 55 of UNCAC enables Greek authorities to request that other States Parties to the Convention give effect and carry out confiscation orders with respect to the instrumentalities and proceeds of corruption and bribery.

\[104\] For example, see treaties with Australia (Article 17(2)), Canada (Article 13(2)) and the US (Article 17(2)).
Articles 13(2) and 18(3)(c) of UNTOC allow Greece to request another State Party to freeze or seize proceeds of serious transnational organised crime, property, equipment or other instrumentalities for the purpose of eventual confiscation. With respect to confiscation, Article 13(1) allows Greek authorities to seek the enforcement of a confiscation order by the competent authorities in another State Party (either directly or through a domestic order).

C. Asset Repatriation

Once a foreign court issues a final order of confiscation for assets, Greek authorities must secure their return. Such repatriation of assets may take place pursuant to (1) treaties to which Greece is a party or (2) the judicial process of the foreign jurisdiction.

Greece is a party to some bilateral MLA treaties that provide for the repatriation of assets.105 Additionally, the following multilateral instruments to which Greece is a party allow for repatriation: (i) UNTOC, Article 14; (ii) UNCAC, Article 57(3)(a) and (b); (iii) Warsaw Convention of 2005, Article 25(1); and, (iv) Council of Europe Convention of 1990, Article 15.106

Additionally, under UNCAC, UNTOC and the Warsaw Convention of 2005 provide that Greece may enter into agreements with other States Parties for the purpose of sharing confiscated assets (i.e. asset-sharing agreements).107

In the absence of a specific legal provision or agreement providing for asset repatriation or asset sharing, Greek authorities may resort to Article 16(1) of EU Framework Decision 2006/783/JHA. The Decision allows funds that have been obtained from the execution of a confiscation order to be disposed of as follows: (i) if the amount obtained is below EUR 10 000 or the equivalent to that amount, the amount shall accrue to the executing State; (ii) in all other cases, 50% of the amount which has been obtained shall be transferred by the executing State to the issuing State.

Lastly, Greek authorities may also seek the repatriation of assets located overseas through domestic court proceedings in the foreign jurisdiction. Such returns can take place if the court orders compensation or damages to be made directly to the Greek government. Additionally, repatriation may be made pursuant to settlement agreements or plea bargains concluded by foreign jurisdictions. This practice has been increasing in frequency (such as through settlements with the United States Department of Justice and repatriation of disgorgements) and may be considered by competent Greek authorities when dealing with foreign jurisdictions.

V. COLLECTING DATA ON ASSET RECOVERY

EU Directive 2014/42 requires Member States to keep statistics on freezing and seizure at a central level in order to increase reliable data and identify areas deserving of improvement. Greek law enforcement authorities do not maintain comprehensive statistics and have only some non-uniform and centralised data. For example, some stakeholders are uncertain about the types of cases that should be recorded108 while others keep track of freezing and seizure orders not for statistical purposes but to determine when to request extensions of such orders.109

105 For example, see treaties with Australia (Article 17(5)), Canada (Article 13(2)) and the US (Article 17(3)).
106 UNCAC and UNTOC only allow for the repatriation of assets for offences falling within the scope of their respective instruments.
107 Such agreements may either be standing or case-specific agreements. For example, the United States has entered into standing sharing agreements with 20 countries. Such agreements generally provide the circumstances in which assets may be shared, the channels of communication between authorities in each State, the procedures for requesting asset sharing, and how assets are to be paid.
109 Consultation meeting with ECP, February 2017.
According to Article 88 of Law 3842/2010, law enforcement and judicial authorities are required to “promptly inform SDOE of all freezing, seizure and confiscation of assets and capital in Greece. Such an obligation serves two objectives. First, it enables SDOE to maintain a comprehensive record of all asset recovery measures carried out by Greek authorities. Secondly, it ensures that SDOE is able to readily access information and quickly respond to requests from Europol and the EU member states, in its capacity as a national contact point for Camden Assets Recovery Interagency Network (CARIN).

However, according to SDOE such reporting is not done in practice despite SDOE’s efforts to provide guidance to judicial and prosecutorial authorities on the types of cases that should be reported.110

Further, according to Article 40 of Law 3691/2008 (AML Law) the FIU is required to report all asset freezing measures taken to SDOE, if said assets fall under the latter’s competence.

Recommendations

- In line with Article 11 of EU Directive 2014/42, maintain comprehensive statistics regarding the number of freezing orders issued in corruption cases, the estimated value of property frozen, and the number of requests for freezing orders sent to foreign States for execution.
- Take necessary measures in order law enforcement and judicial authorities to promptly inform the ARO of SDOE of all freezing, seizure and confiscation of assets and capital as foreseen by Article 88 of Law 3842/2010.
- Ensure that the FIU reports all asset freezing measures taken to SDOE, if said assets fall under SDOE’s competence.

