Greece-OECD Project: Technical Support on Anti-Corruption

Building Capacity and Mobilisation of Law Enforcement Authorities 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. Greece’s National Anti-Corruption Action Plan (NACAP) identifies key areas of reform and defines priorities towards strengthening integrity and transparency and fighting corruption. 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.

www.oecd.org/corruption/greece-oecd-anti-corruption.htm
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Introduction

Corruption undoubtedly raises serious moral and political concerns, undermines good governance and damages a country’s economic, political and social development. Robust anti-corruption enforcement must be a top priority for any national government, and in particular in Greece, where corruption has hampered public and private sector actors alike and contributed to a stagnant economy.

Active enforcement of Greek anti-corruption laws necessarily depends on the skill, organisation, and resources of Greek authorities responsible for investigating and prosecuting all types and levels of corruption offenses. Building the capacity of law enforcement actors to detect and investigate corruption offences is a key component for ensuring long-term political, cultural and social change in Greece. Such mobilisation includes awareness-raising among law enforcement actors of existing investigative techniques, structural and organizational issues relating to how allegations progress through the inquiry and investigative stages, and the specific role and competence of each stakeholder - to name a few.

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

This document has been produced under Outcomes 4.3 and 4.4 of the Technical Assistance Project. It contains technical proposals on ten topics which were identified as areas where there is room to strengthen the capacity of Greek anti-corruption law enforcement authorities. The proposals identify measures and incentives for competent authorities to detect and investigate suspicions of corruption, taking into account good practices in other OECD countries. Where appropriate, a technical proposal may be accompanied by reference materials that can be distributed to relevant law enforcement officials for use in their daily practice. The technical proposals and reference materials build on the information obtained from responses by the competent Hellenic authorities to questionnaires in January 2017, and from discussion in consultation meetings with these authorities that followed in Thessaloniki and Athens in February 2017. The findings of this proposal will be promoted and further developed in the capacity building workshops.

The technical proposal includes nine topics divided into three thematic groups as follows:

**Thresholds and case management**

- Referral of Criminal Corruption Cases to Criminal Law Enforcement
- The Jurisdiction of the Public Prosecutor against Crimes of Corruption (PPACC)

**Improving detection and investigation**

- Criminal Intelligence
- Use of special investigative techniques (SITs) in corruption investigations
- Pooling experts
- Expanding access to databases
- Systematic provision of training
- Corporate investigations and prosecutions
Incentives for anti-corruption authorities

- Anti-Corruption Awards and Recognition of Law Enforcement Efforts

This document does not contain technical proposals on mutual legal assistance in criminal matters, asset recovery and law enforcement co-ordination. These topics fall under other Outcomes in the Technical Assistance Project and are addressed in separate documents.
1. Referral of Corruption Cases to Prosecutorial and Judicial Authorities

Introduction

In Greece, a large number of administrative bodies may receive corruption complaints due to their varied nature and responsibilities. How these bodies process, investigate and assess these complaints is covered in Output 1 (Modernisation of audit mechanisms) and Output 6 (Improved processing of corruption complaints) of the Greece-OECD Technical Assistance Project. Once the administrative body completes this investigation and assessment, it will need to decide whether it must refer the matter to criminal a prosecutor as required by Article 37 § 2 of the Greek Code of Penal Procedure (“CPP”). At present, there is no standardized procedure for deciding whether an allegation of corruption should be referred to law enforcement authorities, raising the possibility that some complaints are not properly referred for criminal investigation.

This section of the Technical Proposal will focus on addressing and improving three specific issues: (i) clarifying the procedure and threshold for referring reports of corruption (or “potential cases”) to prosecutorial and judicial authorities (including awareness-raising); (ii) how cases that do not meet the threshold should be handled; and, (iii) identifying the prosecutorial body competent for dealing with reports of corruption. Where relevant, the Technical Proposal will also refer to international best practices.

Threshold for Referral

Current Inconsistent Thresholds for Referral

Article 37 § 2 CPP places an obligation on Greek public officials to report to the prosecutor crimes of which they become aware during the exercise of their duties. However, such an obligation is difficult to satisfy given the lack of a defined threshold for referring corruption allegations to prosecutorial authorities. This was confirmed by many stakeholders during the February 2017 consultation meetings who explained that there is no uniform threshold for referral. Certain stakeholders stated that they simply investigate the matter and subsequently refer the situation to the relevant prosecutor. Some agencies stated that if there is evidence of a serious criminal offense, they inform the prosecutor regardless of the amount of money involved, while other stakeholders rarely send reports of corruption to the prosecutor and only do so when the alleged acts are no longer considered simple suspicions.

Recommendation for a Uniform Threshold

Article 37 § 2 CPP does not establish a specific threshold that allegations or reports of corruption must meet in order to be forwarded to the prosecutor. Additionally, the under-reporting of reports to the prosecutor for investigation should not result from a stakeholder’s uncertainty regarding whether a case meets a certain threshold that would justify a prosecutorial investigation or any other type of determination regarding the legal insufficiency of the evidence obtained by the stakeholder. The only body capable of making a determination as to the legal sufficiency of evidence that would justify the launching of an investigation is the prosecutor’s office. It is therefore necessary that stakeholders adopt a threshold that errs on the side of referring the case to the prosecutor for further investigation. Such a threshold will not result in an increased backlog for prosecutors given that in its present form, Article 37 § 2 CPP does not provide any guidance as to which allegations should be sent to the prosecutor. Such a reality highlights the importance of establishing a point of reference or qualification to guide the stakeholders in their work, in order to strike a balance between sending every allegation to the prosecutor and sending too few.
Recommendations for a Uniform Threshold

- The reporting standard should fall somewhere between “mere suspicion” (i.e., uncorroborated hunches or hearsay) and “reasonable suspicion” (based on rational inferences and facts). Allegations satisfy this standard when they provide articulable facts that describe criminal activity in sufficient detail;

- Reports of corruption need not reach the level of reasonable suspicion, given the limited ability of stakeholders to gather intelligence and because such efforts can be carried out during the investigative phase under the supervision of the prosecutor.

Addressing Reports of Corruption that Fail to Meet Threshold for Referral

Current Situation

After defining the threshold for referral, the next issue logically is what a stakeholder should do when an allegation does not meet the threshold for referral. Currently, there is no uniform guidance on how stakeholders should manage allegations that do not meet the threshold. During the consultation meetings, many stakeholders stated that they archive a large number of reports of corruption they receive due to insufficient information or their anonymous nature. Other stakeholders keep such reports open indefinitely.

Recommendation for Handling Reports of Corruption that do not Meet the Proposed Referral Threshold

The manner in which such reports of corruption are handled is important for organizational purposes as well as ensuring quality control and increased enforcement. Such reports should be given due consideration before being closed or discontinued, yet such procedures should not be overly burdensome on the stakeholder. It should be noted that Article 37 serves a dual function: (i) to ensure that the prosecutor is duly informed of criminal offenses (even anonymous reports or allegations); and, (ii) to enable stakeholders to gather intelligence in line with their own mandate. As stated above, the threshold for referral is not very high. However, despite the lower threshold, some reports of corruption may simply not justify further action or may still need to be elaborated before being sent to the prosecutor.

With respect to such reports, stakeholders should establish two categories of reports that do not meet the referral threshold after a first review:

1. Report of corruption requires additional inquiry within competence of stakeholder
2. Report of corruption requires additional inquiry outside of competence of stakeholder

The first category consists of reports are not yet ready to be forwarded to the prosecutor, either due to insufficient information, unclear facts, or the inability of the stakeholder to find additional information on its own. In such instances, the report should not be immediately discarded. Rather, the report should be categorized as requiring additional inquiry that is within the stakeholder’s competence and should be re-assessed when additional information is collected. For example, an internal affairs division within a government body is able to take additional efforts such as informal interviews or information gathering. Entities such as SDOE or the FIU are able to use their authority to investigate further – albeit in the domain where prosecutorial authorization is not required.

In such instances, officials responsible for overseeing the preliminary information-gathering stage should update the status of the issue on a regular basis (at least once per month). Stakeholders should not establish a time limit or deadline for making a determination regarding whether the report should be forwarded to the prosecutor, as these often take time to develop and additional facts my
come to light at a later date. Such a determination, however, should be made after a reasonable amount of time has passed after additional inquiries have seen no progress.

The second category involves reports of corruption whose elaboration requires expertise or measures that are not within the competence or capability of the stakeholder that received the report. In such instances, the original stakeholder should contact the entity that has the required capability (e.g., SDOE, Financial Police, etc.) or that has access to an individual or information that is necessary to determine whether the report of corruption should be referred to a prosecutor. The preliminary evaluation of the report should remain with the original stakeholder and restraint should be exercised in order to ensure that any information gathering does not include activity that would require prosecutorial authorization.

For the purpose of facilitating such exchanges between stakeholders, a coordination mechanism vis-à-vis corruption reports of corruption should be explored, even if it is informal in nature. This concept will be further explored in the technical proposals under Outcome 3.4 on law enforcement co-ordination.

Anonymous Reports of Corruption

Current Situation

Anonymous reports of corruption pose significant difficulty for stakeholders. During the consultation meetings, many stakeholders exhibited their frustration with anonymous reports and appear to impose a higher referral threshold (i.e., more serious nature of allegations, more evidence, etc.). The foregoing is problematic because it results in the application of different evaluation standards depending on the source of the report or allegation rather than its substance. Additionally, such an approach risks eliminating viable reports from consideration, resulting in lower levels of enforcement. In justifying their approach, stakeholders highlighted a legal provision which provides that anonymous reports or allegations should not be treated with priority and may be ignored. The provision referred to by stakeholders is Article 43 § 4 CPP, which applies exclusively to prosecutorial authorities and gives them the discretion to immediately archive anonymous reports of corruption. This provision, however, does not apply to administrative bodies that have received a corruption complaint. Permitting such entities to decide whether a complaint should be sent to a prosecutor would infringe upon the exclusive powers of the prosecutors and result in the application of different and non-uniform standards across stakeholders. Additionally, it may also result in the archiving of otherwise valid allegations. Therefore, stakeholders should not apply the standard articulated in Article 43 § 4 CPP and should instead allow the prosecutor to determine whether a report should be investigated further when it meets the criteria established in the section below. Establishing such a standard will increase uniformity and allow for a steady flow of more credible and worthwhile anonymous reports to make their way to the prosecutor.

The obligation to report found in Article 37 CPP also applies to anonymous reports of corruption and does not permit the application of different evaluation standards depending on the source of such reports. As entities charged with seeking transparency and ensuring that allegations are indeed communicated to the prosecutor, stakeholders are prohibited from ignoring or archiving reports made anonymously. There are several reasons for which a complainant may seek to hide his or her identity - including fear of reprisal - and such allegations may indeed lead to the exposure of bona fide and serious crimes of corruption.
Recommendations for Handling Anonymous Reports of Corruption

Stakeholders should develop a policy for handling anonymous reports of corruption that consists of the following:

- Specify good practice on identifying trends indicative of allegations that are phony, incoherent, designed to harass to distract, or otherwise not bona fide. Such reports generally: (i) are exaggerative and even pejorative in nature, appearing to focus more on the official(s) who engaged in the act than on the conduct and facts themselves; (ii) use similar language and expressions as well as similar methods of describing facts and events; (iii) provide an excessive amount of information and allege an significant number of offenses (on one end, such reports often seek to distract and overwhelm investigators and, on the other hand, aim to result in seemingly continuous investigations into specific individuals who have not engaged in wrongdoing);

- Ensure that additional steps are taken to duly vet anonymous reports of corruption by outside means (and review the efficiency of such methods at least once annually). These steps could include summoning individuals mentioned in the complaint to answer questions; independently corroborating the allegations through means such as verification of financial statements and consulting publicly available documents; liaising with other intelligence agencies to round out information relating to allegations;

- Create a policy that encourages employees to consider anonymous reports in the same manner that normal reports are evaluated and that emphasizes that anonymity by itself should not be a dispositive factor.

Identifying the Competent Authority for Referral

Current Situation

Nearly all stakeholders responsible for assessing allegations and reports of corruption demonstrated confusion regarding the competence of each prosecutor’s office with respect to different types of allegations. For example, during the consultation meetings, SDOE representatives highlighted that its five-member committee evaluates reports in order to determine whether to forward them to the Economic Crime Prosecutor (“ECP”) irrespective of their connection to corruption. Sending a report of corruption (whether misdemeanour or felony) to the ECP creates additional delay because in such cases it would be the PPACC or the prosecutor of the Court of First Instance who would be competent to investigate the matter. Other agencies such as the internal affairs divisions of the Independent Authority for Public Revenue (“IAPR”) and Ministry of Finance also stated that when a case involves a criminal offense such as bribery committed by one of their employees, they would forward the case to the ECP.

This problem poses an unnecessary burden on prosecutorial authorities, requiring them to coordinate amongst themselves and wasting valuable time and resources. The Athens PPACC stated that the ECP often sends her office reports that were incorrectly forwarded to its office. The ECP does so after reviewing the report and realizing that the allegations involve corrupt acts committed by public servants. Conversely, it is also not uncommon for reports of corruption that fall outside of the jurisdiction of the PPACC under Article 1 of Law 4022/2011 to be referred to the PPACC instead of the prosecutor of the Court of First Instance (the competent body for misdemeanour corruption offenses). Needless to say, it is clear that communication and organization are lacking.

The abovementioned issues and challenges are easily avoidable if government administrative bodies are provided with clear and comprehensive training and guidance regarding the jurisdiction,
mandate and role of each prosecutorial authority and relevant law enforcement authorities such as SDOE and the Financial Police (see next sub-section below).

**Recommendations for Identifying the Competent Authority**

Provision of training and guidance which should:

- Focus around the subject-matter jurisdiction of the PPACC, using it as a point of reference for all reports. The current jurisdiction of the PPACC, ECP and 1st instance prosecutors is explained below on the section on the Jurisdiction of the PPACC;

- Address reports with mixed corruption and economic crime elements (PPACC or ECP jurisdiction) and establish simple rules of thumb for forwarding authorities to follow (providing examples of past reports and allegations and organizing trainings both within and across different stakeholders) – the PPACC should be involved in defining such principles;

- Include yearly reviews with the PPACC to assess the adequacy of referrals vis-à-vis reports of corruption that are correctly categorized as PPACC and other relevant issues such as possible methods of follow-up or coordination between stakeholders and PPACC.

**Specific Competence of SDOE and Financial Police of the Hellenic Police**

In addition to the abovementioned guidance on prosecutorial bodies, administrative bodies should also be provided with similar guidance on the competence of law enforcement bodies involved in the fight against corruption, such as SDOE and the Financial Police. Providing such guidance will raise awareness of the larger anti-corruption law enforcement framework in Greece and ensure that reports are sent to the proper authorities, thereby streamlining cases.

Regarding SDOE, such guidance should include the following:

- SDOE’s competence includes the detection and investigation of all types of financial and economic crimes, fraud, irregularities and illegal acts, including foreign bribery.

- Under Greek law, SDOE does not have the power to initiate investigations on its own but may initiate inquiries based on information received or as a result of data analysis. However, SDOE officials must resort to the public prosecutor if they determine that a criminal offence has been committed (pursuant to Article 37 CPP).

- SDOE, the Hellenic Police and the Financial Police Division often have concurrent jurisdiction over corruption cases. This is partly because the current legislation does not specify which body is responsible for specific types of corruption investigations.

Regarding the Hellenic Police generally, guidance should include the following:

- Pursuant to Article 33 CPP general investigative officers of the Hellenic Police are competent for investigating any crime, including foreign bribery, after receiving a relevant prosecutorial order issued as part of a preparatory examination or a preliminary investigation. In practice, however, prosecutorial authorities will often favour submitting such an investigative order to

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1 OECD Phase 3 Report on Greece, pp. 21-21, paras. 64-65.
2 It also means that in performing its investigative duties it must do so in the presence of a public prosecutor or obtain the relevant authorisation of a public prosecutor or an investigative judge. The unobstructed cooperation, coordination and information sharing between the above bodies is essential for SDOE in order to perform effectively its detection and investigation duties.
a specialized police force such as the Financial Police Division or the Internal Affairs Division of the Hellenic Police.

Regarding the Financial Police Division of the Hellenic Police, guidance should include the following:

- The Financial Police Division was established in 2011 by Presidential Decree 09/2011. The Financial Police operates within the Hellenic Police framework and is competent for financial and economic crimes, including organised crime. The Financial Police’s mission is to prevent, investigate and suppress crimes committed against the interests of the public sector and the national economy as well as offences involving organised crime.

