



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

June 2012

This Phase 3 Report on Greece by the OECD Working Group on Bribery evaluates and makes recommendations on Greece's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on 15 June 2012.

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EXECUTIVE SUMMARY

The Phase 3 report on Greece by the OECD Working Group on Bribery evaluates and makes recommendations on Greece's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report considers country-specific (vertical) issues arising from changes in the Greece's legislative and institutional framework, as well as progress made since the Greece Phase 2 evaluation in 2005. The report also focuses on key Group-wide (horizontal) issues, particularly enforcement. The report concludes that the Working Group could not conduct a proper examination of many issues because of the Greek authorities' failure to provide timely information, detailed statistics and translated legislation. This may be explained by the on-going financial crisis in the country. Greece is therefore required to undergo a Phase 3bis evaluation in order to review specific issues identified throughout this report. The Working Group will decide the precise timing and scope of the Phase 3bis evaluation in June 2013.

The report describes in particular several areas in which Greece's implementation of the Convention falls short. The Working Group is especially concerned over the Greek authorities' inaction in a case in which three Greek nationals allegedly committed foreign bribery. Despite learning of the allegations for almost two years, the Greek authorities failed to open a domestic investigation until after the on-site visit in January 2012. The Working Group will further examine this case in Greece's Phase 3bis evaluation. In the meantime, it recommends that Greece take all necessary measures to ensure that foreign bribery cases are seriously investigated and prosecuted as appropriate. Greece should also raise the awareness of foreign bribery among judges and prosecutors through appropriate training, and ensure that all competent law enforcement authorities have the power to investigate this crime. In addition, the Working Group recommends that Greece rationalise and eliminate duplicative statutory provisions that apply to the offence of foreign bribery, liability and fines against legal persons, confiscation, and foreign bribery-related accounting misconduct. Greece should also improve its system for seeking and providing mutual legal assistance and clarify the types of assistance available.

The Working Group is also concerned about Greece's limited ability to detect foreign bribery. Awareness of Greece's foreign bribery laws among the private sector, especially accountants and auditors, is low and needs to be raised. Finally, the Group noted that Greece still has not adopted appropriate measures to protect whistleblowers in both the public and private sectors from discriminatory or disciplinary action.

The report also notes some positive developments, such as Greece's efforts to improve its anti-money laundering framework, and to enact legislation to impose debarment from public procurement as a sanction for foreign bribery. Other Parties to the Convention have expressed appreciation of Greece's provision of mutual legal assistance in foreign bribery cases.

The report and its recommendations reflect findings of experts from Ireland and Korea and were adopted by the OECD Working Group on 14 June 2012. It is based on legislation and other materials provided by Greece and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its three-day on-site visit to Athens from 31 January to 2 February 2012, during which the team met representatives of the Greek public sector, judiciary, private sector and civil society.

A. INTRODUCTION

1. The On-site Visit

1. From 31 January to 2 February 2012, an evaluation team from the OECD Working Group on Bribery in International Business Transactions (Working Group) visited Athens as part of the Phase 3 evaluation of Greece's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention), the 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Anti-Bribery Recommendation), and the 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation).

2. The evaluation team was composed of lead examiners from Ireland and Korea as well as members of the OECD Secretariat.¹ During the on-site visit, the lead examiners met over 90 representatives of the Greek public and private sectors, legislature, judiciary, civil society, and media.² The evaluation team expresses its appreciation of Greece's hospitality during the on-site visit. Prior to the visit, Greece responded to the Phase 3 Questionnaire and supplementary questions, and provided some relevant legislation and documents. The lead examiners also referred to the 2007 Mutual Evaluation Report by the Financial Action Task Force (FATF MER), the 2009 Third Evaluation Report of the Council of Europe Group of States Against Corruption (GRECO), and other public information. As explained below, the information provided by the Greek authorities was unfortunately inadequate in many respects, which may have been due to the on-going financial crisis in the country.

2. Outline of the Report

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

3. Economic Background

4. Greece is a mid-sized economy in the Working Group. It has the 25th largest economy among the 40 Working Group members. However, this statistic excludes the very large Greek shadow economy

¹ Ireland was represented by: Mr. James HAMILTON, Former Director of Public Prosecutions; and Mr. Gerry WALSH, Detective Inspector, Garda Bureau of Fraud Investigation. Mr. Henry MATTHEWS, Professional Officer, Office of the Director of Public Prosecutions also participated in the Working Group meetings to discuss the draft report. Korea was represented by Ms. Jeusun MOON, Public Prosecutor, Goyang Branch Prosecutors' Office; Ms. Yoojin CHOI, Deputy Director, Anti-Corruption and Civil Rights Commission of Korea; Mr. Dae Seok YOUN, Investigator, High-Tech and Financial Crimes Investigation Division, Central Investigation Department, Supreme Prosecutors' Office; and Mr. Joong Shik LIM, Audit and Inspection Officer, Public Procurement Service. Mr. Changjin KIM, Prosecutor, Ministry of Justice, also participated in the Working Group meetings to discuss the draft report. The OECD Secretariat was represented by Ms. Catherine MARTY and Mr. William LOO, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs.

² See Annex 2 for a list of participants.

which is estimated to be 20-30% of GDP.³ At the time of this report, Greece was experiencing a severe financial crisis and recession which has resulted in drastic reductions in the government's budget. In terms of trade, Greece ranks 31st and 34th in imports and exports (goods and services) respectively in the Working Group. The European Union is by far its biggest trading partner. Nevertheless, in 2010 Turkey, Russia and Albania accounted for 9.7% of exports, while 22.5% of imports originated from Russia, China, Korea and Libya. In terms of international investment, Greece has the 28th highest stock of outward foreign direct investment (FDI) in the Working Group. The major FDI destinations include Turkey, Romania, Netherlands and Serbia. In 2008, 48% of the turnover of Greek multinational enterprises was in Russia, Bulgaria and Romania.⁴

5. Greece's shipping industry is of particular interest in the context of foreign bribery. Despite its relatively small economy, owners from Greece controlled 15.96% of the world's shipping tonnage in 2010. When measured in terms of nationally flagged and beneficially owned tonnage, the Greek fleet is by far the world's largest.⁵ In 2009, approximately 750 shipping companies in Greece contributed foreign exchange earnings that amounted to 6.72% of the country's GDP.⁶ Several participants at the on-site visit acknowledged that the shipping industry – whether in Greece or elsewhere – are susceptible to bribe solicitations by foreign officials, especially in the form of facilitation payments.

6. Small- and medium-sized enterprises (SME) constitute a significant part of the Greek private sector. A recent paper stated that Greek SMEs represent a very important share of the economy, accounting for a far larger share of total employment and value added than the EU average. However, more than 97% of all Greek enterprises are “micro-companies” with a “strong domestic market orientation”.⁷ At the on-site visit, Greek officials stated that 99.6% of Greece's 750 000 private enterprises were SMEs. Most engage in export manufacturing and are located in Thessaloniki near the northern border. A significant number of exporting SMEs are also found in Athens.