VI. ANNEXES

The draft legislative provisions below are intended as a general guide and a starting point for implementing the recommendations described earlier in this document. As the Greek authorities have indicated, the provisions would need to further adjusted and adapted, so as to abide by the standards of Law 4048/2012 (FEK A’34/23.02.2012).

A. Draft Revised CPP Provision on Asset Freezing

<table>
<thead>
<tr>
<th>Article XX CPP - Freezing of Assets</th>
<th>Άρθρο ΧΧ ΚΠΔ - Δέσμευση περιουσιακών στοιχείων</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. All types of assets described in Article 76(1) PC are subject to freezing measures provided that there are well-founded suspicions that the assets are the direct or indirect proceeds of an offence for which an investigation is underway or have been used in or are destined to be used in an offence for which an investigation is underway.</td>
<td>1. Τα αναφερόμενα στο άρθρο 76 παρ.1 ΠΚ περιουσιακά στοιχεία υπόκεινται σε δέσμευση εφόσον υπάρχουν βάσιμες υπόνοιες ότι τα παραπάνω περιουσιακά στοιχεία αποκτήθηκαν αμέσως ή εμμέσως από κακούργημα ή πλημμέλημα για το οποίο διεξάγεται ανάκριση ή έχουν χρησιμοποιηθεί ή προορίζονται να χρησιμοποιηθούν για την τέλεση αδικημάτων για τα οποία διεξάγεται ανάκριση.</td>
</tr>
<tr>
<td>2. Assets described in Article 76(1) belonging to third parties are subject to freezing measures if there are well-founded suspicions that the assets are the direct or indirect proceeds of criminal activity. A third party is not subject to freezing measures if said third party</td>
<td>2. Η δέσμευση των αναφερόμενων στο άρθρο 76 παρ.1 ΠΚ περιουσιακών στοιχείων επιβάλλεται σε τρίτο αν υπάρχουν βάσιμες υποψίες ότι</td>
</tr>
</tbody>
</table>
is able to meet the requirements listed in Article 76(2) PC.

3. During a main investigation, the freezing is ordered by the investigating judge with the consent of the public prosecutor. In case of a preparatory examination or preliminary investigation, the freezing is ordered by a single judge of the competent Court of First Instance.

4. The order has the power of a seizure report and is issued without prior summoning of the accused or third person. The order is served upon the accused and the public registrar authority or the credit or financial institution where the investigating judge or the public prosecutor is based. In case of jointly owned assets the order must also be served upon co-owners.

5. The freezing measure applies from the time of service of the order upon the public authority credit or financial institution. From this time, any juridical act, mortgage, or other act registered by the mortgage registry is null and void. The safe deposit box cannot be opened and any withdrawal of money from an account or any sale of securities or financial products is null and void. Any public official or management officer or employee of the credit or financial institution who intentionally violates the provisions of this paragraph shall be punished with a pecuniary penalty.

6. A party with an interest in an asset subject to freezing has the right to request the review of the order, by an application addressed to the issuing authority within 20 days from the service of the order. If the issuing authority upholds the issuance of the order the accused, the suspect or interested third person may file an appeal within 20 days from the decision on the review before a single judge of the competent Court of Appeal. The submission of the application for review or the appeal shall not suspend the enforcement of the order.

7. In cases where a delay in obtaining the consent of the prosecutor or an order of the judge of the competent Court of First Instance poses an imminent danger of loss of the asset in question, the investigative judge or the prosecutor may attempt the necessary freezing measures in order to secure the asset. In such cases, the consent of the prosecutor or the order of the issuing judge of the competent Court of First Instance must be sought within 72 hours of freezing; otherwise the freezing order is automatically lifted.

8. The freezing measures are lifted after 18 months from the date of the issuance of the order unless the issuing authority decides with a reasoned decision to extend the duration. The extension of an order may be appealed based on the procedure described in Article 76(2) PC.

4. The order has the power of a seizure report and is issued without prior summoning of the accused or third person. The order is served upon the accused and the public registrar authority or the credit or financial institution where the investigating judge or the public prosecutor is based. In case of jointly owned assets the order must also be served upon co-owners.

5. The freezing measure applies from the time of service of the order upon the public authority credit or financial institution. From this time, any juridical act, mortgage, or other act registered by the mortgage registry is null and void. The safe deposit box cannot be opened and any withdrawal of money from an account or any sale of securities or financial products is null and void. Any public official or management officer or employee of the credit or financial institution who intentionally violates the provisions of this paragraph shall be punished with a pecuniary penalty.

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τη λήξη της προθεσμίας.

8. Η δέσμευση παύει αυτοδικαίως με την παρέλευση 18 μηνών από την ημερομηνία έκδοσης της διάταξης, εκτός αν η εκδοτική αρχή αποφαίνεται με ειδικά απιστολογμένο απόφαση για την παράταση της δέσμευσης. Η παράταση μπορεί να αποτελέσει αντικείμενο προσφυγής σύμφωνα με τη διαδικασία της παρ. 6.