- Officers of the Financial Police Division are considered “general investigative officers” in the sense of Article 33 § 1(b) and (c) CPP and are competent for investigating financial and economic crimes, including foreign bribery.

- As part of its detection activity, the Financial Police has a 24-hour hotline through which it receives reports of corruption. After receiving reports of corruption, the Financial Police carries out a preliminary assessment or inquiry and analyses data received through its information management system. The information collected is subsequently transmitted to the competent prosecutor for further action.

- Similar to SDOE, the Financial Police does not have the power to initiate investigations on its own and may only carry out investigative measures in the presence of a public prosecutor or with the prior authorization of a judge or prosecutor.

**Recommendations**

Administrative bodies should be offered training in order to raise awareness of the specific role and competence of SDOE, the Hellenic Police and the Financial Police, and to encourage such bodies to refer reports of corruption directly to prosecutorial or judicial authorities.

**Considerations relating to Law 4446/2016**

Law 4446/2016 created the Office of Complaints within the General Secretariat against Corruption (“GSAC”) under the Ministry of Justice, Transparency and Human Rights. Unfortunately, the OECD team was unable to conduct a full assessment of the Office of Complaints. Though Law 4446 was enacted in 2016, GSAC’s circular governing the Office was issued after the OECD’s meetings with Greek stakeholders. The OECD team did not have the opportunity to consult the prosecutor seconded to the Office of Complaints, other prosecutors such as the PPACC, or entities that are expected to report to the Office. The team was therefore unable to obtain information on the Office’s operation in practice.

**Increasing accountability**

The low level of reporting is not an issue that exists only in Greece but also other WGB Members. To ensure robust reporting, relevant stakeholders must ensure that officials who fail to report are sanctioned. Currently, the offence in Article 259 of the Greek Penal Code (PC) applies only to the most serious instances of failure to report, namely when a public official who knowingly breaches his/her official duties, for the purpose of obtaining an unlawful benefit for oneself or for a third party, or for the purpose of harming the State or a third party. Failures to report that do not meet this threshold are not punishable.
It is therefore proposed that Greece enact a provision (e.g. in the Civil Service Code) that provides for administrative sanctions against a public official who fails to report under Article 37 CPP. Administrative sanctions would thus apply to most failures to report, while Article 259 PC will continue to apply only to the most egregious breaches of Article 37. The available administrative sanctions should include the range of sanctions normally available for disciplining public officials, such as a reprimand, demotion in rank, dismissal, and/or a fine. If such a provision is enacted, then efforts must be made to enforce the provision.

Guidance and Training

Creating a culture of vigilance and transparency is crucial in encouraging public officials to carry out their duties and report all types of corruption, regardless of whether such acts were discovered as part of their professional responsibilities. Each stakeholder should develop guidance to its employees on the referral of corruption allegations. According to international best practice, such guidelines should exhaustively deal with all aspects of referrals, including:

- A clear definition of the reporting threshold (see pp. 7-8);  
- A clear statement of the procedure for addressing reports that fail to meet threshold for referral (see pp. 8-9) and anonymous reports (see pp. 9-10);  
- Identification of the appropriate prosecutorial body to which each type of corruption allegations should be referred (see p. 10-11);  
- The consequences of failing to report (see p. 11).

GSAC should also consider implementing general guidelines that contain information relevant to policy, organization and administration of corruption reports and allegations. Such guidelines should seek to harmonise practices and update stakeholders on their respective practices and organization, thereby reaffirming the work of the various authorities in the fight against corruption and creating a national point of reference and best practices.

Guidance can be issued in the form of official decrees or circulars, ideally on an annual basis, in order to reiterate the commitment of stakeholders and the government in the fight against corruption, and to provide updates on reporting of corruption crimes by stakeholders’ officials. Because some Greek ministerial circulars have not resulted in increased reporting in the past, it is important that such orders be followed up by the relevant stakeholders and made part of the stakeholder’s regular discourse.

Following international best practices, the duty to report should also be included in a stakeholder’s code of conduct that outlines officials’ obligations in the course of their professional functions as well as their duty to remain vigilant and report corrupt acts carried out by other public officials.

Stakeholders should also maintain statistics on the allegations received and forwarded. Statistics allow stakeholders’ performance to be evaluated. They also allow criminal intelligence to be generated (see Section 4). Currently, only a small number of stakeholders are responsible for addressing allegations maintain statistics relating to their work and reports. For example, the Independent Single Public Procurement Authority, which carries out random audits of public entities and contracts, maintains statistics regarding the nature of its audits as well as the number of reports it sends to the prosecutor.

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4 OECD WGB Phase 3 Report – Chile, para. 178.  
5 OECD WGB Phase 3 Report – Luxembourg, paras. 185-86.
Recommendation

In line with the themes contained in the present proposal, GSAC should coordinate and facilitate training to all administrative bodies on how to handle reports of corruption until they are referred to the competent prosecutorial or judicial authorities (for aspects not covered in this section, such as how to process and evaluate reports of corruption, please refer to OECD Technical Report on Effective and Fair Public Sector Complaints Systems).
Reference Materials for Referral of Corruption Cases to Prosecutorial and Judicial Authorities

In order to effectively enforce Greek anti-corruption laws, investigative agencies and authorities responsible for receiving and assessing corruption complaints should establish and follow procedures that clearly articulate when and how to report corruption allegations and to which prosecutor allegations should be submitted. Therefore, in carrying out their responsibilities, all relevant authorities should have access to a guidance manual that addresses the technical and logistical aspects of reporting, including, among others: (i) a uniform method for reporting allegations and complaints; (ii) threshold for referral of cases; (iii) increasing accountability and increasing reporting numbers; and, (iv) a reporting profile of each agency for self- and peer-evaluation purposes.

Such guidance should provide for simple and easy to follow procedures and practices and should seek to harmonize the work of multiple stakeholders with similar mandates and roles in the fight against corruption in Greece.

Threshold for reporting corruption allegations or complaints

Anti-corruption stakeholders should strike a fair balance between the time spent conducting an initial assessment of the allegations and when the allegations justify further action by a prosecutor. This will save your agency time and resources by allowing your employees to avoid a backlog of cases, while also ensuring that allegations meeting a lower threshold are still forwarded to the prosecutor for a final determination. Many stakeholders have not established specific thresholds that must be met in order to refer cases to the next phase of the investigation and Article 37 § 2 CPP does not provide guidance in this respect.

The threshold for reporting corruption allegations to prosecutorial authorities should be low. Additionally, your agency should take the proper measures to ensure that its method of evaluating complaints does not infringe upon prosecutorial discretion regarding whether or not to continue with an investigation. In such cases, the threshold will have been met and if such authority is exercised by a governmental body without the power to make such a determination, it jeopardizes anti-corruption efforts and undermines the role of the prosecutor.

For example, suppose that your office receives an anonymous complaint regarding an alleged act of corruption. The complaint, although anonymous, provides sufficient detail regarding the time and location of the alleged criminal offense, and describes a meeting that took place Greek citizen and a public official working for your entity. In making a determination as to whether the case should be sent to the competent prosecutor, your office should seek to ascertain the veracity of the allegations within the powers of its mandate, yet should not archive the case or discard it as false if it is unable to confirm all of the details included in the complaint. The entirety of the complaint should be considered and the absence of evidence that would tend to confirm the allegation should not result in the automatic rejection of the complaint or otherwise be considered dispositive. Therefore, the threshold for referring complaints of corruption should be fall between “mere suspicion” (i.e., uncorroborated hunches or hearsay) and “reasonable suspicion” (based on rational inferences and facts). In other words, the threshold should be low and your office should err on the side of referring the case to the prosecutor for further investigation. In addition, relevant stakeholders with similar mandates should meet with prosecutors regularly to revise the sufficiency of current practices in order to ensure quality and usefulness.

In devising its reporting guideline relevant to the required threshold for referring complaints, your agency should consider the following:

- Establishing an easy-to-understand threshold that does not follow a one-size-fits all approach, but can instead be applied on a case-by-case basis;
• Striking a balance between the initial assessment and when the case should be forwarded to the prosecutor (for the purpose of saving resources and allowing cases to move forward more quickly);

• Providing for yearly reviews of issues relating to the work of its investigators and common obstacles faced;

• Identifying methods to ensure consistent and robust reporting, such as by creating a culture of accountability and duty among its investigators (e.g. creating incentives, recognition of diligent inquiries, etc.).

Uniform Reporting Format

All anti-corruption stakeholders responsible for evaluating and investigating corruption complaints or allegations should strive to adhere to a uniform report format in order to facilitate the work of the prosecutors and judges who receive and analyse said reports. Establishing a uniform report format will allow for a more efficient and speedy review and enable the reviewer to quickly identify the sufficiency of the evidence contained in the report.

Among other issues, reports to prosecutors should follow a uniform format and include, to the best extent possible, the following information:

• Statement about how allegations and came to attention of agency;

• When and where the criminal activity began, including if the crimes are still ongoing;

• All of the parties known or believed to be involved, even if not immediately apparent or fully substantiated by evidence;

• Details regarding the commission of the crime, including a chronology of the criminal activity and the specific methods used to carry out the criminal activity;

• Evidence obtained during preliminary evaluation;

• The urgency of the request (crimes are still ongoing, assets involved are at risk of disappearing or being moved) accompanied by a detailed explanation;

• Description of the gravity of the crimes (i.e., nature of scheme, amount of money and number of individuals involved, number of items exported, etc.)

• Possible witnesses who may be willing to cooperate with investigation.

Reporting profiles

Your agency should consider devising a mechanism that would allow it to evaluate its own reporting procedures and performance on an annual basis. Such a mechanism should be implemented by all agencies involved in anti-corruption in Greece and should be shared across said stakeholders.

Such a mechanism could consist of an agency reporting profile that includes:

• Specific thresholds for reporting corruption offenses (including examples);

• Important updates in the stakeholder’s fight against corruption;

• Measures taken to increase reporting levels;
• Additional procedures followed by the agency when investigating corruption complaints and reporting complaints to prosecutorial authorities;

• All data relating to complaints; and,

• Any other practices that have proven particularly useful for the agency’s work.

At the end of each year, each body’s reporting profile should be shared with other relevant stakeholders. In order to mobilize anti-corruption law enforcement, the reporting profiles should also mention the obligations of officials to report offenses under Article 37 § 2 CPC and include any relevant information regarding efforts to enforce failure of public officials to report criminal offenses.

Ensuring your agency’s active role in the fight against corruption

Your agency should, in conjunction with other relevant stakeholders, prioritize the optimization of the reporting process. In carrying out such efforts, specific focus should be given to the obligation imposed upon public officials by Article 37 § 2 CPP. Article 37 § 2 CPP requires Greek public officials to report crimes of which they become aware during the exercise of their duties and should be supplemented by administrative and/or disciplinary sanctions (see page 11).

Firstly, the obligation laid out in Article 37 CPP should be presented and viewed as a duty and a privilege. Public officials working for anti-corruption agencies and stakeholders should be actively encouraged to carry out their obligations in order to advance an agenda of transparency and equality. This message should be supplemented by reminders (via publicly posted information) and actual enforcement of binding codes of conduct and violations of Article 259 PC to deter violations of your employees’ obligations. Increasing reporting and ensuring high quality referrals should be a priority for your agency and an essential component of your agency’s culture.
2. The Jurisdiction of the Public Prosecutor against Crimes of Corruption

Introduction

Law 4022/2011 on the Adjudication of Corruption Cases of Political and State Officials and of Cases of Major Public Interest, as amended and as applied today, introduced in Greece the institution of the Public Prosecutors against Crimes of Corruption (“PPACC”), which was formally set up by Article 76 of Law 4139/2013. The Law 4022/2011 was a response to major corruption scandals that erupted and plagued Greece in the late 2000s and which greatly undermined the trust of citizens towards politics and public institutions. The emergence of these scandals combined with the chronic weaknesses and the long delays in the award of justice, sometimes due to the overburdened justice system and sometimes due to the lack of political will, have created a widespread perception of impunity in the public life of Greece.

For this reason, the main goal of Law 4022/2011 was to create a system that would not follow the usual long paths of justice but would secure speedy prosecution and trial for the accused individuals by giving absolute priority to the adjudication of corruption cases of particular importance and gravity for the political and social life of the country. It has to be noted already here that, even before the introduction of Law 4022/2011, there have been several attempts to ensure speedy proceedings for corruption crimes. For example, Article 35 of the Code of Penal Procedure (“CPP”) provided for the possibility of the Public Prosecutor of Areios Pagos to order an investigation and trial in absolute priority in "exceptional cases". The same Article was amended after the enactment of Article 16 of Law 3849/2010 so as to specify that for the crimes of Articles 235-2617 of the Penal Code (“PC”), investigation and trial in absolute priority should be the rule.

However, none of these attempts produced significant results, primarily because the law did not envisage the allocation of additional resources or the creation a separate institution that would facilitate and take care of these speedy proceedings. This was the novelty that introduced with Law 4022/2011, after the amendment of Article 2 with Article 76 of Law 4139/2013; it created a special prosecutor dedicated to corruption crimes who was explicitly exempt from all other duties and which all other agencies were required by law to fully support in terms of gathering and processing evidence.

Jurisdiction of the PPACC

Article 1 of Law 4022/2011 gives the PPACC jurisdiction over three types of crimes:

Article 1. This law’s provisions shall apply to:

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

(b) Felonies falling under the competence of the three member Court of Appeals, acting as a first instance court, which are committed by General and Special Secretaries of ministries, governors, deputy governors or presidents or managing directors or executive directors of public entities, public corporations, public institutions and private entities the administration of which is, directly or indirectly, appointed by the State, or by civil servants according to the provisions of Articles 13A and 263A of the Greek Penal Code, provided that the above

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7 Article 235 and 236 (active and passive bribery of civil servants); 237 (active and passive bribery of a judge) and 237A (trading in influence).
mentioned perpetrators commit these felonies in the course of their duties or on the occasion of office;

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

The subject matter of the three member Court of Appeals is defined in Article 111 CPP and includes economic crimes such as felonies against property, national currency, adulteration, fraud, embezzlement, bribery, theft against the state etc.

*Jurisdiction over felonies committed “on the occasion” of office*

The first category (§a) covers felonies of serving or retired ministers and deputy ministers that were committed while holding office and which are not subject to Article 86 § 1 of the Greek Constitution. This occurs because in principle only the Parliament has the power to prosecute crimes committed by the above individuals during the discharge or “in the course” of their duties (i.e., when they exercise public authority). These offences are exempt from the jurisdiction of any public prosecutor. For all other felonies however, committed “on the occasion” of their office - in other words by taking advantage of the given opportunity⁹ and of their status - as well as for felony corruption offences of members of the parliament, the PPACC has the jurisdiction to investigate and prosecute the above individuals.

*Jurisdiction over felonies of “political functionaries and civil servants”*

The second category (§b) covers felonies committed by civil servants provided that the above mentioned perpetrators commit these felonies either “in the course” of their duties or “on the occasion” of office.

The term “civil servant” is broad. Under Article 13 PC, it encompasses any person that has been legally entrusted, even temporarily, with the exercise of a public or municipal service or of a legal person organised under public law. Article 263A PC goes further to include any person serving permanently or temporarily and under any capacity or relation: (a) legal entities established under private law that through exclusive or privileged exploitation serve the supply of water, light, heat, power or means of transport or communication or mass media to the public, (b) in banks seated within Greece according to the law or their Articles of association, and (c) in legal entities organised under private law where the state has some form of participation in their administration or their capital or where these legal entities are assigned with the execution of state programs of financial reconstruction or development.

Finally, for the purposes of Articles 235 and 236 PC, Article 263A PC expands the notion of civil servant to any person performing a public function or service for a foreign country or public international or supranational organisation to which Greece is a member, including judges, jursors and arbitrators, and members of parliaments and local government assemblies.