4. Cases Involving the Bribery of Foreign Public Officials

7. There are at least two cases involving allegations that Greek individuals or companies bribed foreign public officials. The first case has tenuous connections with Greece. Media reports alleged that the co-owner of a US company bribed foreign public officials in a central Asian country. The co-owner's Greek nationality may be the case's only link with Greece. It is unclear where this individual is located. The Greek authorities learned of the allegations through the Working Group. They have since opened a preliminary investigation and are waiting for the central Asian country to respond to their mutual legal assistance request.

³ Katsios, S. (2006), “The Shadow Economy and Corruption in Greece”, *South-Eastern Europe Journal of Economics* 1, pp. 61-80; Dell'Anno et al. (2007), “The Shadow Economy in Three Mediterranean Countries: France, Spain and Greece. A MIMIC Approach”, *Empirical Economics* 33:51-84.

⁴ Source: OECD.stat, UNCTADstat, International Monetary Fund and World Trade Organisation.

⁵ UNCTAD (2010), *Review of Maritime Transport*, pp. 35-41.

⁶ European Community Shipowners' Associations, Annual Report 2010-2011, pp. 75-76.

⁷ Hyz, A.B. (2011), “Small and Medium Enterprises (SMEs) in Greece - Barriers in Access to Banking Services. An Empirical Investigation”, *International Journal of Business and Social Science*, Vol. 2, No. 2, p. 160.

8. The second case of *Magyar Telekom* raises grave concerns because of apparent inaction by the Greek authorities.⁸ Magyar Telekom was a Hungarian company with operations in the Former Yugoslav Republic of Macedonia (FYROM). In 2005-2006, executives of Magyar Telekom met FYROM public officials with the help of three Greek individuals. One of the three Greek individuals was a “well-known entrepreneur”, stated Greek officials at the on-site visit. As a result of the meetings, the Magyar executives signed two “Protocols of Co-operation” with the FYROM public officials that gave Magyar Telekom certain business advantages in FYROM. Both Protocols were retained by the Greek entrepreneur and were kept out of Magyar Telekom’s internal books and records. Magyar Telekom then obtained the promised business advantages. Shortly thereafter, the executives authorised Magyar Telekom to enter into at least six false “success fee based” contracts for “consulting” and “marketing” services. A total of EUR 4.875 million was paid under these contracts to an offshore shell company controlled by the three Greek individuals. It is believed that these funds were then channelled to FYROM public officials as bribes. Based on these facts, the conduct of the three Greek individuals *prima facie* falls within the definition of foreign bribery in Article 1 of the Convention.

9. The case has led to proceedings in the US. The case first came to light when Magyar Telekom’s German parent company alerted US authorities. In December 2011, Magyar Telekom and its parent company settled criminal and civil foreign bribery-related charges with the US authorities. At the time of this report, proceedings were on-going in the US against the three executives of Magyar Telekom.

10. By contrast, the Greek authorities did not commence a domestic investigation until after the on-site visit, despite knowing about the case much earlier. The Greek authorities stated that they became aware of the allegations in April 2010 when Greece’s Ministry of Justice received a request for mutual legal assistance (MLA) from the US authorities. By February 2011 at the latest, house and office searches had been executed in Greece pursuant to the MLA request. Yet, by the time of the on-site visit in late January 2012, the Greek authorities still had not opened a domestic investigation against the three Greek intermediaries. As explained at p. 19, the competent authorities in Parties to the Anti-Bribery Convention must assess credible allegations of foreign bribery and seriously investigate complaints of this crime. Greece’s initial failure to investigate the *Magyar Telekom* case may be non-compliant with Article 5 of the Convention and 2009 Recommendation Annex I.D (para.2).

11. An assessment of how the Greek authorities handled this case has also been substantially hindered by a lack of timely information. At all times before the on-site visit, the Greek authorities maintained that it had never received allegations of foreign bribery committed by a Greek individual or company. The evaluation team learned of the involvement of the three Greek intermediaries in *Magyar Telekom* only when it was alerted by a journalist during the very last panel of the on-site visit. The evaluation team therefore did not have sufficient time to prepare for the discussions or to explore certain matters in detail. Furthermore, the evaluation team could not meet other relevant officials, such as the prosecutors and judges involved in executing the MLA request and who presumably could have initiated a domestic investigation.

12. Just before the Working Group’s discussion of this draft report, the evaluation team was informed of another possible foreign bribery case involving a Greek individual who operated a fictional enterprise receiving EU funds and who allegedly bribed an EU official. The Greek authorities have

⁸ Unless otherwise noted, the information about the case in this report is taken from the following publicly available documents: Information filed in *US v. Magyar Telekom, Plc.*, US District Court (E.D. Virginia) 1:11CR00597 (29 December 2011); Complaint filed in *Securities and Exchange Commission v. Magyar Telekom, PLC, and Deutsche Telekom, AG*, US District Court (S.D.N.Y.) 11CIV9646 (28 December 2011).

commenced a preliminary investigation and consider this case to concern fraud and potentially foreign bribery.

13. Where appropriate, this report also refers to the *Johnson & Johnson/Dougall/DePuy* case, *Smith & Nephew* case, and *Siemens* case. All of these cases involved individuals or companies from other parties to the Convention bribing Greek officials. Strictly speaking, these cases are *domestic* and not *foreign* bribery cases for Greece. Nevertheless, in the absence of extensive practice in foreign bribery cases in Greece, these cases provide some indication of Greece's criminal enforcement and MLA framework in transnational corruption cases.

5. Co-operation by the Greek Authorities in this Evaluation

14. The *Magyar Telekom* case was not the only matter on which the Greek authorities failed to provide sufficient information. As elaborated below, Greece provided very limited information before the on-site visit in its responses to the standard Phase 3 Questionnaire and supplementary questions. It did not respond to many questions, and gave very brief answers to many others. In many instances, Greece stated that it could not provide more information because it did not have a foreign bribery case. It did not, however, refer to cases concerning similar offences such as domestic bribery that could have been helpful to the evaluation team. Parts of the questionnaire responses alluded to pending legislative amendments with little or no description of the prevailing law or the expected changes. Very limited statistics were provided. Crucially, Greece did not provide English translations of much of the relevant legislation.

15. The scant information made preparations for the on-site visit extremely difficult and reduced the effectiveness of the on-site visit. The evaluation team struggled to identify the issues and concerns that should have formed the focus of the discussions at the on-site visit. The evaluation team also had to resort to seeking legislation and other basic information on the Internet. A substantial part of the discussions during the visit was devoted to relatively basic issues that should have been clarified in the questionnaire responses. This left little time for more in-depth discussions. To make matters worse, a few Greek officials at the on-site visit appeared unfamiliar with the issues to be discussed and thus provided little useful information.