B. Draft Penal Code Provision on Confiscation

Article 76 PC - Confiscation

1. Assets including property, equipment, instrumentalities, as well as accounts, securities or financial products kept at a credit or financial institution, including any safe deposit boxes of the accused, including those owned jointly with any other person, that are the direct or indirect proceeds of a felony or an intentional misdemeanor offence or have been used in or are destined to be used in the commission a felony or an intentional misdemeanour offence and belong to or are in the possession of the principal or of any one of the accomplices are subject to confiscation. Assets that have been transformed or converted, in part or in full, into other property or have been intermingled with property acquired from legitimate sources are also subject to confiscation up to the assessed value of the intermingled asset. Income or other benefits derived from such assets, from property through which such assets have been acquired or from property with which such assets have been intermingled are also subject to confiscation to the same extent as the assets.

2. The assets mentioned in paragraph 1 of the present Article that belong to a third party are subject to confiscation, unless the third party is able to demonstrate that it: (i) has a legitimate legal interest in the assets; (ii) cannot be imputed to have participated, colluded, or otherwise been involved in the criminal activity carried out by the accused or in any other serious offence that is connected to the proceedings; and, (iii) lacked knowledge and did not intentionally or wilfully ignore the illegal source, content, use, or purpose of the assets. In line with Article XX(2) CPP, the requirements in this paragraph apply to freezing measures.

3. If the assets subject to confiscation in of paragraph 1, no longer exist, have not been found, cannot be seized or belong to a third party against whom it is not possible to impose confiscation, assets of the liable person of equal value to those in the time of the conviction, as specified by the court, are confiscated. The court
may also impose a fine up to the amount of the value of assets, if it considers that there are no additional assets for confiscation or the existing assets are of less value than of those subject to confiscation.

4. Where confiscation would be disproportionate or result in hardship to the accused or a third party, the competent court may order limited confiscation, impose a pecuniary penalty, or order both limited confiscation and a pecuniary penalty.

5. When no criminal proceedings have been initiated, confiscation may still be ordered when:
(i) the offender has died; (ii) the offender cannot be identified or found; or (iii) the prosecution was terminated or declared inadmissible. If no criminal proceedings have been initiated, confiscation is ordered by a decree of the judicial council of misdemeanours having competence ratione loci, and in cases where the prosecution was terminated or declared inadmissible by a decree of the competent judicial council or the court decision terminating prosecution or declaring prosecution inadmissible. The provisions of Articles 492 and 504(3) of the Code of Penal Procedure apply by way of analogy to this case.

3. Αν τα περιουσιακά στοιχεία που υπόκεινται σε δήμευση σύμφωνα με την παρ. 1, δεν υπάρχουν πλέον, δεν έχουν βρεθεί, δεν είναι δυνατόν να κατασχεθούν ή ανήκουν σε τρίτο σε βάρος του οποίου δεν είναι δυνατόν να επιβληθεί δήμευση, δημεύονται περιουσιακά στοιχεία του υπαιτίου ίσης αξίας με αυτά κατά το χρόνο της καταδικαστικής απόφασης, όπως της προσδιορίζει το δικαστήριο. Το δικαστήριο μπορεί να επιβάλλει και χρηματική κοινή μέχρι το ποσό της αξίας των περιουσιακών στοιχείων, αν κρίνει ότι δεν υπάρχουν πρόσθετα περιουσιακά στοιχεία για δήμευση ή τα υπάρχοντα υπολείπονται της αξίας των υποκειμένων σε δήμευση.

4. Εφόσον η κατάσχεση είναι στη συγκεκριμένη περίπτωση δυσανάλογη ή υπάρχει κίνδυνος να αποστερήσει τον κατηγορούμενο ή τρίτο από πράγμα που εξυπηρετεί τον αναγκαίο βιοπορισμό, το αρμόδιο δικαστήριο μπορεί να διατάξει περιορισμένη κατάσχεση, να επιβάλει χρηματική ποινή ή να διατάξει αμφότερα.

5. Δήμευση διατάσσεται και όταν δεν ασκήθηκε δίωξη στις ακόλουθες περιπτώσεις: (α) λόγω θανάτου του υπαιτίου (β) λόγω αδυναμίας ταυτοποίησης ή ταυτοποίησης του υπαιτίου ή (γ) λόγω οριστικής παύσης ή κήρύξης της διώξης ως απαράδεκτης. Αν δεν ασκήθηκε δίωξη η δήμευση διατάσσεται με βούλευμα του κατά τότον αρμόδιου συμβουλίου πλημμελειοδικών και στις περιπτώσεις που δίωξη έπαυσε οριστικώς ή κήρυχθηκε απαράδεκτη με βούλευμα του δικαστικού συμβουλίου ή με απόφαση του δικαστηρίου που παύει ή κήρυσσε απαράδεκτη την ποινική διώξη. Οι διατάξεις του άρθρου 492 και του άρθρου 504 παρ. 3 Κ.Π.Δ. εφαρμόζονται αναλόγως και στην προκειμένη περίπτωση.