*Jurisdiction over felonies of “major public or social interest”*

The third category (§c) of offences over which the PPACC has jurisdiction is felonies of major social or public interest under the subject matter jurisdiction of the three member Court of Appeals. According to the explanatory statement of Law 4022/2011 under this category may fall felonies with a large number of victims such as road, maritime and aviation accidents as described in Article 111§5 CPP that “overwhelm” the country's social life, while in second large scale misuse of

⁹ Ε. Συμεωνίδου – Καστανίδου, Τα όρια εφαρμογής των ειδικών διατάξεων για την ποινική ευθύνη των Υπουργών, 2011, 496 et seq., ιδίως σελ. 498
public money. The characterisation is made by the Public Prosecutor of Areios Pagos and, in the past, has included corruption cases such as Ferrostaal.\textsuperscript{10}

**Proposals to improve Law 4022/2011**

*A Public Prosecutor against Corruption*

An assessment of Article 1 of Law 4022/2011 confirms that the jurisdiction of the PPACC is not limited to corruption crimes but extends practically to all felonies that fall under the subject matter jurisdiction of the three member Court of Appeals. These may be felonies against property, national currency, adulteration, fraud, embezzlement etc.

If the initial object and purpose of the law was indeed to ensure speedy proceedings for felony corruption offences by creating an institution that performs its duties undistracted, one wonders whether the extension of jurisdiction under Article 1 §c does not defeat the object and purpose of the law. In other words, even if the PPACC decides to investigate and prosecute exclusively corruption crimes exercising the discretion awarded to her/him by the law, nobody prevents the Public Prosecutor of Areios Pagos from characterising a felony that is unrelated to corruption as of “major public or social interest” and order the PPACC to initiate proceedings.

Although in practice the Public Prosecutor of Areios Pagos seems to exercise this discretion with diligence, there have been cases such as the investigation of the Golden Dawn political party for the allegations of criminal organisation under Articles 187 and 187A PC, that were characterised as of “major public or social interest” to benefit from the speedy proceedings that the law envisages and of the resources of the PPACC’s office.\textsuperscript{11} As such both PPACCs in Athens and Thessaloniki recognise that the scope of paragraph (c) is unclear and that its wording does not provide the legal certainty and clarity that a specific law dealing with corruption crimes should do.

Similarly, it is difficult to explain why paragraphs (a) and (b) are not focused specifically on corruption but cover all types of felonies that fall under the subject matter jurisdiction of the three member Court of Appeals.\textsuperscript{12} That said, there is no doubt that the PPACC should be able to investigate and prosecute economic crimes that s/he considers related and/or subsidiary\textsuperscript{13} to the principal crime of corruption. However, this “incidental” jurisdiction over crimes related to the diversion of property of the state differs significantly from what Article 1 of Law 4022/2011 currently stipulates.

\textsuperscript{10} Three member Court of Appeal of Athens, Case No. 4554/2013.
\textsuperscript{11} Discussion with the Investigative Judges of Law 4022/2011 during the February 2017 consultations meetings.
\textsuperscript{12} See Section on Jurisdiction.
\textsuperscript{13} For the requirements that a crime should meet in order to be characterised as relevant and/or subsidiary see Article 129 CPC.
Recommendations

- Amend Article 1(a) and (b) of Law 4022/2011 to limit the jurisdiction of the PPACC to corruption offences. This may include the crimes of active and passive bribery of political functionaries, active and passive bribery of (senior or high level) 14 civil servants, bribery of a judge, fraud, embezzlement, misappropriation and other diversion of property of the state. In parallel, Article 1 should specify expressly that the PPACC has jurisdiction to investigate economic crimes that are related and/or subsidiary to the principal crime of corruption.

- Amend Article 1(c) by expressly limiting the PPACC’s jurisdiction over corruption offences of “major public or social interest”. The characterisation of “major public or social interest” should be made by the PPACC.

A Public Prosecutor against High Level Corruption

As already explained the main goal of Law 4022/2011 was to create a system that would not follow the usual long paths of justice but would secure absolute priority to the investigation and adjudication of corruption cases of particular importance and gravity for the political and social life of the country. For this reason, the law stipulated in its original form that it is concerned only with felonies of “major public or social interest” and felonies committed by political functionaries and senior or high level civil servants. 15

This means that the PPACC does not have jurisdiction over misdemeanour bribery offences. All bribery crimes committed by political functionaries under Article 159 PC are felonies. 16 However, active and passive bribery committed by civil servants under Articles 235 17 and 236 PC 18 is

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14 See Section (ii) A Public Prosecutor against High Level Corruption.
16 Article 159 Passive bribery of political functionaries
17 Article 235 Passive bribery of a civil servant
a felony only when (a) the civil servant receives an undue advantage related to the performance of his/her duties and s/he does that in a professional or a habitual way or if the undue advantage is of a significantly high value or (b) the undue advantage is received for an action or omission of the offender contravenes his/her duties.

However, in 2013 the law was amended to cover felonies committed also by lower level civil servants. With the 2013 amendment the notion of civil servant covers practically any person that has been legally entrusted, even temporarily, directly or indirectly, with the exercise of a public or municipal service. This even includes employees of banks seated within Greece. According to the explanatory statement of Law 4139/2013, the amendment was deemed necessary due to the corruption scandals involving lower level civil servants that negatively impacted the rule of law, the trust of citizens to the public institutions, and the image of the country internationally. 19

While the will of the legislator to secure speedy proceedings for all corruption felonies is understandable, this expansion in the jurisdiction was not accompanied by additional resources for the office of the PPACC. As it was repeatedly stated by the PPACC during the consultations meetings and the workshops in Athens and Thessaloniki, the amendment filled their offices with low level corruption cases, cases of embezzlements in banks, and other felonies that prevented the PPACC not only from prioritising high level corruption investigations but also from performing effectively its basic functions. The same amendment has been negatively assessed also by the academics during the law enforcement workshop in Thessaloniki. 20

Without any doubt, the PPACC would stand to benefit from having its jurisdiction limited to the 2011 version of the law. Considering very unlikely that the resources of the PPACC will increase, a limitation in jurisdiction would allow the office not only to better manage its already limited resources but also to conduct speedy investigation of corruption cases that are indeed of particular importance and gravity for the political and social life of the country.

3. A civil servant who requests or receives, directly or through a third person, for himself/herself or for another person, any undue provision of a financial nature by taking advantage of his/her status, shall be punished by imprisonment if the action is not punished more severely by another criminal provision.

4. A head of a public service or an inspector or any person who is vested with a decision-making or control power in government services, local government authorities and legal entities referred to in Article 263A, shall be punished by imprisonment, if the act is not punished more severely by another criminal provision, if he/she, by negligence, in breach of a certain official duty, failed to prevent a person under his/her command or subject to his/her control from committing any act of the preceding paragraphs.

18 Article 236 Active Bribery of a civil servant
1. Whosoever offers, promises or gives to a civil servant, directly or through a third party, an undue advantage of any nature, for himself/herself or for another person, for an action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by at least one year imprisonment and a fine of EUR 5 000 to 50 000.
2. If the aforementioned action or omission contravenes the duties of the civil servant, the offender shall be punished by up to ten years’ incarceration and a fine of EUR 15 000 to 150 000.
3. A head of business or any other person who is vested with a decision-making or a control power in business shall be punished by imprisonment, if the act is not punished more severely by another criminal provision, if he/she by negligence failed to prevent a person under his/hers command or subject to his/hers control from committing, to the benefit of the business, any act of the preceding sections.
4. With regard to the applicability of this Article to acts committed abroad by a Greek national, it is not necessary that the conditions under Article 6 are satisfied.

19 Explanatory Statement of Law 4139/2013, pp. 16-17.
20 Professor Maria Kaifa-Gbanti, Law School of the Aristotle University of Thessaloniki - Training: Criminal Law and Procedure with an Emphasis on Corruption, Thessaloniki, 27 April 2017
Recommendations

- Amend Article 1(b) of Law 4022/2011 to limit the jurisdiction of the PPACC to felonies committed by political functionaries and senior or high level civil servants.

- Provide for the possibility of the PPACC to prioritise investigation and prosecution of certain corruption felonies or allocate resources accordingly.

An exclusive Public Prosecutor against Corruption

During the consultations it became evident that the PPACC does not have exclusive jurisdiction over corruption felonies. This happens for several reasons. First of all, the territorial jurisdiction of the two PPACCs extends only to Athens and Thessaloniki, meaning that a First Instance Public Prosecutor may and should investigate and prosecute all other felony corruption offences that are committed in the rest of the territory. Second, even when the crime has been committed in Athens and Thessaloniki, law enforcement and detection authorities often refer the case to a general Public Prosecutor who in turn does not pass the case to PPACC but investigates and prosecutes the case himself.

In fact, the prosecutorial authorities themselves appear to be confused regarding the process that they should follow when a corruption felony comes to their hands. As noted by the Public Prosecutor of the Court of First Instance of Athens during the consultations meetings, the Deputy Public Prosecutor of Areios Pagos issued a circular which stipulated that proceedings for felony corruption offences that are not undertaken by the PPACC are null and void. However, this circular was soon overturned by an opinion of the Judicial Council of the Court of Misdemeanours of Athens. With this contradicting guidance in mind and cognisant of the fact that the office of PPACC in Athens and Thessaloniki is already overburdened with cases, the First Instance Public Prosecutors stated at the consultation meetings that they rarely, if ever, send cases to the PPACC. Undoubtedly, this situation is highly problematic because when a general Public Prosecutor withholds a case that would fall normally under the jurisdiction of the PPACC s/he defies the object and purpose of Law 4022/2011. In other words, a corruption felony does not benefit either from the speedy proceedings or from the resources and expertise that the law has explicitly foreseen for those crimes. Furthermore, the argument put forward by the Public Prosecutor of the Court of First Instance of Athens with regard to the already overburdened caseload of the PPACC is not convincing since the offices of general Public Prosecutors are equally, if not more, overburdened. As such, and since there is no legal obligation on those First Instance Public Prosecutors to prioritise prosecutions of corruption felonies, these cases are easily be ignored or stuck in the pile for years.

The situation regarding the overlap of jurisdiction of the Economic Crime Prosecutor seems to be more streamlined and less problematic. The relevant circular by the Deputy Public Prosecutor of Areios Pagos clarified soon after Law 4022/2011 was passed that the ECP may keep cases of felony corruption committed before 2011 and for which proceedings are ongoing. For all other felony corruption the PPACC should be the one conducting the investigation and prosecution. Possible problems over cases that involve corruption-related crimes could be tackled in part with what was proposed in the section above regarding jurisdiction, and to what is already applicable following the circular by the Deputy Public Prosecutor of Areios Pagos (i.e., the PPACC is responsible for prosecuting and investigating felony corruption offences and economic crimes that are related and/or subsidiary to the principal crime of corruption whereas the ECP for all others).

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21 For the purposes of this document “corruption felonies” means the crimes that are described and fall under the scope of Article 1 of Law 4022/2011.
To this end, the law would greatly benefit either from a clarification or an amendment stipulating the exclusive jurisdiction of the PPACC over felony corruption offences. Given however, that Areios Pagos, as well as any other court, can by law consider a legal matter only when it is a part of a concrete factual case, and given that clarifications in the form of opinions or circulars seems to be often ignored or overturned, it is worth exploring whether an amendment to the law is indeed the way to provide better clarity and more safety to the proceedings.

The exclusive jurisdiction of the PPACC over felony corruption offences would need to be accompanied by the assurance of adequate resources. Currently the office of the PPACC lacks both in personnel and expertise and an increase in the responsibilities and caseload would demand not only better allocation of the existing resources but also the capacity to attract new ones. The allocation of exclusive jurisdiction of the PPACC over felony corruption offences is a timely opportunity for the Greek government to realise its long-standing commitment for the provision of additional resources to the PPACC. This entails among others more expertise and personnel, incentives and benefits to attract experts, expanding databases etc. that would allow the PPACC to carry out its responsibilities in a consistent and timely manner.

**Recommendations**

- Clarification either through guidance (circular, decree etc.) or preferably through an amendment to the law regarding the exclusive jurisdiction of PPACC over felony corruption offences: (i) by expressly assigning the responsibility of prosecution of felony corruption that fall under Law 4022/2011 as well as relevant and/or subsidiary to principal crime of corruption offences to the PPACC and (ii) by making obligatory for any Public Prosecutor to forward felony corruption offences that fall under Law 4022/2011 to the PPACC.

- Provision of additional resources, expertise and personnel to the office of the PPACC to ensure that the PPACC can effectively exercise its exclusive jurisdiction over felony corruption offences.

**A Prosecutor against Corruption with longer office term**

According to Article 2 § 1 of Law 4022/2011, the PPACC is appointed by virtue of a Presidential Decree which is issued following the Decision of the Supreme Judicial Council. However, the term of office of the PPACC is not defined in Law 4022 but in the said Decision on the Supreme Judicial Council. The term of office is in principle 2 years and renewable.22 It is not known to the drafters of this report whether it is possible to appoint a PPACC for a longer term.

The current practice of appointing the PPACC to two year terms is too short. High-level corruption prosecutions in Greece last for much longer than two or even four years. Most cases therefore would not be completed within a PPACC’s tenure. When a case changes hands, the investigation is disrupted and delayed. Institutional expertise in corruption prosecutions is also lost. A longer term, e.g. four years renewable once, would be more desirable. This would allow the PPACC to plan investigations on longer term basis, better manage resources, and prioritise when necessary cases. The PPACC’s term should also be stipulated in Law 4022/2011 to provide transparency and certainty.

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22 See for example Government Gazette No. 351, issue C of 12 April 2017 which appointed Ms Eleni Touloupaki in the office of the Athens PPACC and renewed the term of Mr Achilleas Zisis in the office of Thessaloniki PPACC.
Recommendations

Stipulate in Article 2 of Law 4022/2011 that the term of office of the PPACC is four years renewable once.

Other issues

This section discusses briefly issues which, although not under the jurisdiction of the PPACC, have a paramount importance to the function and effectiveness of the PPACC office. On the one hand, it advocates against a potential merger of the PPACC with the Economic Crime Prosecutor (“ECP”). On the other hand, it links the present document with Output 3.4 on the cooperation, coordination and information-sharing mechanism when detecting, investigating and prosecuting corruption and bribery, which will be delivered to GSAC in December 2017.

More specifically, the present document considers that a potential merger between the PPACC and the ECP would constitute a serious backwards step in the capacity of Greek prosecutorial authorities to investigate and prosecute felony corruption offences. Taking into account that first, the ECP’s jurisdiction under Article 17A § 3 of Law 2523/1997 is extremely broad; second, that the ECP is not required by law to give priority to any of the crimes that he has competence over; and third, that mainly tax and not corruption crimes are in the centre of public life in Greece nowadays, the fear that the prosecution of corruption felonies will fall by the wayside if the two institutions are merged is well grounded. In fact, the ECP does not meet any of the standards with regard to jurisdiction, expertise and prioritisation that were mentioned above and therefore, cannot guarantee that felony corruption offences of major public or social interest benefit from the speedy proceedings of Law 4022/2011. Accordingly, it is recommended that the PPACC be kept as an independent office.

Closely related to the proposal to streamline the jurisdiction of the PPACC is the proposal to set up a coordination mechanism for anti-corruption investigations and prosecutions. Led by the PPACC, and with the participation of all law enforcement authorities involved in the fight against corruption, a coordination mechanism will contribute to allowing the PPACC to monitor closely the progress in ongoing investigations and follow up when necessary with relevant authorities. It will also allow the PPACC to make the best use of available resources by eliminating potential overlaps between the public bodies, by developing bilateral or multilateral interagency partnerships and by prioritising cases. Along with a clearly defined jurisdiction such a mechanism will enhance significantly the effectiveness of the PPACC office and will produce significant results in the fight against corruption. It is recommended therefore, that the proposal on the jurisdiction of the PPACC be read in conjunction with the proposal under Output 3.4.

23 Article 17A § 3 of Law 2523/1997 defines the competence of the ECP over all kinds of financial, economic and tax related crimes.
3. Criminal Intelligence: Reference Materials for Law Enforcement Authorities

Criminal intelligence permits law enforcement authorities to establish a pro-active response to the crime of corruption. It provides the knowledge on which to base decisions and select appropriate targets for investigation. Combined with the appropriate technological tools it also enables law enforcement authorities to identify and understand criminality patterns or the existence of organised criminal activity in specific areas. Once criminal groups and patterns are identified and their habits are known, law enforcement authorities may begin to assess current trends in crime to forecast, and to hamper the development of perceived future criminal activities.

Criminal intelligence is therefore an essential tool for the effective detection and investigation of crimes especially in corruption hotspots.

Most, if not all, detection and investigation authorities in Greece engage in some kind of criminal intelligence. This includes SDOE, the Financial Police, the Internal Affairs Directorate of the Hellenic Police, the FIU etc. However, due to the lack of an overarching criminal intelligence policy and of a Central Intelligence Hub the capacity of Greek authorities to combine this knowledge and evaluate them through common principles, rules and methods in order to produce high quality intelligence seems to be less advanced and at the lower end of the OECD spectrum.