16. The Greek authorities attempted to remedy the situation by providing some of the relevant information and translations after the on-site visit. The additional information was helpful. However, these materials arrived throughout the period while the evaluation team was drafting this report, and thus made the drafting process more difficult. More importantly, the materials raised questions and issues that the evaluation team should have discussed with many participants at the on-site visit. Having been deprived of the opportunity to do so, the evaluation team cannot properly assess many of these issues.

Commentary

The lead examiners note regrettably that they have not received sufficient information from the Greek authorities in a timely manner. Consequently, they are unable to properly assess many of the important issues in this evaluation.

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

17. This part of the report considers Greece's approach to key horizontal (Group-wide) issues identified by the Working Group for all Phase 3 evaluations. Consideration is also given to vertical (country-specific) issues arising from Greece's progress on weaknesses identified in Phase 2, or from changes to Greece's domestic legislative or institutional framework.

1. Foreign Bribery Offence

18. This section will look at a new issue that has emerged since Phase 2, namely the multiplicity of foreign bribery offences in Greece. This is followed by outstanding issues from Phase 2 and the topic of small facilitation payments.

(a) *Multiple Foreign Bribery Offences*

19. In previous Working Group evaluations, Greece has relied principally on Law 2656/1998 (OECD Convention Law) to implement the Anti-Bribery Convention. Article 2 of the Law creates a foreign bribery offence punishable by a specified maximum imprisonment, fine and confiscation. In Phases 1 and 2, the Working Group thus assessed Greece's implementation of the Convention by considering how this Article measured against the requirements of the Convention.

20. This task has been made more complicated in Phase 3 because of additional offences that may apply to foreign bribery. Since Phase 2, Greece has enacted Law 3560/2007 to ratify the Council of Europe Criminal Law Convention on Corruption (the CoE Convention Law). Article 3(1) of the Law extended the domestic bribery offences in Penal Code Articles 235-238 to bribery "committed towards or by civil servants, officials and judges in whom jurors and arbitrators of another state party to the [CoE] Convention". The process was repeated in 2008 when Greece ratified the UN Convention against Corruption (UNCAC) by enacting Law 3666 (UNCAC Law). Article 4(1) of this Law again extended the Penal Code domestic bribery offences to bribery of foreign officials of states that are parties to UNCAC.

21. Two additional laws implementing EU treaties also deal with foreign bribery. Law 2802 (EC Corruption Law) covers bribery of officials of the European Communities and EU member states by extending the bribery offences in Penal Code Articles 235-238. Law 2803 (EC Financial Interests Law) covers the bribery of the same officials through a standalone offence (Article 4). Both Laws also create additional offences for heads of businesses when persons under their authority commit foreign bribery on behalf of the business.⁹ Though enacted in 2000, the Working Group did not consider either Law in Phases 1 or 2. In Phase 3, Greece provided English translations of these laws after the on-site visit.

22. Greece explained that Greece's compliance with each convention is ensured by enacting a ratifying law tailored for that convention. Moreover, there is no duplication because the Penal Code offences would be applied in foreign bribery cases. This position, however, is not substantiated by a strict reading of the OECD Convention Law, which clearly creates a standalone foreign bribery offence. Greece's current argument also contradicts its previous position in Phases 1 and 2 when it relied on the OECD Convention Law to implement the Anti-Bribery Convention. Furthermore, the Penal Code does not apply to bribery of officials of all foreign countries, but only those that are party to UNCAC or the CoE Convention. The EC Corruption Law and EC Financial Interests Law likewise cover only bribery of European officials. These offences therefore do not cover all non-Greek public officials as required by the Anti-Bribery Convention.

23. The greater concern with these multiple offences lies in their implementation in practice. The maximum punishment for foreign bribery under these laws is the same for natural persons (see p. 15) though slightly different for legal persons (p. 17). However, many of these offences are defined differently. For example, the foreign bribery offence in the OECD Convention Law covers offering, promising and giving a bribe. The Penal Code only covers promising and providing, while the EC Financial Interests Law refers to just "passive and active bribery". All three laws define a "foreign public official" differently.

⁹ Article 7 of EU Financial Interest Law and Article 5 of EC Corruption Law.

Lawyers, academics, judges and civil society representatives at the on-site visit felt that this legal framework was complex, as have reviews conducted by other international organisations.¹⁰ Furthermore, it is conceivable that multiple offences can apply to a specific foreign bribery case. The Penal Code (Article 2) states that where multiple provisions apply to a single case, then the one prescribing the most lenient penalty prevails. But this does not completely resolve the issue since the same maximum punishment is available for several foreign bribery offences (e.g. the OECD Convention Law and the Penal Code). There are also discrepancies on liability of legal persons for foreign bribery under these laws (see p. 12). Despite these observations, the Greek authorities believe that the multitude of offences is a theoretical problem that would not affect the implementation of these offences in practice.

24. Greece also states that this Phase 3 evaluation should disregard the offences in the EC Corruption and Financial Interests Laws. In its view, these laws are part of a separate regime that is unrelated to the Anti-Bribery Convention. This distinction is questionable, however. A case of bribery of an EU official to win an EU grant would constitute offences under both the EC Laws and the Anti-Bribery Convention. The possible case involving the bribery of an EU official (see p. 8) also illustrates this point.

25. At the time of this report, the Penal Code was being reformed to streamline existing offences. Greece provided translations of some provisions of the draft Penal Code, including those on the bribery offences. It did not appear that the revised Penal Code, if enacted in its current form, would eliminate the multiple foreign bribery offences that are found in the various laws ratifying international conventions.

Commentary

The lead examiners are concerned that Greece has enacted multiple foreign bribery offences. The approach may allow Greece to avoid the need to analyse whether its pre-existing law meets the requirements of various international conventions. This in turn allows Greece to ratify these conventions more quickly. However, the multiple offences that result generate excessive complexity and impede the implementation of these conventions in practice. The lead examiners therefore recommend that Greece rationalise and eliminate its multiple foreign bribery offences, including the offences in the EC Corruption and EC Financial Interest Laws. A major reform of Greece's Penal Code is also underway. The lead examiners therefore also recommend that the Working Group consider these issues in subsequent evaluations of Greece.

(b) Follow-Up Issues from Phase 2

26. Phase 2 Follow-up Issues 8(a) to (c) concerned three aspects of Greece's foreign bribery offence: (a) bribery of a foreign public official who uses his/her position in excess of his/her powers, (b) bribery committed by the best-qualified bidder, and (c) the defence of effective regret.

27. In Phase 2 (paras. 119-122), the Working Group was concerned that the foreign bribery offence in the OECD Convention Law offence did not cover bribery in order that an official uses his/her position in excess of his/her powers. This is because the offence only expressly covered bribery in order that an official commit an act or omission "pertaining to his/her service or being inconsistent with his/her duties". Since Phase 2, the offence has not been amended in this regard. In Phase 3, Greece stated that the active bribery offence in Penal Code Article 236 alleviates the Working Group's concerns. However, that provision only covers bribery in order that an official commits an act or omission which "pertains to

¹⁰ GRECO (2009), *Third Evaluation Round: Evaluation Report on Greece*, para. 44; FATF (2007), *Third Mutual Evaluation of Greece*, paras. 867-868.

[his/her] duties or [is] contrary to them”. Because the offence is tied to the official’s duties, it too does not appear to cover an official who uses his/her position in excess of his/her powers.

28. The OECD Convention Law also prohibits bribes in order to obtain or retain “an unfair business or other advantage of pecuniary or any other nature that is not due”. In Phase 1 (p. 5), some doubts were expressed over whether this language excluded a briber who is the best-qualified bidder as required by Commentary 4 of the Convention. The Law also has not been amended in this regard since Phase 2.

29. As for the defence of effective regret, Article 22(3) of Law 3849/2010 repealed Penal Code Article 236 which had provided the defence. Also repealed is Article 76(1) of the Penal Code which allowed the bribe to be returned to a briber who effectively regrets.

Commentary

The lead examiners commend Greece for repealing the defence of effective regret from its foreign bribery offence. They recommend that Greece clarify that its foreign bribery offence covers (i) all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official’s competence, and (ii) bribery committed by a best-qualified bidder.

(c) Small Facilitation Payments

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

2. Responsibility of Legal Persons

31. Greece has established an administrative and not criminal form of liability of legal persons for foreign bribery. A legal opinion in 2010 prepared by academics at the government’s request reiterated that *criminal* liability of legal persons is fundamentally incompatible with Greek law. There have not been investigations or proceedings against legal persons for foreign bribery. This section considers outstanding Phase 2 recommendations on the liability of legal persons and relevant post-Phase 2 developments, such as the enactment of the UNCAC Law and CoE Convention Law.

(a) Multiple Provisions on Liability of Legal Persons for Foreign Bribery

32. Like the foreign bribery offence, successive ratifications of international conventions have left Greece with multiple corporate liability provisions that could apply to foreign bribery cases. In Phases 1 and 2, Greece relied on Article 5 of the OECD Convention Law (as amended) to implement the corporate liability requirements of the Anti-Bribery Convention. After Phase 2, Greece enacted the CoE Convention Law (Article 10) and UNCAC Law (Article 8). Both provide liability of legal persons for corruption offences, including foreign bribery. Though enacted pre-Phase 2, the EC Financial Interests Law (Article 8) also creates corporate liability for bribery of officials of European Communities or EU member states. As mentioned earlier, Greece provided a translation of this law only after the on-site visit. To further complicate matters, corporate liability provisions are found in Article 51 of Law 3691/2008 on Anti-Money Laundering (AML Law) and Article 41 of Law 3251/2004 implementing the European Arrest Warrant (EAW Law). These additional provisions deal with money laundering and organised crime offences and could also be applicable in foreign bribery cases.

33. Like the foreign bribery offence, these multiple provisions create problems for implementation. The provisions differ in coverage. As noted at p. 10, the CoE Convention, UNCAC and EC Financial Interests Laws only cover bribery of an official of a foreign country that is party to the respective Conventions. The OECD Convention Law is not restricted in this respect. The UNCAC Law also imposes corporate liability only if foreign bribery is committed in a party to the Convention. As explained below, these laws also have different tests for imposing liability. The maximum penalties under these laws are also different (see p. 17). Much like the foreign bribery offences, the result is again an excessively complex array of provisions that may make enforcement unnecessarily difficult.

Commentary

The lead examiners recommend that Greece rationalise and eliminate its multiple provisions that could impose liability against legal persons for foreign bribery.

(b) Bribery to the Benefit of the Legal Person

34. Under Article 5(1) of the OECD Convention Law, a legal person is liable for foreign bribery only if it “has benefited in any way” from foreign bribery. In other words, the legal person must have actually benefitted from the crime. It might not be liable if, for instance, it won a contract due to bribery but the contract did not generate any revenues because it was a poor business decision. The EC Financial Interests Law (Article 8) also requires the legal person to have benefited from the crime before liability arises. In this respect, the OECD Convention Law and the EC Financial Interests Law are narrower than the Anti-Bribery Convention. Greece appears to acknowledge this deficiency. Under the CoE Convention and UNCAC Laws (which were enacted at a later time), a legal person is liable for foreign bribery that is committed “for the benefit” of the legal person. In other words, the test is whether the crime was intended to benefit the legal person, irrespective of whether the intended benefit materialised.

35. A further problem is whether the benefit to the legal person must be direct, pecuniary, and aimed principally at the legal person. It is unclear whether a parent company would be liable if its subsidiary wins a contract because of foreign bribery, and revenues from the contract are channelled from the subsidiary to the parent. Also unclear is whether non-pecuniary benefits (*e.g.* an improved competitive situation) are covered. Article 5(1) of the OECD Convention Law expressly covers a legal person that has “benefited in any way”, which arguably includes non-pecuniary benefits. The CoE Convention, UNCAC and AML Laws do not contain similar language, however. A further issue is whether liability arises if the principal offender committed foreign bribery in the interest of him/herself or a third party but the legal person benefits coincidentally. Greek prosecutors were confident that all of these situations are covered, but this remains to be seen as case law develops.

36. Finally, under Article 41 of the EAW Law, a legal person may also be liable for a crime that is committed (i) through the legal person, or (ii) on behalf of a legal person. It is unclear what these concepts mean in concrete terms. The question was raised with the Greek authorities but remained unanswered.

Commentary

The lead examiners recommend that the Working Group follow up whether Greece imposes liability against a legal person for foreign bribery where (a) the legal person benefits indirectly from the bribery, (b) the legal person obtains a non-pecuniary benefit such as an improved competitive situation, (c) the principal offender committed foreign bribery in the interest of him/herself or a third party but the legal person benefits coincidentally, (d) whether a parent company would be liable if its subsidiary commits foreign bribery.

(c) *Persons Who May Trigger Liability of Legal Persons*

37. Article 5 of the OECD Convention Law imposes liability if a legal person has benefited from foreign bribery because of the “fault of its managers”. In Phase 2 (paras. 160-164), the Working Group determined that “manager” in this context meant “the constitutional organs of the legal person” such as the board of directors. Liability therefore arises only if a member of the constitutional organ commits foreign bribery, orders another person to commit the crime, or impliedly consents to the commission of the crime.

38. This raised two concerns for the Working Group (Phase 2 paras. 160-164). First, a legal person is not liable for foreign bribery committed by lower level employees and officers absent board-level complicity. Second, liability cannot be imposed if foreign bribery was committed because of inadequate supervision by the legal person’s constitutional organs. Consequently, the Working Group recommended that Greece “ensure that liability of legal persons for foreign bribery is effective, particularly regarding (i) the threshold for imposing liability, and (ii) the categories of persons whose acts may trigger the liability of a legal person” (Recommendation 6(d)).