1. Getting familiar with criminal intelligence

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<th>Basic concepts</th>
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<td><strong>Information</strong> is the raw knowledge and data collected during the detection and investigation process.</td>
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<tr>
<td><strong>Intelligence</strong> is the analysed information that is capable of being understood, used and acted upon in a meaningful way.</td>
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The intelligence cycle

**Direction**: Targeted and systematic search and provision of information with set objectives, in a specific context of needs and requirements.

**Collection**: Gathering of data and information.

**Evaluation**: Assessment of the reliability of the source and the validity of its content.

**Collation**: Organisation of the information so that they can be easily accessed and evaluated.

**Analysis**: Careful examination of information to discover its meaning and essential elements.

**Dissemination**: Timely distribution of the intelligence in the appropriate form and manner to a selected audience.
2. Terms of Use

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24 Source: Hellenic Police Intelligence Division (HPiD)
3. Working more effectively with criminal intelligence

Working more effectively with criminal intelligence requires your agency to follow some basic principles and standards at both the management and operational level.

**Management level**

- **Develop a standard intelligence gathering and data mining work plan for your agency**
  
  Carefully planning and defining all activities of the intelligence cycle is particularly significant to your agency’s work. Consider developing a standardised roadmap that provides the basic guidance on how your agency performs each and every activity of the intelligence cycle. Similarly, the roadmap should be clear about the tasking and coordination responsibilities of the management, but also of the responsibilities of the different operational units.

- **Establish intelligence focal points in your agency**
  
  Due to the multiplicity of authorities involved in intelligence gathering and analysis knowing your intelligence community and having easy access to key people is fundamental. Consider allocating a person or a small group of people as intelligence focal points of your agency and charge them with the responsibility to necessary synergies and collaborations with other focal points and the dissemination of intelligence where necessary and appropriate.

- **Invest in human capital and modern technologies**
  
  The deployment of highly qualified personnel and modern technologies can function as a catalyst for bringing the intelligence work together. Consider providing guidelines, codes of practice and regular training to your staff and equip your agency with modern system products such as secure storage and registration facilities, advanced analytical tools, case management systems, access to specialised databases etc.

**Operational level**

- **Keep systematically data and records of your work**
  
  Consider producing comprehensive reports following the conclusion of each case and codifying or storing the produced intelligence. This would enable your agency to use the gathered intelligence for future detection and investigation activities and will help you and other authorities to identify criminality patterns or produce statistical and predicative models.

- **Think of the bigger picture and discover patterns of organised criminality**
  
  Corruption crime is complex sometimes demands you to think in terms of organised crime. Remember that an allegation about corruption in a hotspot (e.g. ports, customs, hospitals etc.) is often linked into series of allegations that your agency or other agency have already dealt with.

- **Upgrade your intelligence analysis work**
  
  Consider employing the best and most current technological tools and techniques available at your agency when conducting intelligence analysis. Likewise, consider participating in all available seminars and training to stay up-to-date with the latest developments in intelligence gathering and analysis.
4. The Hellenic Police Intelligence Division (HPiD)

The Hellenic Police Intelligence Division (HPiD) is the Central Intelligence Hub of the Hellenic Police, focusing on combating all forms of crime with a main focus on Serious and Organised Crime and Terrorism.

The HPiD provides support to all Law Enforcement, Prosecutorial and Judicial authorities in the analysis of information and data collected during preliminary investigations and similar judicial procedures. It equally conducts independent operational-intelligence activities and disseminates regular information products such as newsletters, bulletins, status reports and threat assessments on Serious and Organised Crime. It has developed a network of focal points of all the Greek authorities as well as bilateral collaboration agreements of confidential character that concerns Serious and Organised Crime and Terrorism and which can take place either in person or in a digital environment.

Moreover, the HPiD is implementing a series of trainings and seminars, including e-learning, in the area of criminal intelligence. These training and seminars are available to all law enforcement authorities and can be tailored to the needs of the requesting agency.

Finally, the HPiD has the authority to respond to requests for intelligence from foreign national authorities and international organisations via specially provided channels of communication, and to contribute to in translational criminal cases.

Law enforcement, prosecutorial and judicial authorities are strongly encouraged to make use of these tools and participate in the trainings by contacting the HPiD at:

**Hellenic Police Intelligence Division**  
Address: 173, Alexandra’s Avenue, 115 22, Athens  
Tel: (+30) 2106476968  
Fax: (+30) 2106433696  
E-mail: ioc.didap@hellenicpolice.gr  
Website: www.hellenicpolice.gr

- For support in the analysis of information and data please contact:  
  [Αστυνόμο Α’ κ. ΜΠΡΑΪΜΗ Κυριάκο]

- For information products please contact:  
  [Αστυνόμο Α’ κ. ΠΑΡΘΕΝΗ Χρήστο]

- For trainings and seminars please contact:  
  [Αστυνόμο Α’ κ. ΣΤΑΥΡΟΠΟΥΛΟ Δημήτριο]
4. Use of special investigative techniques (SITs) in corruption investigations

This section of the technical proposal concerns the use of special investigative techniques (“SITs”) in corruption investigations. In particular, the proposal recommends that: (1) controlled deliveries be made available in corruption investigations; (2) a requisite Ministerial decision be issued so that covert investigations become available operationally; (3) the crimes of corruption listed in Article 253B CPP should be included in the list of crimes that fall under Article 187 PC (criminal organization) (provided of course that the respective requirements of Article 187 PC are satisfied); (4) it be clarified whether the special tool of “tracking devices on vehicles” is included in the scope of Articles 253A CPP and 253B CPP (if not then a relevant amendment should be made); and, (5) Greece take the necessary steps so that the foreseen special investigative techniques are used in corruption investigations and cases, including those involving foreign bribery.

SITs and International Conventions

Many international anti-corruption conventions and legal instruments define SITs and require them to be available for use in corruption investigations.

UN Conventions

According to Article 50 of the UN Convention against Corruption (“UNCAC”), in order to effectively combat corruption each state party should enable its authorities to use the following SITs: (i) controlled deliveries; (ii) electronic or other forms of surveillance; and, (iii) undercover operations. Additionally, parties to UNCAC should provide for the admissibility in court of evidence derived pursuant to the abovementioned techniques. Greece ratified UNCAC through Law 3666/2008.

Further, Article 20 of the UN Convention on Transnational Organized Crime (“UNTOC”) foresees SITs, including electronic or other forms of surveillance and undercover operations (including controlled delivery), for the purpose of effectively combating organized crime. Greece ratified UNTOC through Law 3875/2010.

Council of Europe

The Council of Europe has also addressed the issue of SITs. According to a European Council Recommendation, the term “special investigation techniques” means techniques applied by the competent authorities in the context of criminal investigations for the purpose of detecting and investigating serious crimes and suspects, aiming at gathering information in such a way as not to alert the target persons.

In 2013, the Council of Europe hosted a conference on SITs, in co-operation with the UN Security Council Counter-Terrorism Committee Executive Directorate (“CTED”), the Organization for Security and Co-operation in Europe (“OSCE”), and the League of Arab States. According to the findings of Session I of the Conference, SITs constitute, on the basis of various international and regional instruments, at least the following:

- Controlled deliveries;
- Electronic surveillance (wire-tapping, clandestine filming etc.);
- Infiltration of an undercover operative;

27 Committee of Ministers Recommendation Rec(2005)10 of the Committee of Ministers to member states on “special investigation techniques” in relation to serious crimes including acts of terrorism (Adopted by the Committee of Ministers on 20 April 2005 at the 924th meeting of the Ministers’ Deputies).
Online searches;
Clandestine analysis of computer hard drives;
Tracking devices on vehicles; and,
There is also the comment that the list is growing with the rapid evolution of technology.

The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Council of Europe) provides for cross-border observations (Article 17), controlled deliveries (Article 18), covert investigations (article 19), and joint investigation teams (Article 20). Greece has signed (on 8 November 2011) but has not ratified the Second Additional Protocol.

**European Commission**

A study was conducted for the European Commission and entitled, “Study on paving the way for future policy initiatives in the field of fight against organised crime: the effectiveness of specific criminal law measures targeting organised crime,” ([Final report, February 2015](#)). Part 3 of the Study, which addressed legal and investigative tools) identified the following as SITs:

- Surveillance;
- Interception of communication;
- Covert investigations;
- Controlled deliveries;
- Informants;
- Joint investigation teams;
- Hot pursuit;
- Witness protection.

As stated in the report, these investigative tools included as over the years they have been established as key to cross-border investigations. The Study also concluded that usually a combination of two or more techniques is employed in order to ensure a positive result. A multi-pronged approach is often the most efficient choice in the evidence-gathering process:

### 7.5. Key findings on the use of tools in combination

Responses in the questionnaires indicate that special investigative tools are rarely used on their own. Usually a combination of two or more is employed in order to ensure a positive result. Organised criminal groups, in particular, have a sophisticated organisation, structure and means of communication. Therefore, a multi-pronged approach is often the most efficient choice in the evidence-gathering process. Judicial discretion and authorisation standards and procedures appear also to play a role in law enforcement agencies opting to employ a package of special investigative techniques. This is the case since no application for authorisation of a special investigative technique is guaranteed to be approved. Hence, investigators at times may choose to apply for several special investigative tools as an insurance strategy. Finally, where the health and livelihood of law enforcement officers may be at risk, investigative tools that minimise those risks are applied. This results in the high prevalence of interception and surveillance in combination with informants, covert investigations and controlled delivery.\(^{28}\)

Additional EU legal instruments that deal with the use of SITs is in the Annex III.

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\(^{28}\) See [Part 3, Section 7.5](#).
Streamlining the framework of SITs in Greece

Availability of Controlled Deliveries in Corruption Investigations in Greece

A controlled delivery is “the technique of allowing illicit or suspect consignments […] with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence” (UNCAC Article 2(i)).

Controlled deliveries are available for investigating offences committed by criminal organisations but not for corruption offences. Under Article 253A CPP,29 crimes committed by criminal or terrorist organizations can be investigated using techniques such as controlled deliveries, undercover operations, lifting of secrecy, recording of the activity or other facts outside a residence by audio and video equipment or by other special technical means, and correlation or combination of personal data. The same techniques, excluding however controlled deliveries, were made available for corruption offences30 by Article 253B CPP.31

Excluding controlled deliveries from corruption investigations is not in line with all Conventions, guidelines, studies, etc. described above. It also deprives the competent Hellenic authorities for investigating and prosecuting crimes of corruption of a powerful investigative tool.

International experience shows that controlled deliveries, when applied with appropriate safeguards, can be an effective investigative technique that does not jeopardise an individual’s constitutional rights. In United States v. Grubbs, 547 U.S. 90 (2006), the U.S. Supreme Court upheld the defendant’s conviction based on a controlled delivery of contraband, finding that an “anticipatory search warrant” was constitutional under the Fourth Amendment of the U.S. Constitution.32 The European Court of Human Rights (“ECHR”) has also decided that controlled deliveries do not jeopardise an individual’s right to a fair trial.33

Recommendation

The special investigative technique of “controlled deliveries” should be included in Article 253B CPP.

Issuing a Joint Ministerial Decision to Make SITs Operational

The Joint Ministerial Decision foreseen by Article 253B should be issued as soon as possible. As foreseen in Article 253B CPP, the details and the procedure regarding the “covert investigations” are defined by a Joint Ministerial Decision; however, such a Joint Ministerial Decision has not been issued yet. In response to a questionnaire, a 4022/2011 Investigative Judge in Athens stated that SITs are not used often in corruption cases, especially in the main judicial investigation phase. One reason is because the Joint Ministerial Decision has not yet been issued.34

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29 See ANNEX IV
30 Corruption offences in this context include Articles 159 and 159A PC (active and passive bribery of public officials), Articles 235 and 236 PC (active and passive bribery of civil servants), Article 237 PC (active and passive bribery of a judge), and Article 237A PC (trading in influence).
31 See ANNEX IV
33 Sequeira vs Portugal (dec) no. 73557/01, ECHR 2003 – VI; Bannikova vs Russia, no.18757/06, ECHR 2011 - II.
34 Athens Investigative Judge reply to the questionnaire.
It should not be difficult to issue the Ministerial Decision. A similar Joint Ministerial Decision was issued under Article 28 of Law 4139/2013 (i.e., the anti-drug Law), regarding the “acts of control officers” (covert investigations) in drug cases.

**Recommendation**

The Joint Ministerial Decision foreseen in Article 253B CPP regarding covert investigations should be issued as soon as possible. The Joint Ministerial Decision issued according to Article 28 of Law 4139/2013, i.e. the anti-drug Law, regarding the covert investigations (or “acts of control officers”) in drug cases, could serve as a valuable example/guide.

**Investigations of corruption offences committed by criminal organizations**

In this section it is recommended that special investigative techniques be made available to investigate corruption offences committed by criminal organizations. Article 253B CPP allows SITs to be used to investigate corruption offences, except when the offence is committed by a criminal or terrorist organisation:

*Article 253B. Investigative acts on crimes of corruption.*

*Especially for the punishable acts of Articles 159, 159A, 235, 236, 237 and 237A 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]*

Article 253A CPP allows SITs to be used to investigate cases where criminal organisations commit certain specified offences. The enumerated offences, however, do not include corruption crimes, i.e. the offences in Articles 159, 159A, 235, 236, 237 and 237A of the Criminal Code.

These provisions deprive the competent Hellenic authorities for investigating and prosecuting crimes of corruption of important investigative tools. The provisions also do not comply with UNTOC (Articles 5, 2, 3, 8, 9 and 20) which requires SITs to be available to investigate cases of corruption committed by criminal organisations. As stated above, Greece ratified UNTOC through Law 3875/2010.

**Recommendation**

The crimes of corruption listed in Article 253B CPP (i.e. Articles 159, 159A, 235, 236, 237 and 237A PC – whenever they are felonies) should be included in the list of crimes that fall under Article 187 PC (provided of course that the respective requirements of Article 187 PC are satisfied).

**Tracking devices on vehicles**

Tracking devices on vehicles has been recognised internationally as a powerful special investigative technique. It is not clear whether tracking devices on vehicles are available in Greece. Article 253B only permits “recording of activity outside a residence”. Similarly, Article 253A only provides for the “recording of the activity or other facts outside a residence by audio and video

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35 The Joint Ministerial Decision was published in Government gazette “FEK” No. 2928/B/31-12-2015.

36 See findings of Session I of the Conference hosted by the Council of Europe on 14 and 15 May 2013 in Strasbourg, in co-operation with the UN Security Council Counter-Terrorism Committee Executive Directorate (CTED), the Organization for Security and Co-operation in Europe (OSCE), and the League of Arab States.
equipment or by other special technical means”. The language used in Articles 253A and 253B CPP looks ambiguous regarding the possibility to use the special investigative technique of tracking devices on vehicles, which could well be the case. In the workshops different opinions were expressed on this matter. However, since no evidence supporting this possibility has been provided, this is a matter that could be further clarified.

**Recommendation**

Given that the language used in Articles 253A and 253B CPP looks ambiguous regarding the possibility to use the special investigative technique of tracking devices on vehicles, which could well be the case, and that no evidence supporting this possibility has been provided, this is a matter that could be further clarified, and if necessary the respective provisions to be modified accordingly.

**Use of special investigative techniques in corruption investigations/cases in practice**

International experience shows that SITs have been used effectively in actual corruption investigations. For example, 73% of initiated cases in Latvia is based on evidence obtained through special investigative techniques. Australia has successfully used telecommunications interception in foreign bribery investigations.

**Recommendation**

Greece should take the necessary steps so that the foreseen special investigative techniques are used in corruption investigations/cases, including in foreign bribery investigations/cases. Relevant measures could include: (i) to issue, as a matter of urgency, the Joint Ministerial Decision foreseen in Article 253B CPP regarding covert investigations (as already stated), (ii) awareness raising initiatives, (iii) relevant training offered to prosecutors, judges, and law enforcement officers, and (iv) workshop presentations and case studies from foreign jurisdictions on the usefulness/added value of SITs in corruption investigations/cases.

*Please refer to Annex I, II, III and IV for sources of law mentioned in this Section.