39. Greece has not amended Article 5 of the OECD Convention Law but maintains that the provision is unproblematic. The Body for the Prosecution of Economic Crime (SDOE) is responsible for imposing penalties against companies under Article 5 (see p. 21). Greece stated that SDOE takes a broad view of liability. It has thus imposed administrative penalties against legal persons for tax offences that were committed by relatively low-level employees responsible for bookkeeping. However, the validity of this analogy is questionable. Legal persons are taxpayers and are thus directly liable for any unpaid taxes, regardless of whether this results from the acts of a junior or senior employee. Whether and when a legal person is held liable for an intentional crime (such as foreign bribery) committed by an individual is quite a different matter. Despite being requested, Greece could not provide other examples or case law of corporate liability deriving from intentional crimes.

40. In any event, Greece may have implicitly recognised the shortcomings in Article 5 of the OECD Convention Law. Four of the five laws on corporate liability referred to at p. 12 are not premised upon the “fault of a manager” (the EC Financial Interests Law is the exception). Instead, liability arises in one of two situations. First, a legal person is liable for foreign bribery committed by a natural person acting either individually or as part of an organ of the legal person, and who holds a management position in the legal person. A person has a management position if he/she has the power to (i) represent the legal person, (ii) take decisions on behalf of the legal person, or (iii) exercise control within the legal person. Second, corporate liability also arises if the lack of supervision or control by a person who meets these criteria enables foreign bribery to be committed.

41. Liability of legal persons under these four additional laws partly addresses the Working Group’s concerns. These four laws avoid the pitfalls associated with Article 5 of the OECD Convention Law, and largely meet the requirements of Annex I (Section B(b)) of the 2009 OECD Anti-Bribery Recommendation. Unfortunately, unlike the OECD Convention Law, these four laws do not cover all cases of foreign bribery that fall within the Anti-Bribery Convention (see p. 10). Another shortcoming is that Greece has not provided any guidance on what amounts to adequate supervision and control to prevent foreign bribery. Such guidance would aid the interpretation of these laws, and also help raise much-needed awareness of foreign bribery among Greek companies. The Good Practice Guidance in Annex II of the 2009 Anti-Bribery Recommendation could be a useful starting point for such guidance.

Commentary

The lead examiners recommend that Greece ensure consistency in its laws on liability of legal persons for foreign bribery by replacing “the fault of the legal person’s manager” in Article 5

of the OECD Convention Law with alternate language found in other laws. They also recommend that Greece issue guidance on what amounts to adequate supervision and control to prevent foreign bribery.

(d) Proceedings in Relation to the Principal Offender

42. It is unclear whether the liability of a legal person for foreign bribery is contingent on a conviction of the principal natural person who committed the crime. Article 5 of the OECD Convention Law does not expressly address this issue. The CoE Convention Law and UNCAC Law state that the legal person's liability is "in addition to the natural person's penal liability". This could be read to mean that a legal person would be liable only after a natural person has been criminally convicted. The AML Law (Article 51(4)) and EAW Law (Article 41(5)) expressly state that "the implementation of the provisions [on liability of legal persons] shall be independent of any civil, disciplinary or criminal liability of the physical persons mentioned therein". Similar language is absent from the OECD Convention Law, CoE Convention Law and UNCAC Law.

43. The Phase 2 Report (paras. 169-172) also expressed some concerns over how proceedings are conducted against the natural and legal persons in a foreign bribery case. The OECD Convention Law mandates separate and distinct proceedings against the natural and legal persons in the same case, with no possibility of combining the two. The Working Group noted that this approach has advantages but there may also be drawbacks, such as duplication, waste of resources, and co-ordination. There were also suggestions that in practice proceedings against a legal person would not be started until the natural person has been convicted. For these reasons, the Working Group decided to monitor these issues as practice developed (Phase 2 Follow-up Issue 8(d)).

44. These concerns have been exacerbated by one development since Phase 2. The CoE Convention and UNCAC laws establish a similar system of separate proceedings against natural and legal persons in the same case. A Joint Decision of the Ministers of Finance and Justice (11130/2730/4-11-2010) states that administrative proceedings against a legal person under these laws should begin only after criminal charges are brought against the natural person. This poses two problems. First, it suggests that proceedings against a legal person cannot be commenced if charges cannot be laid against a natural person (e.g. if the natural person is dead). Second, the Joint Decision only applies to corporate liability under the CoE Convention and the UNCAC Laws. The practice under other laws such as the OECD Convention Law is unclear.

Commentary

The lead examiners recommend that Greece clarify that the liability of legal persons for all foreign bribery offences, including under the OECD Convention Law, is not restricted to cases where the natural person(s) who perpetrated the offence is prosecuted or convicted. They also recommend that the Joint Decision of the Ministers of Finance and Justice be clarified that proceedings against legal persons may be commenced in the absence of criminal charges against a natural person. The Joint Decision should also be extended to all laws that could result in corporate liability for foreign bribery, including the OECD Convention Law.

3. Sanctions for Foreign Bribery and Related Offences

45. This section focuses on the outstanding Phase 2 recommendations and follow-up issues on sanctions for foreign bribery. It also considers post-Phase 2 legislative amendments in this area, and other matters that were not fully addressed in Phase 2. Administrative sanctions such as bans on exercising certain activities, and debarment from public procurement and export credits, are considered later at p. 43.

(a) *Sanctions against Natural Persons*

46. Sanctions against natural persons for foreign bribery under the OECD Convention Law have increased. In Phase 2 (para. 184), foreign bribery was punishable by imprisonment of one to five years. Since 2008, the same punishment applies if a foreign bribery offence is a misdemeanour, i.e. if the bribe paid is less than EUR 73 000. If the bribe exceeds this amount, then the offence is a felony and is punishable by imprisonment of five to ten years.¹¹ Greece informed the Working Group that multiple bribes may be aggregated for determining whether the threshold is exceeded (Penal Code Article 98(2)). The same maximum punishment applies to foreign bribery under the Penal Code, EC Financial Interests Law, CoE Convention Law and UNCAC Law. After the on-site visit, the threshold for foreign bribery to become a felony was increased from EUR 73 000 to EUR 120 000¹² for the offences under the CoE Convention and UNCAC Laws. The threshold for the foreign bribery offences in the other laws (including the OECD Convention Law) remains unchanged. This brought further inconsistency among the existing multiple foreign bribery offences.

47. A greater concern is that, despite these provisions, foreign bribery may rarely result in actual imprisonment (Phase 2 para. 185). Penal Code Article 99 mandates that jail sentences of less than one year are converted to fines. Conversion is discretionary for sentences between one and three years. A three-year sentence may be converted to a fine of up to EUR 64 605. The fine may be further converted to the performance of community service (Article 82). In addition, based on legislation enacted after Phase 2, jail sentences of under two years must be suspended unless there are compelling reasons not to do so. Suspension is discretionary for sentences between two and five years (Articles 99-100A CC). At the on-site visit, Greece stated that recent legislation provides for additional suspensions of jail sentences in order to reduce the prison population. Parliament was also discussing the impact of eliminating sentence conversions.

48. Fines are also available, though perhaps not in all foreign bribery cases. Greece's foreign bribery offences, including the one in the OECD Convention Law, do not expressly provide for fines. Nonetheless, Greece stated that fines are available for these offences under Article 81 of the Penal Code. A greater concern, however, is that Article 81 only provides for a fine if "a crime emanates from causes of profit". Fines therefore may not be available when a foreign official is bribed to obtain non-financial advantages such as licenses or queue-jumping. A further concern is that the maximum fine available is only EUR 15 000.

Commentary

The lead examiners recommend that Greece increase the maximum fines available against natural persons for foreign bribery. Greece should also ensure that fines are available in all foreign bribery cases, regardless of whether the crime "emanates from causes of profit". The Working Group should also follow up whether the sanctions imposed against natural person are effective, proportionate and dissuasive, in light of Greece's system of converting and suspending sentences of imprisonment.

Finally, the lead examiners note that a foreign bribery offence under the OECD Convention Law is considered a misdemeanour if the value of the bribe is less than EUR 73 000. Bribes

¹¹ Penal Code Article 18 establishes three categories of criminal offences: (a) felonies, which are punishable by imprisonment for life or 5-20 years; (b) misdemeanours, which are punishable by imprisonment of less than 5 years or a pecuniary penalty, and (c) petty violations, which are punishable by "jailing" or a fine.

¹² See art. 25.1 of Law 4055/2012.

below this threshold could be significant (especially in developing countries) and could lead to substantial benefits to the briber. The lead examiners therefore recommend that the Greece lower the threshold for foreign bribery offences, and allow the consideration of other mitigating and aggravating factors in determining whether an offence is a misdemeanour or felony.

(b) Sanctions against Legal Persons

49. In Phase 2 (paras. 190-194), the Working Group expressed concerns over how fines against legal persons are assessed in foreign bribery cases. Under the OECD Convention Law, legal persons are punishable for foreign bribery by an administrative fine of up to three times the value of the “benefit” received by the legal person. Greece stated that “benefit” likely means the value of the contract obtained by the briber. The Working Group was concerned that a fine could not be imposed if bribery was committed to obtain not a contract but other types of business advantages such as tax relief, subsidies, or licenses. The Greek authorities agreed that these provisions may have shortcomings. Phase 2 Recommendation 7 accordingly asked Greece to “ensure that the amount of an administrative fine against a legal person does not depend solely on the value of a contract obtained by the briber”. The Working Group also decided to follow up the issue of sanctions against legal persons (Follow-Up Issue 8(f)).

50. Greece has not implemented Phase 2 Recommendation 7. It has not amended the provision since Phase 2. Fines against legal persons for foreign bribery are also three times the “benefit” under the EC Financial Interests Law, CoE Convention Law and UNCAC Law. In its 2007 Written Follow-Up Report (p. 16) Greece indicated that “benefit” would be interpreted “to encompass all possible advantage to the offender, including tax benefits” based on “the practice and relevant case law in fraud cases”. Greece did not explain its change in position from Phase 2, when it claimed that “benefit” meant the value of the contract obtained by the briber. In any event, the different interpretations of “benefit” illustrate the nebulous nature of the term. In its Phase 3 questionnaire responses, Greece merely stated that it has not had any foreign bribery cases to test the issue.

51. A further concern is that fines under the OECD Convention Law are based on benefits actually received by the briber. A fine may therefore not be available if a bribe is offered but not accepted, thus resulting in no contract or “benefit” (Phase 2 para. 192). In fact, a legal person escapes liability entirely if it has not actually benefitted from the offence (see p. 13). The CoE Convention and UNCAC Laws avoid this pitfall by expressly making fines a function of the value of the benefit “achieved or intended”. Unfortunately, the OECD Convention Law and the EC Financial Interests Law do not use this language. The EAW and AML Laws also avoid the problem by stipulating the monetary value of the maximum fine, rather than linking the fine with the benefit.¹³ However, these different formulations of fines create a different problem, namely that they may lead to different fines being imposed in the same case.

Commentary

The lead examiners recommend that Greece rationalise and eliminate its multiple formulations of fines that could apply to legal persons in foreign bribery cases. All relevant provisions should ensure that a fine may be imposed irrespective of whether a benefit is achieved or intended, or whether the benefit is a contract or other types of business advantages.

¹³ EUR 5 million for a substantive offence, and EUR 1 million where inadequate supervision or control allowed a substantive offence to be committed.

(c) *Absence of Statistics and Inability to Assess Sanctions Imposed in Practice*

52. The Working Group in Phase 2 noted many of the issues regarding sanctions described above. Consequently, the Working Group decided that it would follow up sanctions imposed for foreign bribery against both legal and natural persons “based on statistics provided by Greece” (Follow-up Issues 8(e) and (f)). Unfortunately, in Phase 3 Greece has provided only very rudimentary and cryptic data on sanctions against natural persons, and did so only after the on-site visit. The Hellenic Police indicated that, from 2005 to 2011, 163 imprisonment sentences and 7 “lengthy prison sentences” were imposed. It is not clear to what offences these figures relate. (Presumably, they do not relate to foreign bribery as there have not been convictions of this offence.) There are no data on sentences and fines that have been imposed for these crimes, or on the frequency of conversion and suspension of jail sentences. Initiatives announced in other fora to collect statistics¹⁴ have apparently not borne fruit. Greece also did not provide statistics on sanctions imposed against legal persons for foreign bribery and other intentional crimes. Greece states that some other Parties to the Convention also have difficulty providing relevant statistics on sanctions imposed for foreign bribery.

Commentary

The lead examiners are disappointed that Greece has not provided the necessary statistics on sanctions. The data that have been provided is of limited use. They were also provided after the on-site visit, thus depriving the lead examiners of an opportunity to discuss them with the on-site visit participants. Under these circumstances, the lead examiners cannot assess whether sanctions for foreign bribery in Greece would be effective, proportionate and dissuasive. They therefore recommend that the Working Group re-assess these issues in a future evaluation. They also recommend that Greece compile statistics on the number and types of sanctions imposed against natural and legal persons in foreign corruption cases.