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37 Workshops in Thessaloniki and Athens
38 UNCAC - Country Review Report of Latvia
39 OECD (October 2012) Australia Phase 3 Report
Reference Materials on Special Investigative Techniques (“SITs”)

The Council of Europe has addressed the issue of the Special Investigative Techniques - SITs. According to a European Council Recommendation, the term “special investigation techniques” means techniques applied by the competent authorities in the context of criminal investigations for the purpose of detecting and investigating serious crimes and suspects, aiming at gathering information in such a way as not to alert the target persons.

European Commission

A study was conducted for the European Commission and entitled, “Study on paving the way for future policy initiatives in the field of fight against organised crime: the effectiveness of specific criminal law measures targeting organised crime,” (Final report, February 2015). In particular, Part 3 of the Study, which addressed legal and investigative tools, identified the following as SITs:

- Surveillance;
- Interception of communication;
- Covert investigations;
- Controlled deliveries;
- Informants;
- Joint investigation teams;
- Hot pursuit;
- Witness protection.

As it is stated in the report, these specific investigative tools were selected for inclusion as over the years they have been established as key to cross-border investigations.

Regarding the use of investigative techniques in combinations, the Study concluded that, usually a combination of two or more techniques is employed in order to ensure a positive result. Additionally, the Study highlighted that a multi-pronged approach is often the most efficient choice in the evidence-gathering process.

Additional EU legal instruments that deal with the use of SITs is in Annex III.

UN Conventions

According to Article 50 of the UN Convention against Corruption (“UNCAC”), in order to effectively combat corruption, each state party should enable its authorities to use the following special investigative techniques (“SITs”): (i) controlled deliveries; (ii) electronic or other forms of surveillance; and, (iii) undercover operations. Additionally, parties to UNCAC should provide for the admissibility in court of evidence derived pursuant to the abovementioned techniques. Greece ratified UNCAC through Law 3666/2008.

Further, Article 20 the UN Convention on Transnational Organized Crime (“UNTOC”) foresees SITs, including electronic or other forms of surveillance and undercover operations (including controlled delivery), for the purpose of effectively combating organized crime. Greece ratified UNTOC through Law 3875/2010.

40 Committee of Ministers Recommendation Rec(2005)10 of the Committee of Ministers to member states on “special investigation techniques” in relation to serious crimes including acts of terrorism (Adopted by the Committee of Ministers on 20 April 2005 at the 924th meeting of the Ministers’ Deputies)
International experience – efficiency of SITs

International experience shows that SITs have been used effectively in actual corruption investigations. For example, 73% of initiated cases in Latvia is based on evidence obtained through special investigative techniques.41 Australia has successfully used telecommunications interception in foreign bribery investigations.42

Bulgaria confirmed that the following measures may be employed in investigating corruption cases: the electronic recording of conversations ("bugging") in private or public premises, wire-tapping of telephones and interception of other communications (i.e. mail, fax, e-mail), video-surveillance, observation, controlled delivery, anonymous informants and searches.43

International experience – controlled deliveries and constitutional rights

A controlled delivery is “the technique of allowing illicit or suspect consignments […] with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence” (UNCAC Article 2(i)).

It is important to state that International experience shows that controlled deliveries, when applied with appropriate safeguards, can be an effective investigative technique that does not jeopardise an individual’s constitutional rights.

In United States v. Grubbs, 547 U.S. 90 (2006), the U.S. Supreme Court upheld the defendant's conviction based on a controlled delivery of contraband, finding that an “anticipatory search warrant” as constitutional under the Fourth Amendment of the U.S. Constitution.44

The European Court of Human Rights (ECHR) has also decided that controlled deliveries do not jeopardise an individual’s right to a fair trial.45

Hellenic legislation

According to Articles 253A46 and 253B47 CPP, the competent authorities may make use of special investigative techniques (or special investigative acts), for the investigation of relevant cases/crimes. For crimes falling under Articles 187 and 187A PC (i.e., criminal or terrorist organization), special investigative techniques such as:

- undercover operations,
- controlled deliveries,
- lifting of secrecy,
- recording of the activity or other facts outside a residence by audio and video equipment or by other special technical means, and
- correlation or combination of personal data,

may be employed, according to Article 253A CPP.

The same techniques, excluding however controlled deliveries, were made available by subparagraph IE.16 of the first article of Law 4254/2014, by which article 253B CPC was

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41 UNCAC - Country Review Report of Latvia
42 OECD (October 2012) Australia Phase 3 Report
43 UNCAC - Country Review Report of Bulgaria
44 UNCAC - Country Review Report of the United States of America
45 Sequeira vs Portugal (dec) no. 73557/01, ECHR 2003 – VI; Bannikova vs Russia, no.18757/06, ECHR 2011 - II.
46 See ANNEX IV
47 See ANNEX IV
introduced, also for crimes of corruption falling under Articles 159 and 159A PC (active and passive bribery of public officials), Articles 235 and 236 PC (active and passive bribery of civil servants), Article 237 PC Code (active and passive bribery of a judge), and Article 237A PC (trading in influence).

It is noted that the Joint Ministerial Decision foreseen by article 253B CPP, regarding the details and the procedure for “covert investigations” has not been issued yet; hence, the special investigative technique of “covert investigations” cannot be used in practice till the foreseen Joint Ministerial Decision is issued.

Use of special investigative techniques in corruption investigations/cases

The special investigative techniques constitute useful and very powerful investigation tools that can render corruption investigations more efficient.

In practice, the competent Hellenic authorities do not use SITs for corruption cases/investigations, despite their availability. The combination of Article 253B CPP and Article 263A PC, gives the possibility to use the foreseen special investigative techniques also in foreign bribery investigations/cases (with the exception of “covert investigations” till the foreseen Joint Ministerial Decision is issued). However, it seems that the foreseen special investigative techniques are not exploited in this respect either.

It is to the interest of the competent Hellenic authorities to use the available special investigative techniques in corruption investigations/cases, including in foreign bribery investigations/cases.
5. Pooling of Experts

Introduction

The robust enforcement of anti-corruption law in Greece (whether high profile or lower-level investigations) necessarily depends on technical expertise. Without readily available experts, corruption investigations will continue to experience significant delays and the work of the authorities will continue to be seriously hampered.

Greek legislation provides for the provision of experts to prosecutors and judges. Currently, the use of and access to experts is provided for by: (i) provisions in the CPP which apply to the use of experts generally; and, (ii) procedures available to prosecutors and judges responsible for corruption crimes of Law 4022/2011.

With regard to the provisions of the CPP, Articles 183 to 185 CPP provide that the Prosecutor of the Court of Appeal may, upon request, appoint an expert from a list of experts available in each jurisdiction. Specifically, Article 185 CPP provides for the establishment and maintenance of a “table” or list of experts and stipulates a preference for civil servants to be appointed as experts for investigations. Such a list of experts is organised and administered by each Court of First Instance. Article 186 CPP provides that if no expert possesses the expertise required by the requesting investigative entity, an expert that is not on the list may be appointed. Lastly, Article 189 CPP places an obligation on the expert to accept an appointment as expert (if he or she is a civil servant or is an expert who lawfully exercises a science, an art, or a profession which is deemed necessary for the purposes of the expertise) and states that experts should receive compensation for their services and any expenses incurred.

With regard to corruption offences, Article 2 § 3 of Law 4022/2011 provides that investigative judges for crimes of corruption are to receive support from experts when carrying out their work. Such experts are to be appointed from a list issued annually by each Court of First Instance (in accordance with Article 185 CPP mentioned above). Additionally, the amendment of Law 4022/2011 by Law 4205/2013 (which established the PPACC) provides for the PPACC and his or her deputy prosecutors to receive technical expertise and assistance. More specifically, Article 8 § 1 of Law 4205/2013 added para. 3A in Law 4022/2011 and established an autonomous “Office of Specialised Experts” under the direction of the PPACC.

Investigative judges of Law 4022/2011 have stated that the current level of support is grossly insufficient. It is not uncommon for their work to be supported by experts who offer their assistance on a voluntary basis and in the interest of furthering justice. However, due to such experts’ ad hoc and independent involvement, judges are unable to fully rely on such generosity. Other Greek judges have stated that the list of experts provided for the CPP only works when expertise does not involve complex or drawn out expertise, such as requiring handwriting or calligraphy expert or questions relating to medical expertise. When questions are of a complex nature, judges often turn to experts that are not on the Court of First Instance list, such as university academics.

The Office of Specialised Experts attached to the PPACC has a staff of experts in financial analysis. However, the Office does not have access to experts who specialise in other sectors such as engineering, forensic accounting, banking and loans, financial payment systems such as PayPal and Bitcoin, among others. Such experts are often only seconded to PPACC and many return to their home agencies before their appointment ends, leading to stagnant caseloads and incontinuity generally. Additionally, under Law 4205/2013, the PPACC’s Office of Specialised Experts is

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48 Investigative judges of Law 4022/2011 in Athens have repeatedly stated that there is a need for access to a body of experts that is exclusively dedicated to the needs of their office, as the list of experts contains many professionals who are simply not available to provide the expertise required by the judges.

49 According to a representative from the Athens PPACC, under Law 4205/2013 there is no separate fund to cover the salaries of experts, which is why the office of the PPACC often has to secure experts from other government entities who are not accustomed to the type of work and do not have an incentive to learn due to the short amount of time they spend with the office before returning to their home agencies.
allotted 45 expert positions. However, at any given time, the Office contains only between 4 to 10 experts. This has been cited as a serious issue by the PPACC offices in both Athens and Thessaloniki. According to prosecutors in the PPACC office, the lack of available experts creates an unfortunate boomerang effect - prosecutors receive cases that have not been properly investigated and in order to move those cases forward they need sufficient expertise and resources, which they also do not have. This cycle replays itself, leading to forced inaction.

Lastly, prosecutors of the courts of first instance, who prosecute lower-level corruption crimes, are to use provisions of the CPP when seeking expert. During the consultation meetings, said prosecutors noted that they do not have any access whatsoever to technical experts (engineering, banking, forensic accounting, etc.), which often results in immense delays and a general inability to move forward with their cases. Often, certain ministries or sub-agencies may have expertise in general matters but not in the areas relevant to the investigation. These findings confirmed those mentioned in the OECD WGB Phase 3bis Report, which noted that with regard to resources and expertise, key institutions in tackling corruption in Greece are facing the same resource pressure as felt by the whole of the country’s public administration.50

Proposals to Optimise the Use of Experts

Streamlining Existing Frameworks

This sub-section addresses two specific areas: (i) the need to ensure the proper functioning and resources of the Office of Specialised Experts for the purposes of furthering the PPACC’s work; and, (ii) ensuring that other prosecutorial and judicial authorities involved in corruption investigations (including investigative judges of Law 4022/2011) have access to experts through an organised and efficient system that meets their needs.

Office of Specialised Experts within PPACC

It is evident that the Office of Specialised Experts is understaffed. It is imperative that the Office be adequately staffed in order to meet the needs of the PPACC’s caseload and to ensure that consistent and robust assistance is available when required. Several law enforcement authorities in Greece have expert bodies exclusively dedicated to furthering their work, including the Office of the Economic Crime Prosecutor.51 Most of the experts in the Office of Specialised Experts are seconded to PPACC from other government ministries and agencies – many of whom are only assigned to the PPACC for a limited period of time or are expected to carry out duties relating to both their seconding entity and PPACC at the same time. This is clearly problematic. Such a practice results in an inconsistent and partial dedication of resources that cannot be depended upon for longer periods of time, thereby impeding the institutionalisation of expertise and steady progress in cases.

Therefore, if an expert is a civil servant who is seconded to the PPACC from another government agency, said expert must be relieved of his or her ongoing commitments to his or her home agency while serving in the Office of Specialised Experts. Doing will minimise the likelihood that the expert will be distracted by parallel responsibilities and as a result, increases the quality of expertise provided and the familiarity of the expert with PPACC procedures. Experts should also serve at least 18 months.

Additionally, in order to create a solid and working pool of experts in the field of anti-corruption, it is important to solidify their identity as such and publicly recognise and evaluate their contributions and technical skills. As such the service of an expert at the Office of Specialised Experts within PPACC should be included in the personal service folder of the expert, count as a specialised service and receive the appropriate amount of service points. As with the performance and evaluation reviews mentioned above, this would raise awareness of anti-corruption enforcement in the country and create a positive image of the fight against corruption, not to mention create additional incentives.

50 OECD WGB Phase 3bis Report – Greece, para. 87.
51 See Article 63 of Law 4472/2017.
Additionally, creating such recognition would further advance the professional objectives of the experts, incentivize active involvement of experts, and have ancillary benefits such as restoring trust in the Government and its commitment to eradicating corruption.

**Recommendations for PPACC Office of Specialised Experts**

- Ensure the proper and full staffing of the Office of Specialised Experts within the PPACC (as it is essential to the PPACC’s ability to carry it out its mandate and root out corruption in Greece). The Office should be staffed with experts who are fully qualified and are able to operate unencumbered by external duties and commitments. Experts who are seconded from their home agencies must be relieved of any remaining or ongoing duties related to their work for the home agencies in order to be able to dedicate their time and skillset to the cases under the jurisdiction of the PPACC.

- The organisation (including recruitment, assignment, etc.) of experts within the Office of Specialised Experts should be managed by a Deputy PPACC with the assistance of legal secretaries and should report on the status of experts and the need for different types of expertise. This will ensure uniformity relating to the administration and supervision of experts. Expertise should also be comprehensive and meet the needs of the office.

- All experts should be provided with practical guidance on how to draft expert reports, including information on how to explain and present information specifically for use by prosecutors and judges.

- Stipulate that the service of an expert at the Office of Specialised Experts within PPACC be included in the personal service folder of the expert, count as a specialised service and receive the appropriate amount of service points.

**Consolidated Experts Database (non-PPACC related cases)**

Currently, pursuant to relevant provisions of the CPP and in accordance with practice, each Court of First Instance maintains a list of experts. However, practitioners have stated that the system is deficient in that experts currently on the list are either unavailable, do not have the required level of expertise, or are able to help but are not entirely reliable. Such a vacuum presents serious challenges for law enforcement efforts in Greece and must be revisited and streamlined.

In order to remedy the lack of organisation and to increase the quality and consistency of experts in Greece, a comprehensive and central expert database should be created. The existing list of experts should be consolidated into a comprehensive database independent from the operation of the Office of Specialised Experts attached to the office of the PPACC. The list should include experts (including both civil servants and external experts) with significant technical or academic experience. Such technical expertise should not only include financial and economic expertise (e.g. illicit financial flows, money laundering, or overpricing in public contracts), but also essential areas such as forensic accounting, digital evidence and metadata, computer forensics and sector-specific expertise (engineering, shipping, banking, etc.).

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52 APEC 2014, *Handbook (First Part) - Best Practices in Investigating and Prosecuting Corruption Using Financial Flow Tracking Techniques and Financial Intelligence*, p. 8. In particular, assistance of forensic accountants should always be available during an investigation, as opinion derived from a forensic test may help to obtain additional information or may provide closure to other areas of the inquiry, assist in tracing transactions back to the money or assets, provide full analytical review of money flows, identify unexplained transactions, match employees lifestyle with predicted income, or establish links between related parties.
Such a database should be administered and updated by a central organising committee on experts. The committee should ensure efficient organisation and availability of high-quality experts from the public and private sectors.

The central organising committee for experts should possess the following characteristics:

- Ability to receive requests from all prosecutors investigating corruption allegations and the power to appointment experts pursuant to Articles 185 and 186 CPP;

- Allow for simple requests to be granted immediately, by enabling *ad hoc* or readily available expertise when the requesting prosecutor or judge only requires expert advice on one or two technical issues (instead of long and drawn-out reports);

- Gauge and meet demand by ensuring that prosecutors and judges requiring long-term or more complex technical expertise are assigned experts that have such availability and where relevant, facilitating the official secondment of an available public official from his/her original agency to the requesting judge or prosecutor;

- Regularly update and maintain the database of civil servant experts and external experts;

- Include members of different stakeholders (such as the Ministry of Finance and its subdivisions, the Hellenic FIU, and other administrative authorities) who agree to dedicate a certain portion or percentage of their scheduled work week exclusively to tasks such as updating and maintaining the database, or are seconded specifically for this purpose.

### Implementing New Mechanisms

#### Institutionalisation of knowledge and good practices

Along with investigative judges of law 4022/2011 and the PPACC, the central organising committee for should undertake efforts to institutionalize knowledge gained from the use of experts and their work-product. Organising expert reports and expertise provided in previous investigations in a central and easily-accessible database would allow investigative judges and prosecutors to improve their own level of education and knowledge.