4. Confiscation of the Bribe and the Proceeds of Bribery

53. Again, multiple and inconsistent provisions may apply to confiscation in a given foreign bribery case. Article 2(3) of the OECD Convention Law provides for the confiscation of the bribe and the proceeds of bribery, or other property of corresponding value. Article 76(1) of the Penal Code establishes a general confiscation regime. The provision allows confiscation of the proceeds of a felony or misdemeanour, the “price” of such proceeds, anything acquired from such proceeds, and instruments of crime.¹⁵ Article 3 of the EC Financial Interests Law allows the confiscation of the bribe but not the proceeds of bribery. Article 46 of the AML Law provides confiscation of assets derived directly or indirectly from proceeds of crime. Provisions on confiscation can also be found in the Criminal Procedure Code. Confiscation under all of these provisions is conviction-based and is considered to be both a secondary penalty and a security measure. Once again, the multiplicity of inconsistent provisions likely impedes proper and adequate implementation.¹⁶

¹⁴ In 2009, Greece described the establishment of a special unit in the Ministry of Justice to collect and review data about all pending judicial cases and decisions (GRECO (2009), *Third Evaluation Round: Evaluation Report on Greece*, para. 114). Greece states that this initiative is on-going.

¹⁵ Greece stated that Law 3849/2010 amended the Penal Code to make confiscation compulsory for corruption-related crimes. In fact, the amendment only concerns certain enumerated corruption offences (e.g. illicit enrichment) and not foreign bribery.

¹⁶ The Greek authorities indicated that the draft Criminal Code should include one single provision on confiscation aiming at bringing Greece in compliance with the requirements of the Convention.

54. On the other hand, there are no provisions that expressly deal with confiscation against legal persons. Article 5 of the OECD Convention Law prescribes the punishment against a legal person for foreign bribery. Available sanctions include administrative fines, debarment from public benefits and bans on certain activities. Confiscation is not mentioned. The same is true of the EC Financial Interests Law, CoE Convention Law and UNCAC Law. In Phase 2 (para. 193), Greece stated that confiscation would be available against a legal person under Penal Code Article 76. This position is doubtful, since legal persons are not subject to criminal liability. Just prior to the Working Group's discussion of this draft report, Greece stated that confiscation against legal persons for foreign bribery is available under legislation on tax and money laundering. However, Article 46 of the AML Law on its face does not clearly provide for confiscation against legal persons. The Greece authorities did not provide a translation of the relevant tax legislation.

55. Despite acknowledging that confiscation is unavailable against legal persons for foreign bribery, Greece states that the Working Group should not consider this issue in this Phase 3 evaluation. In their view, the Working Group had already considered this issue in Greece's Phase 2 evaluation and thus should not revisit the matter. The evaluation team notes, however, that "Phase 3 includes analysis of issues and/or standards which have been developed by the Group since an evaluated country's Phase 2 evaluation, or were overlooked at the time of the Phase 2 evaluation."¹⁷

56. Assessing the application of confiscation in practice is again hampered by a lack of information. Greece did not provide statistics or examples on confiscation against natural or legal persons.

Commentary

The lead examiners recommend that Greece rationalise and eliminate its multiple provisions on confiscation that could apply in foreign bribery cases. Greece should also take steps to ensure that law enforcement authorities and prosecutors routinely seek confiscation in corruption cases. Finally, the lead examiners cannot assess whether confiscation against legal persons for foreign bribery is available, or the use of confiscation in practice because of the lack of statistics. They therefore recommend that the Working Group re-assess these issues in a future evaluation. Greece should also collect statistics on the use of confiscation and interim measures, especially in corruption and foreign bribery cases.

5. Investigation and Prosecution of the Foreign Bribery Offence

(a) Principle of Mandatory Prosecution and the Magyar Telekom Case

57. The Greek prosecution service is organised hierarchically and nation-wide. A prosecutor's office is attached to each of level of court (Court of First Instance, Court of Appeal and the Areios Pagos). Prosecutors are generally obliged to follow the instructions of the head of their office and prosecutors from higher levels on management matters but not specific cases ("internal" subordination). Recent press articles raised some issues of "external" subordination (i.e. interference of the executive government) in certain tax evasion cases.¹⁸ Greece states that additional information indicates that there was no executive interference in these cases.

¹⁷ Phase 3 Procedure, para. 5.

¹⁸ Athens News (29 December 2011), "Prosecutors' Resignation Spurs Political Storm"; Agence France-Presse (30 December 2011), "Greek Anti-Corruption Prosecutors Withdraw Resignations".

58. Greek law establishes the principle of mandatory prosecution (or “legality”). If a prosecutor at the Court of First Instance becomes aware of an allegation of a crime, then he/she is obliged to open criminal proceedings (Criminal Procedure Code (CPC) Articles 27 and 43). A Court of First Instance prosecutor may also be ordered to commence proceedings by prosecutors at the Court of Appeal and Areios Pagos, as well as by the Minister of Justice (CPC Articles 30(1)). Once proceedings are opened, the prosecutor must order a preliminary investigation if the alleged crime is a felony.¹⁹ For misdemeanours, the prosecutor may order a preliminary investigation or send the matter to trial directly if there is sufficient evidence. The prosecutor may also order that a summary investigation precede the preliminary investigation (CPC Article 31). Once the investigation is completed, the case must be sent to trial unless the alleged crime is (a) not an offence under law, (b) obviously unfounded, (c) not susceptible to evaluation by a court, or (d) not supported by sufficient evidence (CPC Article 43). Cases that do not proceed to trial are “filed” by sending a copy of the dossier and the reasons for filing to the prosecutor at the Court of Appeal. A “filed” case may be reopened if new evidence emerges.

59. There are major concerns that the principle of mandatory prosecution was not applied in the *Magyar Telekom* case, which involved substantial allegations of foreign bribery. As noted at p. 7, the case concerned three Greek intermediaries who helped executives of a Hungarian company to bribe FYROM public officials. The Greek authorities learned of the allegations in April 2010, when the Ministry of Justice received an MLA request in the case from the US. By February 2011, search warrants had been executed in Greece pursuant to the MLA request. This suggests that there were at least reasonable grounds to believe that evidence of foreign bribery would be found in Greece. In December 2011, Magyar Telekom and its parent company admitted responsibility for the crime to the US authorities. Yet by January 2012, the Greek authorities still had not opened a domestic investigation against the three intermediaries in Greece. This is especially surprising because at least two judges and prosecutors (in addition to the Ministry of Justice) would have been involved in executing the MLA request (see p. 37). The principle of mandatory prosecution should have required these judges and prosecutors to open (or cause to be opened) an investigation in Greece. Unfortunately, the evaluation team did not have an opportunity to meet these judges and prosecutors at the on-site visit.

60. Just prior to the Working Group’s discussion of this draft report, Greece provided an explanation of why it had not opened an investigation into the *Magyar Telekom* case before the on-site visit. When Greece receives an MLA request that discloses information about its citizens committing crimes abroad, it gives higher priority to executing the MLA request unless there is proof that a crime had been committed in Greece. Unfortunately, the lead examiners did not have an opportunity to discuss this explanation directly with the prosecutor and investigating judge who had conduct of the MLA request. Greece also stated that it opened a domestic investigation in the case after the on-site visit. Greece further explained that the case had been filed internally as an MLA and not foreign bribery case, and therefore was not brought to the attention of the evaluation team before the on-site visit.