Perhaps more importantly, as much effort possible must be made in order to develop and maintain a best practices document that compiles the specific types of techniques and activities used by individuals and entities engaging in corruption or bribery. Circulating such a resource or at least informing authorities of its existence could significantly enhance institutional knowledge of corrupt practices and highly technical information that prosecutors and judges could apply or use in their investigations instead of having to refer to or wait on experts. Such an effort would raise awareness of anti-corruption enforcement and expertise and make efficient use of existing resources and past efforts.

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53 The committee should put procedures in place to manage requests and prioritize cases according to urgency, complexity and the type of expertise required.

54 The centralized system should be organised according to sector-specific expertise and experience (including qualifications and certifications), general availability, and work of experts on prior cases. The work that the experts have produced on prior cases, whether in document or oral form (when discussing issues with judges or prosecutors over the phone or email) should be kept in each expert’s file. The experts should bear the responsibility of providing said files or reports to the relevant contact points in charge of administering the work of the central committee for the organisation of experts. To ensure adequate follow-up and to avoid lost cases, all requests sent by judges or prosecutors to an expert should also include the committee individual in charge of the specific sector under which the expert falls.
Greek Anti-Corruption Expert Certification Body

The central organising committee should explore the conditions for creating a national certification agency or body with respect to experts. In addition to certifying the expertise of different types relevant to anti-corruption enforcement, the body should supervise the practice of experts in judicial proceedings and investigations and seek to unify professionals generally. In addition to serving as a central registry system for experts, the body’s activities should also establish the manner in which experts are allocated and used, quality standards that experts must meet, certification and accreditation of experts (according to specialisation), and serve as a forum for experts and professionals alike.

Specific Measures to Ensure Functionality and Quality Control

Use of Civil Servants as Experts

Resorting to the expertise of employees working for specialised government entities is common practice in Greece. However, such requests for expertise from specialised bodies such as SDOE, Financial Police, FIU, and others, consistently result in obstacles or delays that frustrate investigations and stall prosecutions. This is often attributable to a lack of organisation or prioritization of the request by the requested agency, an absence of follow-up regarding the requested expertise or simply due to the agency’s own resource constraints.

To maximise the efficiency and administration of such expertise, each agency and authority with specialised expertise should implement a plan to coordinate relevant experts in an effective manner that allows for requests to be executed speedily and thoroughly. In order to ensure quality and availability of experts, each agency should consider dedicating a number of its experts for the exclusive purpose of providing expertise to requesting prosecutorial and judicial authorities, for periods of up to six months. Knowledge acquired during the use of exclusive experts should be organised by said experts during the period of their service and reported to the central organising committee. As such, the central organising committee should also consider issuing guidelines and best practices with regard to agency management of experts and endeavour to supplement its own institutional knowledge mechanism.

Performance Evaluation/Review

Ensuring quality control is a fundamental component of using experts for judicial proceedings and investigations. As such, reviewing the quality of the work provided by experts as well as their ability to respond to requests for assistance, should be considered when deciding whether to call upon experts or to keep experts on the list of available specialists.

Measures for ensuring quality control should be implemented and revised, and should include, among other things: (i) whether the expert displayed sufficient qualitative knowledge of his or her technical area; (ii) the level of satisfaction of the requesting authority with the technical expertise provided and its usefulness in furthering the investigation (the ability of experts to understand the instructions given to him or her and liaise with the requesting party); (iii) ability of expert to effectively and clearly communicate his or her findings in a final report that can be used by the requesting authority to further the investigation and or prosecution; (iv) professionalism and ethical values; and, (v) any issues relating to logistics (i.e., whether the expert is reliable and whether he or she provides the requested assistance in a steadfast and efficient manner).

Collaborative Initiatives - Regular Expert Forums and Seminars

It is important for the body of experts in anti-corruption matters to gather for the purpose of exchanging ideas, techniques, best practices, and emerging trends relating to their specialisations. Attendees benefit from sharing their ideas and latest research, with a focus on practical aspects of the profession. In addition, the opportunity to network and share one’s own professional developments
and achievements could very well be an important factor in advancing the fight against corruption in Greece and ensure active participation of experts in prosecutorial efforts.
6. Expanding access to databases

Introduction

The analysis of questionnaires and the discussions at the consultation meetings in February 2017 revealed the need of judicial/prosecutorial, and law enforcement authorities for access to various databases. Such access would be beneficial to the work of the said authorities when investigating/prosecuting corruption cases. More information on the needs for access to databases is provided in the following sections.

Financial Police Division – needs/requests for expanding access to databases

The Financial Police Division of the Hellenic Police (“FPD”) stated in the questionnaire (q. 2.1), and at the consultation meeting in Athens, regarding problems with access to databases - needs/requests for expanding access to databases:

Access to the databases of the Ministry of Finance

The ELENXIS database of the Ministry of Finance contains a wide range of data, e.g. income & VAT statement information, registry details/profiles of taxpayers (addresses, business activities, branches, linked persons, etc.), details of audit orders, progress on audit cases, violations records, real estate items.

This information is important for corruption investigations, as it is vital to have a clear and full picture of the suspects regarding tax, financial and real estate matters/data and transactions.

The FPD stated that it has limited access to the information system ELENXIS. A Presidential Decree published in the Government Gazette FEK No. 2232/B/01-08-2012 states that the FPD can have direct access to ELENXIS in the framework of a preliminary investigation or preparatory examination. A Joint Ministerial Decision under Article 44 § 2b of Law 4249/2014 to give FPD access to the databases of the Ministry of Finance was drafted and sent to the Ministry of Finance in 2015 but remains unsigned. The FPD stated also that this situation creates problems to the investigation of their cases.

ERGANI database and National Land Registry

The FPD stated that it does not have access to the ERGANI database of the Ministry of Labour, Social Security and Welfare. The database contains data on employees and employers in Greece, and is also a tool for gathering relevant statistical data. It was established in March 2013 to combat undeclared and uninsured labour. This information is important for corruption investigations, e.g. if there are allegations that officials of the competent authorities (e.g. of the services of the Ministry of Labour) are involved in undeclared, and uninsured labour (e.g. by aiding the perpetrators due to bribe-taking).

The FPD stated that it also does not have access to the National Land Registry of the Ministry of Environment and Energy. A draft Ministerial Decision giving FPD access to the Registry has been forwarded to the Ministry of Finance but remains unsigned.

Access to the databases used by the Independent Authority for Public Revenue

Currently, Greek judicial, prosecutorial and law enforcement authorities do not have access to important databases maintained by the Independent Authority for Public Revenue (IAPR). In addition to the ELENXIS database (discussed above), IAPR officers have access to several databases that are useful for investigative purposes. The first such database is TAXIS, which allows investigators to access detailed information on taxpayers and their activities as well as tax declarations. Additionally, the E9-ENFIA database of the IAPR allows officers to carry out rapid property-related inquiries (e.g. real
Access to the E9-ENFIA database would be of particular value for authorities investigating corruption in light of the tendency of criminal actors to use real estate as a vehicle to launder proceeds obtained through corruption. Lastly, the IAPR also has access to the ICIS database which contains information on customs-related activity.

**Recommendations**

- The FPD be given access to the ELENXIS database of the Ministry of Finance as requested, the information system “ERGANI” of the Ministry of Labour, Social Security and Welfare, and the “National Land Registry” of the Ministry of Environment and Energy, provided that it will be beneficial for its work when investigating corruption cases.

- Provide Greek judicial, prosecutorial and law enforcement authorities with access to databases maintained by the IAPR (e.g. TAXIS, E9-ENFIA, ICIS) to ensure efficient corruption investigations and prosecutions.

**Registry System of Bank and Payment Accounts**

Article 62 of Law 4170/2013 (amended by Law 4211/2013, and Article 71 of Law 4446/2016) and Article 107 of Law 4387/2016, established a Registry System of Bank and Payment Accounts housed within the General Secretariat of Information Systems of the Ministry of Finance. The Registry enables Greek authorities to access bank and payment accounts and transactions carried out by financial and credit institutions operating within Greece. Greek authorities may thus access the banking data of individuals and legal entities, including those of family members of public servants and officials. The Registry system also serves as the only regular instrument for the competent public authorities to lift bank secrecy on the basis of applicable legislation.

While the registry is used primarily to detect tax evasion and other related criminal activity, it can be useful in corruption cases for quickly identifying specific assets, understanding financial flows, and facilitating seizure and confiscation. The PPACC in Athens highlighted that the Registry system has proven to be useful and efficient because it has significantly reduced the amount of time spent on searching for information relating to bank account activity and beneficiaries. Nonetheless, the Anti-Corruption prosecutor echoed the Economic Crime Prosecutor’s concerns that the Registry does not currently allow for queries for information relating to a single beneficiary over a multi-year period.

The following Greek authorities currently have access to the Registry: (i) the Economic Crime Prosecutor; (ii) the Anti-Corruption Prosecutor (Athens, and Thessaloniki); (iii) all Services of the the General Secretariat for Public Revenue; (iv) all Services of the Special Secretariat of the SDOE; (v) the Financial Police Division, and (vi) the Hellenic FIU

Currently the Internal Affairs Directorate of the Hellenic Police and the Internal Affairs Service of the Ministry of Shipping and Island Policy do not have access to the Registry System of

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55 A new Cadastre system is currently being developed and is expected to be completed in 2020. The Cadastre will be operated by the National Cadastre and Mapping Agency and will contain all data relating to each individual property. See [http://www.ktimatologio.gr/aboutus/Pages/htSwFsW1ELgXtYD8.aspx](http://www.ktimatologio.gr/aboutus/Pages/htSwFsW1ELgXtYD8.aspx) (in Greek).

56 Law 4170/2013 transposed the EU Directive 2011/16 on administrative cooperation in the field of taxation into national legislation.


58 Anti-Corruption Prosecutor Response to Asset Recovery Questionnaire, p. 9, q. 15.

59 The Thessaloniki PPACC still does not have access to the Registry in practice.

60 Police Internal Affairs reply to the criminal enforcement & asset recovery questionnaires, p. 15.
Bank and Payment Accounts. They have stated (questionnaire, consultation meeting) that such access would be useful to their work.

The Investigative Judges of Law 4022/2011 also do not have access to the Registry. The Thessaloniki PPACC similarly cannot access the Registry, even though such access is foreseen by law.

**Proposals to consider**

- The Internal Affairs Directorate of the Hellenic Police and the Internal Affairs Service of the Ministry of Shipping and Island Policy gain access to the Registry System of Bank and Payment Accounts, when there is an order by a prosecutor.

- The Thessaloniki PPACC and the Investigative Judges of Law 4022/2011 be given access to the Registry System of Bank and Payment Accounts.

**Access to the Real Estate Database of the Ministry of Finance of the Ministry of Finance**

The Investigative Judges of Law 4022/2011 noted at the questionnaires that they lack access to the real estate database of the Ministry of Finance.

**Proposal to consider**

The Investigative Judges of Law 4022/2011 gain access to the real estate database of the Ministry of Finance.

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61 Internal Affairs Service of the Ministry of Shipping and Island Policy reply to the asset recovery questionnaire, q.8, p.5.
7. Systematic Provision of Training

Introduction

The analysis of questionnaires and the discussions at the consultation meetings in February 2017 revealed substantial needs for training, on behalf of all stakeholders, in various disciplines/topics. The main topics in which training is needed could be summarized as follows:

- Financial Investigation.
- Basic accounting, financial, economic and banking concepts/transactions (a financial investigation sub-topic).
- Penal Procedure/Penal Procedure Code & Penal Law/Penal Code (PC), with an emphasis on crimes of corruption.
- Special investigative techniques including Articles 253A and 253B CPP.
- Information/intelligence management/analysis.

Apart from providing training in these topics, as part of the OECD-Greece Technical Assistance Project, the OECD can definitely play a role, also in an extension of the project in 2018 and beyond, e.g. organise international training or mentoring events.

More information on each training topic is provided in the following sections.

Financial Investigation

This topic is for prosecutors, investigative judges, and investigators, dealing with corruption cases/investigations. A basic understanding of financial investigations should be gained by all bodies responsible for investigating and prosecuting crimes of corruption. The relevant subtopics for training could include: (i) definition, characteristics, and purposes, of financial investigation (ii) sources for financial investigations, (iii) conducting financial investigations – financial investigation techniques, (iv) money laundering.

The replies to the questionnaires (e.g. of the Thessaloniki Investigative Judge of Law 4022/2011) and the discussions in the consultation meetings (e.g. with the Athens Investigative Judges of Law 4022/2011) revealed the need for training especially in financial investigations.

Further replies to the questionnaires and discussions in the consultation meetings, by/with various stakeholders (e.g. Athens PPACC, First Instance Prosecutors/ Athens-Piraeus, SDOE, Financial Police Division, Internal Affairs Directorate of the Hellenic Police, Internal Affairs Service of the Ministry of Shipping & Island Policy, FIU), confirmed that there is a pressing need for training, and especially for training in financial investigations.

Apart from providing such training as part of the OECD-Greece project, the OECD can definitely play a role, also in an extension of the project in 2018 and beyond. It is noted that the needs for training, including training in financial investigation, are continuous.

In the general topic of financial investigations are included the subtopics of basic accounting, financial, economic and banking concepts/transactions, for Prosecutors, and Investigative Judges who deal with corruption cases/investigations (more details below).

Basic Accounting, Financial, Economic and Banking Concepts/Transactions

This financial investigation sub-topic is for Prosecutors, and Investigative Judges, in order for them to develop a basic understanding of important accounting, financial, economic and banking concepts/transactions.
It will enable them to understand basic relevant concepts when investigating relevant cases, and “read” at a basic level financial statements, accounting books, records, and accounts, various transactions including bank transactions, etc.

The purpose of such courses/trainings is not to make them financial experts; the purpose is that they to develop a basic understanding of the involved concepts and issues, and enable them to give to the financial/economic experts assisting them a better picture of what they exactly need each time.

It is noted that the Athens Investigative Judges of Law 4022/2011 and the Athens PPACC indicated in the consultations meetings that such training would be indeed helpful.

Potential trainers from the following bodies (indicative):

- Bank of Greece
- Hellenic Capital Market Commission
- Hellenic FIU
- SDOE
- Financial Police Division - FPD
- Independent Authority for Public Revenue
- Training Institute of the Body of Chartered Auditors Accountants (IESOEL)

**Criminal Law and Procedure with Emphasis on Corruption Crimes**

This topic is for officers of the competent Law Enforcement Agencies & the Internal Affairs Bodies.

The officers of the above bodies should develop a good knowledge regarding basic concepts of the CPP/penal procedure and the PC/penal law, with an emphasis on crimes of corruption, as this would render their investigations more effective and in line with the requirements of the law.

Not all officers receive the same level of training on the above issues; this training will enable them to “build” more solid cases from a legal point of view, and to avoid mistakes that could hurt their cases, and create problems also to the prosecutors and investigative judges during the prosecution and main judicial investigation phases.

It is noted that SDOE asked for such training not only in the questionnaire, but also at the consultation meeting in Athens. Further, the First Instance Prosecutors in Athens stated that such training would be useful to the Financial Police Division.

Potential trainers:

- Prosecutors
- Judges, including Investigative Judges
- Academics

**Special Investigative Techniques, including Articles 253A and 253B of the Code of Penal Procedure**

According to Articles 253A and 253B CPP the competent authorities may, for an exhaustive list of crimes, make use of special investigative techniques (or special investigative acts), for the investigation of relevant cases/crimes.

According to the questionnaires responses and the consultation meetings, the special investigative techniques foreseen in Article 253B CPP are not used in practice in corruption
investigations/cases. The missing Joint Ministerial Decision (foreseen by Article 253B CPP) refers only to the technique of “covert investigations”, yet the rest techniques are used in practice. This training course, apart from promoting knowledge on the legal and operational/practical issues related to the special investigative techniques, will also serve as a relevant awareness raising tool.

This topic is for Prosecutors, Investigative Judges, and officers of the competent Law Enforcement Agencies, dealing with corruption cases.

Potential trainers:
- Prosecutors
- Judges, including Investigative Judges
- Academics

**Information/Intelligence Management/Analysis**

This topic is for officers of the competent Law Enforcement Agencies, & the Internal Affairs Bodies, and the FIU.

According to the questionnaire responses and the consultation meetings, there is no uniform approach regarding information/intelligence management & analysis. Further, it is not certain that all competent bodies have relevant tools and the required level of knowledge and expertise.

For example, SDOE stated at the consultation meeting in Athens that in spite of the fact that at some point they had purchased some i2 licences, they were never used and they don’t even know the reason for this. The i2 (by IBM) is a specialized analysis software (can be used for all kinds of analyses, but it is very popular especially regarding operational analysis). It is used by many law enforcement authorities internationally, and also by relevant European and International bodies, e.g. EUROPOL.

Two main components are the iBase (the main database, including the designer, a tool by which the templates of cases are created/designed), and the i2 analyst notebook which is a visual intelligence analysis tool than can optimize the value of massive amounts of information, e.g. bank transactions, commercial transactions, telephone calls, relations between individuals, corporate relations (mother company, branches, subsidiaries, groups of companies, etc.), etc.

This training course will help the competent bodies to achieve a higher level of knowledge and expertise, and it will also serve as a relevant awareness raising tool.

Potential trainers from the following bodies (indicative):
- EUROPOL
- Europol National Unit
- Hellenic Police Information Management & Analysis Directorate
- Financial Police Division-FPD
8. Corporate Investigations and Proceedings

The current proposal was drafted before the amendment of Law 3691/2008 Article 51 by Law 4506/2017 in December 2017. The law does not address all the recommendations of the Technical Proposal. Therefore, some recommendations remain still relevant and need to be read under the light of the amended law.

Introduction

Corporate liability in Greece is governed primarily by Article 51 of Law 3691/2008 (anti-money laundering law – AML law). It provides for administrative and not criminal liability for legal persons as under Greek law criminal responsibility is based on the principle of individual culpability, which dictates that only a person may be held responsible for an act that they committed and be criminally punished. The AML Law was amended in 2014 to rationalise and eliminate multiple and unclear legislative provisions that used to apply to liability and fines against legal persons for acts of corruption. The AML Law applies to all types of legal persons, which according to Greek authorities, also includes State-owned and State-controlled enterprises (“SOEs”).

Apart from the above basic legislation, there are a number of provisions in the public procurement laws such as Law 4281/2014 and 4412/2016, providing for the exclusion of legal persons involved in corrupt practices from taking part in procurement procedures. Finally, while the general provisions of the Greek Civil Code (specifically, Article 184) are not exclusively applicable to legal persons, they still allow for civil liability of legal persons by providing for the annulment of contracts that result from corrupt acts.

Despite this legislative framework and the 2014 amendment, enforcement by Greek law enforcement of corporate liability remains very low, and is at times even non-existent especially for foreign bribery. This is not due to a shortage of such cases. On the contrary, recent corruption scandals involving legal persons (Siemens, Novartis, etc.) showcase that Greek law enforcement is not familiar enough with the corporate liability regime. As a result of such unfamiliarity, priority is given to the investigation and proceedings of the natural persons involved in the corrupt activity. The sparse application of corporate liability in Greece raises serious concerns both in terms of practice and awareness of the fact that corporate liability can serve as a highly effectively tool in the fight against corruption.

There are several reasons for ensuring effective law enforcement for legal persons in Greece. The Greek economy is mainly driven by commercial entities meaning that fighting corruption would fall short if only the natural persons would be sanctioned while the legal persons that profited from the corruption offence were exempt from punishment. Furthermore, decision-making processes in corporations can involve multiple layers within an organisation, operating through complex business structures and collective decision-making processes. As such, it can often be more difficult to identify and/or prosecute responsible individual perpetrators and instigators who hide behind the corporate veil than it is to hold the legal entity responsible for the illegal benefits it received. Ensuring that a legal entity can be held liable can therefore have an important deterrent effect, motivating and incentivizing enterprises to make compliance a priority and invest in effective compliance programmes to prevent and detect corruption.

This section focuses on three issues that create obstacles to increased levels of enforcement of anti-corruption laws against legal persons. These issues include: (i) an underdeveloped and infrequently applied legal regime; (ii) a lack of understanding among Greek law enforcement.

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62 Article 51 of Law 3691/2008 was replaced by Article 9 paragraph 2 Article of Law 3875/2010, and was further amended by Law 4174/2013 and Law 4254/2014.
63 OECD WGB Phase 3bis Report – Greece, para. 51.
64 OECD WGB Phase 3bis Report – Greece, para. 50.
authorities regarding the planning and execution of investigations and proceedings of legal persons for corruption offences; and, (iii) a lack of awareness of corporate liability for corruption and cultural norms surrounding this notion.

The Need to Improve Corporate Liability Legal Regime

In order to be applied with more vigour and frequency, relevant legislation in Greece on the liability of legal persons must provide a clear and comprehensive framework of action.

Definition of legal persons

Currently, Article 51 of the AML Law does not specifically define the notion of a legal person. While the AML Law does indeed distinguish between “obligated” and “non-obligated” legal persons, such a distinction further obscures the relevant procedures envisaged by the law as it fails, on one hand, to sufficiently explain the rationale behind such a distinction, and on the other hand, to provide the criteria that attribute to a legal persons a certain status. Article 5 of the AML Law attempts to define the category of obligated persons by providing a list which appears, however, to be non-exhaustive. The list includes mainly financial institutions but also accountants, lawyer, and so forth. As such, it is difficult to say with certainty if a legal person falls under the scope of the AML Law but also if the legal person will be categorised as an obligated or non-obligated for the purposes of investigation and sanction proceedings. The law as whole does not provide a workable context for law enforcement authorities. Given that Greece is still in the nascent stages of applying corporate liability, in particular with regard to crimes of corruption which can often involve several complex elements, extra efforts must be made to make legislation practical and applicable.

Bribery for the benefit of the legal person

Additionally, the corporate liability legislation currently in place contains several essential deficiencies that render its application difficult, and likely causes enforcement authorities to shy away from investigating and sanctioning unlawful conduct by legal persons. For example, under Article 51 of the AML Law, a legal person is liable for bribery that is committed “for the benefit” of the legal person. Such language can be interpreted as absolving a legal person from liability when the principal offender (the natural person committing the corruption offense) acted in his or her exclusive interest or benefit. The restrictive and narrow nature is problematic as it would exclude an indirect advantage given to a third party or a corporation’s subsidiary that may not be not directly affiliated with its parent company. In such cases, the legal person clearly reaps a benefit from the unlawful conduct but would not be exposed to legal liability. Loopholes such as these make it immensely difficult to sanction corporate involvement in corruption and allow legal persons to tailor their conduct accordingly. It is therefore recommended that a case law study be conducted in order to assess these and other issues as they relate to the investigation and proceedings of legal persons, with a specific focus on the activities of legal persons (whether direct or through a third party or other type of intermediary) that would trigger liability.

Who can trigger the liability of the legal person?

Much like the issue relating to the benefit received by the legal person, Greek law enforcement authorities are only given vague guidance as to the categories of natural persons who can trigger the liability of legal persons. Article 51 § 1 of the AML Law currently imposes liability on legal persons only when natural persons acting individually or as part of an organ of the legal person and who hold a management position in the legal person commit a corruption offence. This regime lacks sufficient detail and is difficult to apply in practice as anti-corruption judges and prosecutors face situations that are not addressed by the law, yet are characteristic of typical corruption activity.

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65 OECD WGB Phase 3bis Report –Greece, para. 52.
66 OECD WGB Phase 3bis Report –Greece, para. 54.
For example, the law does not appear to apply to situations where a senior corporate official delegates or otherwise authorizes the commission of the corruption offense by a lower level employee who does not fall under the narrow category provided in Article 51 (natural person acting for the legal person and who also holds a management-level position). In addition, Article 51 does not seem to cover cases where the lack of supervision or control by a physical person referred to in paragraph 1 has made it possible for a physical person under its authority to engage in corrupt activity. Such a reality poses a significant obstacle to the investigation and proceedings of legal persons, particularly in light of the fact that corruption crimes are often committed by mid- and lower-level company employees pursuant to delegated authority.

It is therefore recommended that anti-corruption stakeholders be provided with guidance on what amounts to adequate supervision and control to prevent corruption. Such guidance should draw upon the Good Practice Guidance on Internal Controls, Ethics, and Compliance Annex II, of the 2009 Anti-Bribery Recommendation as well as on the relevant guidelines of the Greece OECD Project on Promoting Compliance, Effective Internal Controls and Ethics.

**Jurisdiction to sanction legal persons**

According to Article 64 of the Greek Civil Code a legal person is subject to Greek laws if the latter has a registered office or an “effective seat” in Greece. An effective seat is the place where a legal person carries out its management, unless otherwise provided in the deed of constitution or the articles of incorporation. According to Greek authorities in the OECD WGB Phase 3bis Report, corporate liability also applies to a foreign subsidiary whose parent company is located in Greece if there is “sufficient connection” between the subsidiary and its parent. Such a sufficient connection would be found if, for instance, a majority of the subsidiary’s directors are appointed by the parent company, the accounts of both companies are consolidated, and important decisions are taken by or in the parent company.

That said, given the AML Law’s silence regarding this issue and taking into account that jurisprudence seems to have been inconsistent regarding the theory of “effective seat”, the law would benefit from some guidance that would allow for a sufficiently broad jurisdictional base for imposing liability against legal persons.

**Sanctions against legal persons**

Depending on the characterisation of the legal persons as obligated or non-obligated, the AML Law identifies a set of sanctions that can be imposed against the legal person that has engaged in corrupt activities. Regarding obligated legal persons or companies listed in a regulated market, the following sanctions can be imposed: (i) an administrative fine of 50.000 euros up to 5.000.000 euros; (ii) final or provisional - for a period ranging from one month to two years - withdrawal or suspension of the permit for the operation of the legal person or prohibition from carrying out its business; (iii) prohibition from carrying out specific business activities or from the establishment of branches or capital increase, for a period ranging from one month to two years; (iv) final or provisional exclusion, for a period ranging from one month to two years, from public grants, aids, subsidies, awarding of contracts for public works or services, procurement, advertising and tenders of the public sector or of the legal persons belonging to the public sector. The same sanctions may also be imposed on non-obligated legal persons with the exception that the administrative fine is significantly lower, ranging from 20.000 to 2.000.000 euros. In addition, the AML Law stipulates that the administrative fine shall always apply, irrespective of the imposition of other sanctions.

The OECD WGB Phase 3bis Report clarifies that the available sanctions under these provisions are not as effective, proportionate or dissuasive as the Anti-Bribery Convention requires.68 This is due to two reasons. First, the maximum sanctions available are insufficient and disproportionate with the bribes and benefits frequently seen in foreign bribery cases. Second, there is

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67 See also Article 16 § 1, and 40 of Law 3316/2005
68 OECD WGB Phase 3bis Report – Greece para. 72.
no rationale for differentiating between obligated and non-obligated legal persons and setting substantially lighter sanctions for the latter given that non-obligated legal persons (i.e. all corporations except financial institutions) are the actors that predominantly engage in corruption. Furthermore, the AML Law does not provide for confiscation of assets belonging legal persons, and it is doubtful that Article 46(1) of the AML Law which allows confiscation against a “third person” can be interpreted in practice to also encompass legal persons.

Article 51 of the AML Law would therefore benefit from the Recommendation of the Phase 3bis report so that the sanctions against non-obligated and obligated legal persons for corruption crimes are streamlined, the maximum fines for legal persons meet the effective, proportionate or dissuasive requirement established by the Anti-Bribery Convention and that confiscation is expressly available for legal persons.

Recommendations

- With respect to the definition of legal persons, the AML Law should encompass all entities with legal rights and obligations and define the notions of obligated and non-obligated legal persons.

- With respect to the element of “benefit” the AML Law should cover also cases where the legal person obtains an indirect benefit or where the principal offender committed corruption in the interest of him/herself or a third party but the legal person benefits coincidentally.

- With respect to the persons that can trigger the liability of legal persons, the AML Law should clarify that a legal person would be held liable if an individual in a senior position in the legal person “directs” or “authorises” a lower level individual to commit foreign bribery or if the lack of supervision or control by the individual has made possible the commission, by a physical person under its authority to engage in corrupt activities.

- With respect to jurisdiction to sanction legal persons, guidance would be necessary to allow for a sufficiently broad jurisdictional base for imposing liability against legal persons.

- With respect to sanctions against legal persons, the AML Law should be amended so that the sanctions against non-obligated and obligated legal persons for corruption crimes are streamlined, that the maximum fines for legal persons meets the effective, proportionate or dissuasive requirement and that confiscation is expressly available for legal persons.

Tools and Strategies to Maximize Corruption Investigations

Identifying easily the competent authority and making it possible to sanction legal persons

Article 6 of the AML Law identifies the competent authority for each category of legal person. For example, the Bank of Greece seems to be the competent authority for the supervision of financial institutions operating in Greece, and the Hellenic Capital Markets Commission the relevant body for overseeing corporations (sociétés anonymes) and so forth. In addition, in line with Article 51 § 1(b), the Hellenic Capital Markets Commission is the competent authority to impose administrative sanctions on legal persons that are members of an organized market (e.g. stock exchange) and at the same time are not supervised by another “competent authority” in the sense of Article 6 of the AML Law. In the case of other non-obligated legal persons, the foreseen sanctions seem to be imposed by an ad hoc Joint Ministerial Decision of the Minister of Justice, Transparency & Human Rights, and by the competent Minister as specified in § 1(b).
That said, the procedure to conduct investigations, to impose sanctions, to designate the authorities responsible for gathering evidence, as well as any other relevant procedure for the implementation of Article 51 of the AML Law, has to be defined by a Joint Ministerial Decision of the Minister of Finance and the Minister of Justice, Transparency and Human Rights. This decision is still pending. As a result, there is currently no designated procedure or guidance that exists and that would enable an authority to commence proceedings against implicated legal persons.

It is unclear why, so many years after the enactment of the AML Law, a joint ministerial decision has yet to be issued. In the past, SDOE has been designated by Decision 11130/2730/4-11-2010 as the competent authority to conduct investigations against non-obligated legal persons. With the current limited competence, personnel and resources of SDOE, it would be difficult to envisage the authority still playing this role. In any event, it is evident that the lack of a ministerial decision creates a very problematic situation that prevents authorities from enforcing the law and possibly allowing legal persons to act unobstructed. The necessary actions must be urgently implemented in order to lay out the procedure and make it possible for the AML Law to be enforced against all legal persons.

Sanctioning legal persons independently from natural persons

Article 51 § 4 of the AML Law adequately addresses the independence of liability of legal persons from that of natural persons since it expressly mentions that the application of the provisions regarding liability of legal persons is not dependent on the civil, disciplinary or criminal liability of the implicated natural persons. However, in practice the administrative proceedings against corporations commence only when the competent authority for obligated legal persons or the Minister of Justice for non-obligated legal persons is informed (pursuant to Article 51 § 5) by the public prosecutor that criminal proceedings against the natural persons are involved. This practice seems to have been reinforced by a Joint Decision of the Ministers of Finance and Justice (11130/2730/4-11-2010), which in implementing Article 10 of Law 3560/2007 stated that administrative proceedings against legal persons under these laws shall only begin after criminal charges are brought against the natural person.

The joint ministerial decision that was in force until 2014 interpreted Article 51 § 5 as if the notification by the public prosecutor is a requirement to commence corporate proceedings. This is not the case. In fact, paragraph 5 simply stipulates an obligation to the public prosecutor for notification to ensure that when there are criminal proceedings against the natural persons involved, the relevant authorities that are competent for the corporate proceedings are also informed of the process. Interpreting the notifications of paragraph 5 as a requirement to commence corporate proceedings would only go against the paragraph’s object and purpose, but would also obviate the need for paragraph 4 on the independence of the two procedures. This situation in conjunction with the absence of relevant case law or subsequent guidance to clarify the issue and the hesitation of public prosecutors to notify competent executive authorities because of their independence creates serious procedural obstacles for the enforcement of legal liability.

Corporate liability regimes should, at all times, allow for proceedings to take place against legal persons even in the absence of proceedings against any natural person. It is therefore imperative that the relevant guidance is issued in line with Article 51 § 4, thereby reaffirming the exclusive nature of liability of legal persons and not restricting such liability to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted.

69 Articles 2 through 12 of Law 3560/2007 (as amended by Law 3666/2008) have been repealed with subparagraph IE20 of article 1 of Law 4254/2014 and therefore, there is a presumption that the Joint Ministerial Decision has no more legal basis and therefore, is inactive.
70 OECD WGB Phase 3bis Report – Greece, para. 62.
71 OECD WGB Phase 3bis Report – Greece, para. 95.
Dealing with complex corporate structures

Article 51 of the AML Law does not expressly cover or exclude legal liability when a legal person bribes by using intermediaries. According to the Greek authorities it is up to the courts to clarify this issue. The OECD’s 2014 Foreign Bribery Report highlights that 75% of concluded foreign bribery cases that it reviewed in its analysis involved intermediaries. This overwhelming percentage of corruption offences committed through intermediaries on a company’s behalf, including related legal persons (e.g. parent and subsidiary companies and entities within the same corporate group) and unrelated legal or natural persons (e.g. shell companies, third-party agents, consultants, trusts, joint ventures or contractors) demonstrates the importance of ensuring that legal persons do not escape liability by funneling bribes through intermediaries on their behalf. Accordingly, proper actions need to be taken in order to ensure that this lack of explicit reference to the AML does not create loopholes and allow corporations to use intermediaries or complex corporate structures to avoid liability.

Another important issue is that the AML Law does not address successor liability. The issue is of particular interest of Greece where the current economic situation has forced companies to merge, be restructured or acquired by other legal entities. When this occurs, liability of the acquired company or the constituent companies before the merger should not be extinguished, but should instead be assumed by the acquiring or successor company. The AML Law should be amended to expressly provide for such successor liability.

Ensuring the independence of corporate proceedings

It is understood that corporate proceedings in Greece are of an administrative character. Thus, corporate corruption investigations in Greece are investigated by SDOE in the Ministry of Finance, not by a prosecutor or investigative judge. Sanctions are then imposed by the Hellenic Capital Markets Commission or the Minister of Finance, not a court presided by a judge.

The OECD WGB Phase 3bis Report voiced serious concerns about the susceptibility of this arrangement to political and executive influence. SDOE, the Hellenic Capital Markets Commission and the Minister of Finance are part of the executive government. They do not have the same level of independence as prosecutors or investigative judges. The Hellenic Capital Markets Commission and the Minister of Finance are also not bound by the principle of mandatory prosecution. Article 2 of the OECD Anti-bribery Convention allows Parties to implement a system of corporate liability that is criminal, civil or administrative in nature. But regardless of the nature of the system, Article 5 of the Convention further requires that investigations, prosecutions and adjudication of companies be independent of political and executive influence. The system in Greece falls short of this threshold. This becomes more obvious if we take into account that other Parties to the Convention with civil law systems and corporate administrative proceedings have managed to have administrative sanctions determined by the courts.

It is evident, that corporate proceedings in Greece would benefit from some safeguards of independence and due process that would ensure that political or other considerations do not interfere with the investigation of the wrongdoing and the effective sanctioning of a legal person. For example, vesting an independent administrative or civil court with the responsibility to supervise the investigation and impose corporate penalties to legal persons upon proper adjudication of the case would facilitate the use of investigation tools that are not available to administrative authorities, to ensure that all collected evidence is properly assessed and used, and finally that any sanction against the legal person would be enforceable by law.

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72 OECD WGB Phase 3bis Report – Greece, para. 53.
74 OECD WGB Phase 3bis Report - Greece para. 99.
75 See e.g. Germany and Italy
Raising Awareness of the Importance of Holding Legal Persons Responsible for Corruption

Corporate liability for corruption crimes is no longer the exception but the norm. However, Greece’s progress in adhering to the new era of robust corporate enforcement has not been as evident as other countries. One of the reasons is because corporate liability has been traditionally perceived as being fundamentally incompatible with Greek law. In light of such a reality, it is important to raise awareness among Greek law enforcement authorities of the need to step up their corporate enforcement efforts.

One such method involves the intelligent employment of the administrative sanctions available under the AML Law and other relevant law, which if done effectively, can be decisive in dissuading legal persons from engaging in corrupt activities. For example, imposing sanctions such as withdrawal or suspension of a permit of operation and final or provisional exclusion from public grants, aids, subsidies, awarding of contracts for public works or services, procurement can be more effective for companies in the Greek economic context than simply imposing monetary fines that may not always be collected. Moreover, such measures incentivise other companies that want to be eligible for public procurement to develop requirements for internal controls, compliance measures and anti-corruption programmes including “no corruption” warranties and measures for their suppliers triggering a supply-chain of transparency and integrity to fight corruption.

Initiatives or ideas such as the foregoing should be considered and implemented by anti-corruption authorities, as they will mobilize efforts and perpetuate a change in corporate behaviour.

Recommendations

- With respect to the conduct of corporate investigations and imposition of sanctions, necessary actions must be urgently taken in order to lay out the procedure and make possible for the AML Law to be enforced against these entities.

- With respect to the independence of corporate proceedings from criminal prosecution, necessary actions must be urgently taken in order to reaffirm the object and purpose Article 1 § 4 of the AML Law.

- With respect to complex corporate structures, the AML Law should be amended to expressly prevent corporations from using intermediaries, complex corporate structures or succession to avoid liability.

- With respect to the independence of corporate proceedings, sufficient safeguards such as supervision by an administrative or civil court need to be considered in order to prevent political or other considerations from interfering in the proceedings.
Reference Materials for Promoting Corporate Proceedings

The Importance of Corporate Proceedings

Legal persons exercise significant influence in the Greek public and private sectors, as well in foreign markets, and operate in the interest of their profitability by eliminating obstacles to their long-term viability and success. Such strength, while important for economic growth, comes at a price, as legal persons often engage in wrongdoing at the highest and lowest levels in both the public and private spheres in order to advance their own interests. The proactive investigation and sanction of legal persons for corruption is a key component of ensuring transparency and deterring wrongful conduct. Without it, Greece faces a losing battle in its fight to eradicate domestic and foreign corruption.

There are many benefits to the investigation and sanctions of legal persons for corruption:

- Corporate proceedings are just. While natural persons physically carry out the acts constituting corruption, it is the legal person that truly advances and benefits from such activity. Legal persons enjoy legal rights in the framework of their business operations, and should therefore be held responsible when they violate anti-corruption laws.

- Corporate proceedings deter companies from engaging in corruption. Legal persons have much to lose from a public prosecution, such as damage to their brand or reputation or access to public procurement. The threat of prosecution makes companies think twice before even engaging in corrupt acts.

- Corporate proceedings promote compliance measures to prevent corruption. Countries that have stepped up corporate anti-corruption enforcement have witnessed positive improvements in the behaviour and culture of legal persons. Companies actively invest in corporate compliance programmes to minimizing the risk of engaging corruption and subsequent prosecution.

- Corporate proceedings compensate the state for corruption. Any benefits and assets unlawfully obtained by the legal person through corruption are confiscated. Significant fines can be levied against the company. These financial penalties are in addition to any that are imposed against natural persons.

Greek legal framework for sanctioning companies for corruption

Article 51 of the AML Law provides for administrative and not criminal liability for legal persons. Article 51 applies to all categories of legal persons. However, Article 5 § 1 of the AML Law provides examples of obligated persons (entities subject to the Law’s provisions), and clearly establishes that legal persons such as credit and financial institutions, companies providing business capital, and other business entities are indeed covered by the law and subject to sanctions stipulated in Article 51. State-owned enterprises are also considered legal persons and are subject to sanctions under Greek law.76

Legal persons found responsible for corruption offences defined in Articles 2 and 3 of the AML Law are subject to various sanctions, including fines ranging from 20,000 euros to 5 million euros depending on their nature and on the benefit acquired, a prohibition on carrying on business

76 OECD WGB Phase 3bis Report – Greece, para. 51 (“The OECD Convention Law applicable at the time of Phase 3 covered “any legal entity or undertaking”, which, according to the Greek authorities, included all legal persons and enterprises, including State-owned and State-controlled enterprises (SOEs). The Greek authorities state that SOEs also fall within the ambit of the AML Law.”).
activities, and may also be declared ineligible to receive public subsidies or to be selected for public contracts.\textsuperscript{77}

**Competent authorities to conduct corporate proceedings**

According to Article 51 § 5 of the AML Law, the procedures to conduct investigations, to impose sanctions, to designate the authorities responsible for gathering evidence, as well as any other relevant procedure for the implementation of Article 51, must be defined by a Joint Ministerial Decision of the Minister of Finance and the Minister of Justice, Transparency and Human Rights. This decision is still pending and as a result, there is currently no designated procedure and no guidance exists for relevant authorities to commence corporate proceedings against implicated legal persons.

However, given that Article 6 of the AML Law identifies the competent authorities for the supervision of the different categories of legal persons (e.g. the Bank of Greece for financial institutions, the Hellenic Capital Markets Commission for corporations (société anonyme) and members of the organised market etc.) it is recommended that the latter authorities set up the interim procedures for conducting investigations and imposing sanctions against legal persons in line with the proposals of section iv) of the present document.

**Overcoming challenges when investigating legal persons for corruption**

Issues relating to the liability of legal persons are crucial to understanding the complex nature of corporate structures and understanding how and where to investigate such entities. Holding legal persons responsible for corruption can be a tricky task, in particular due to issues relating to jurisdiction of law enforcement authorities over the acts of certain corporations, lack of investigation planning, and because of the complex structures that characteristically define corporations.

- **Triggering the liability of legal persons**

  Article 51 of the AML Law imposes liability on legal persons for offences committed by an individual acting either individually or as part of an organ of the legal person, and who holds a management position in the legal person.\textsuperscript{78} Simply put, a legal person cannot be held liable under the current legal framework for acts carried out by lower-level employees or if the company fails to exercise proper supervision and control to prevent unauthorised bribery.

  In order to overcome this challenge, the competent authorities when conducting an investigation into allegations of corruption carried out by a legal person should construe the level of authority of the person whose conduct triggers the liability of the legal person flexibly in order to reflect the wide variety of decision-making systems in legal persons.\textsuperscript{79} More practically, they should consider not only the post actually held by the person but also whether the person exercises de facto management because of the key nature of his or her functions. Attributing the corrupt act of such individuals to the company is essential to triggering the liability of the legal person.

- **Tracing the benefit**

  According to Article 51 of the AML Law, a legal person is liable for bribery that is committed “for the benefit” of the legal person. Such unclear language may create loopholes and exclude cases of indirect advantage for the legal persons such as advantage given to a third party or a corporation’s subsidiary that may not be not be prima facie affiliated with its parent company. It is

\textsuperscript{77} See Article 51(1) and (2) of Law 3691/2008; Articles 31 and 82 of Law 3669/2008, Article 16 paragraph 1, and Article 40 of Law 3316/2005.

\textsuperscript{78} A person has a management position if he/she has the power to (i) represent the legal person, (ii) take decisions on behalf of the legal person, or (iii) exercise control within the legal person.

therefore, necessary for an investigation of a legal person to be complete in that it has identified correctly and traced the benefit in a precise manner in order to ensure that the legal person at hand has not obtained an advantage either directly or indirectly or even coincidentally through third parties or subsidiaries.

- **Jurisdictional considerations relating to foreign bribery investigations**

  According to Article 64 of the Greek Civil Code a legal person is subject to Greek laws if the latter has a registered office or an “effective seat” in Greece. An effective seat is the place where a legal person carries out its management, unless otherwise provided in the deed of constitution or the articles of incorporation.

  When investigating allegations of foreign bribery, authorities should be aware of specific details relating to where the corrupt act(s) occurred and which entity is allegedly responsible for said act(s). It is equally important to be aware of the legal person’s corporate structure and where the legal person carries de facto its management. When subsidiaries or otherwise affiliated companies are involved, authorities must clearly trace the acts to a corporate identity and identify how, where and by whom the decisions were made in order to identify if “sufficient connection” between the subsidiary and its parent exists. Sufficient connection would be found if, for instance, the majority of the subsidiary’s directors are appointed by the parent company, the accounts of both companies are consolidated, and important decisions are taken by or in the parent company.

  Establishing a clear and comprehensive investigative plan and identifying the entities believed to be involved (as well as their status as a legal person and connections to others) prior to launching a major investigation is recommended.

- **Investigating legal persons independently from natural persons**

  Article 51 § 4 of the AML Law expressly stipulates that the application of the provisions regarding liability of legal persons does not depend on the civil, disciplinary or criminal liability of the implicated natural persons. Even though paragraph 5 of the same Article imposes an obligation on the public prosecutor to notify the authorities that are competent for initiating proceedings against companies that criminal proceedings have also been initiated against a natural person, such an obligation should in no way be interpreted in a manner that also requires the commencement of proceedings against the company. In fact, corporate proceedings should always be able to take place against legal persons even in the absence of proceedings against any natural person.

- **Using smartly the administrative sanctions available under the AML Law**

  Sanctions should effectively dissuade companies from engaging in corrupt activity. Fines and relevant monetary sanctions may be the most frequently applied but are not necessarily the most effective taking into account the Greek economic context. For example, withdrawing or suspending a permit of operation and definitively or provisionally excluding companies from public grants, aids, subsidies, awarding of contracts for public works or services, and procurement will not only block companies’ access to public money but will also strip companies from tax benefits that accompany such public procurement. Moreover, it will incentivise other companies that wish to be eligible for public procurement to develop requirements for internal controls, compliance measures and anti-corruption programmes including “no corruption” warranties and similar measures for their suppliers.
9. **Anti-Corruption Awards and Recognition of Law Enforcement Efforts**

**Creation of Anti-Corruption Awards within the Greek Law Enforcement Sector**

Given the anti-corruption reforms that the Greek government is beginning to implement, a non-financial rewards program can incentivizing active criminal enforcement of anti-corruption laws, make the government accountable in the context of its reforms and reaffirm its commitment to fighting corruption. In devising an awards program, the government should focus on aspects that are relevant to the mandates and work of individual agencies. The award process must be transparent and inclusive. As such, the award and its accompanying recognition must be perceived as objectively representative and include sectors outside of government, such as civil society and the private sector. Awards should also be based on results that are tangible. The general population needs to appreciate the awards’ effects. Rewards are often given to programs that use technology in a new and innovative way. Note that technology for the sake of technology is not usually worth a reward, but technology use which helps achieve one of the other goals, such as improved service to the citizen is very much worthy of acknowledgment.

When establishing an award at either the national level or agency level, the responsible authorities should consider the following aspects:

- How often the award(s) should be made;
- The types of levels at which the award will be made and the administration of the award process (i.e., will the awards be thematic in nature – such as best use of technical or most innovative use of investigative techniques – or also focus on results, such as best prosecutorial results, etc.);
- Eligibility of awardees to receive different types of awards (i.e., government, private sector, NGO sector);
- Creating awards for different sectors and civil society members;
- The award decision-making process (ranging from application/nomination criteria to how the winner and runner-up are selected);
- The entity/individual that gives out the award (Ministers, heads of service, etc.)

**Recognition**

In order to raise awareness of victories in the fight against corruption and to encourage law enforcement authorities to prioritize the eradication of corruption and lack of transparency in Greece, anti-corruption stakeholders should consider engaging in outreach initiatives. The winners of the award should be afforded the opportunity to speak about their investigation in public events and also meet with international counterparts to increase visibility and recognition of their work. The lessons learned should also be implemented by their agency. Additionally, workshops and training opportunities should be organized across different entities in order to build capacity and maximize momentum.

**OECD ACD Anti-Corruption Enforcement Excellence Award**

**Purpose of award**

As part of the OECD Greece Technical Assistance Project, we propose the creation of an Anti-Corruption Enforcement Excellence Award. The Award would identify the most effective and innovative approaches as well as best practices in the criminal enforcement of corruption laws, both domestic and foreign. The goal of creating the Award is to create a culture of accountability in
Greece, beginning with the very entities responsible for ensuring the enforcement of the country’s anti-corruption laws. By placing specific focus and attention on anti-corruption initiatives, best practices and innovative methods for detecting, prosecuting and preventing corruption, the Award would serve as a driving force for Greek officials and raise awareness of the fight against corruption in Greece by acknowledging specific results achieved in important investigations.

**Award Procedure**

The award procedure would follow that of other similar initiatives, including Transparency International’s Anti-Corruption award which recognizes the “courage and determination” of individuals and organizations fighting corruption around the world. The OECD award would be based on the submission of nominations as well as investigations known to the public and seek to highlight the main accomplishments of its recipients and the effects of their work on the national, regional and international fight against corruption as it relates to Greece.

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80 In 2016, the Award was given to the prosecutors involved in the Carwash operation (Operação Lava Jato) in Brazil which is the largest investigation of state capture and corruption in Brazil’s history.