61. Further questions about the principle of mandatory prosecution may be raised by the possible case involving bribery of an EU official described at p. 8. The Greek authorities state that a preliminary investigation has been opened in the case. If the investigation ultimately reveals that bribery of foreign public officials was involved, then the Greek authorities should consider laying foreign bribery charges in addition to charges of other crimes (such as fraud).

¹⁹ See footnote 11 for the classification of criminal offences.

Commentary

The lead examiners are extremely concerned that Greece may be non-compliant with Article 5 of the Convention in the Magyar Telekom case. Despite learning in April 2010 that three individuals in Greece may have engaged in foreign bribery in the Magyar Telekom case, the Greek authorities had not opened an investigation by January 2012.

Unfortunately, the lead examiners were unable to fully assess these issues concerning the Magyar Telekom case. As noted at p. 7, the evaluation team was informed of the case virtually at the end of the on-site visit. They therefore did not have an opportunity to prepare and research the matter before the meetings in Athens. They were also unable to discuss the case – including the reason why a domestic investigation had not been opened - with the judges and prosecutors who knew of the allegations but did not commence domestic proceedings. This is extremely regrettable, given the seriousness of the Magyar Telekom case and Greece’s possible non-compliance with Article 5 and 2009 Recommendation Annex I.D (para.2). The lead examiners therefore recommend that these issues be closely examined in a future evaluation of Greece.

In the meantime, the lead examiners recommend that Greece ensure that foreign bribery allegations provided to Greek officials through MLA, or in multilateral fora on international co-operation (e.g. Eurojust), or otherwise, are promptly forwarded to Greek law enforcement authorities and that domestic investigations are subsequently opened as appropriate. The lead examiners also recommend that the Greek authorities proceed proactively and without delay against both natural and legal persons in a foreign bribery-related case whenever appropriate.

(b) Conduct of Foreign Bribery Investigations

62. In Phase 2, there was substantial confusion over which body was responsible for foreign bribery investigations. Recommendation 5(a) thus asked Greece to remedy this issue and to improve co-ordination and information-sharing among relevant agencies. Most of these issues remain outstanding in Phase 3.

63. Greece states that certain prosecutors in Athens and Thessaloniki specialise in financial and economic crime cases. In addition, Law 3943/2011 established a new Economic Crime Prosecutor office that is staffed with experienced tax, customs, and financial experts etc. This new body became operational in 2011 and deals with cases of tax evasion and fraud; it is unclear whether it would also be involved in foreign bribery cases. As noted above, once criminal proceedings are opened, the prosecutor responsible for the case must order a preliminary investigation. A preliminary investigation is conducted by a judge (*juge d’instruction*) with the assistance of investigative authorities.

64. The Body for the Prosecution of Economic Crime (SDOE) is one of the main investigative bodies in foreign bribery cases. The OECD Convention Law (Article 4) provides that SDOE is responsible for “carrying out searches and preparatory investigations” of offences under that Law. Similar provisions are found in the CoE Convention Law (Article 11) and UNCAC Law (Article 9). SDOE is also responsible for imposing administrative sanctions against legal persons under these Laws. SDOE is not a police force but an administrative body within the Ministry of Finance. Its core competence is in financial crimes against the EU and the Greek state, such as tax evasion and smuggling. Its responsibilities also include investigation of trafficking in illegal substances and money laundering.²⁰ Greece explained that the SDOE was given the responsibility for foreign bribery cases because of their investigative powers and expertise.

²⁰ Article 30 of Law 3296/2004 and Article 88 of Law 3842/2010.

A public prosecutor is permanently attached to SDOE and presumably oversees investigations conducted by SDOE.

65. The Hellenic Police may also investigate the foreign bribery offences in the UNCAC and CoE Convention Laws.²¹ Greece states that, as part of the Hellenic Police, the Economic Police Service (EPS) can also investigate foreign bribery offences under both laws. However, the statutory mandate of EPS is to prevent, investigate and suppress “financial crimes against the interests of the public sector and the national economy, or which are committed by criminal organisations” (PD 9/2011 Article 3(1)). This arguably covers bribery of Greek but not foreign officials, but the Greek authorities state that the power of EPS to investigate foreign bribery derives from Hellenic Police broader jurisdiction to do so. Unfortunately, the evaluation team received a translation of the legislation governing EPS and enforcement statistics (see p. 25) only after the on-site visit. It was therefore unable to discuss this information with on-site visit participants.

66. Less clear is whether the Hellenic Police may also investigate the foreign bribery offence under the OECD Convention Law. At the on-site visit, the version of the OECD Convention Law that had been provided to the evaluation team referred only to SDOE as the responsible investigative agency. Greek officials also largely agreed that SDOE had exclusive competence to investigate offences under that law. However, after the on-site visit, the Hellenic Police informed the evaluation team of Law 3938/2011. This Law, which had been enacted before the on-site visit, purportedly gave the Hellenic Police jurisdiction to investigate offences under the OECD Convention Law. Unfortunately, the evaluation team could not verify this information because Greece did not provide an English translation of this law. It also did not have an opportunity to discuss this provision with the on-site visit participants. Just prior to the Working Group’s discussion of this draft report, the evaluation team was informed that the Hellenic Police’s jurisdiction to investigate foreign bribery under the OECD Convention Law was not conferred by Law 3938/2011. Instead, Hellenic Police’s jurisdiction over foreign bribery derives from its general jurisdiction to investigate all crimes. SDOE, however, would be the principal investigative agency in foreign bribery cases, with the Hellenic Police playing only a supporting role.

67. Greek efforts to co-ordinate the concurrent competence of SDOE and the Hellenic Police have not been sufficient. In 2007, the Public Prosecutor at Areios Pagos issued Opinion 16 which states that the Hellenic Police is generally competent to conduct preliminary investigations. However, the prosecutor in charge of the case ultimately decides whether the Hellenic Police or SDOE would conduct the investigation in the case. Greece states that the Opinion is technically not binding but is observed in practice by all enforcement agencies. Of concern, however, is that the Opinion contradicts the OECD Convention Law which clearly gives SDOE exclusive competence to investigate foreign bribery. The Opinion also does not specifically refer (and thus may not apply) to the OECD Convention Law or the other foreign bribery offences. Greece added that co-operation and exchange of information across law enforcement bodies are efficient, but did not provide evidence in support of this assertion.

68. Another issue is the resources and expertise of these various bodies. SDOE is staffed with specialists from the tax administration, financial inspectorate and customs. It does not have forensic accounting and auditing expertise within its staff, according to an on-site visit participant. After the on-site visit, Greece stated that SDOE staff included a large number of “auditors”. However, it could not confirm what forensic training or expertise these “auditors” have. Meanwhile, EPS stated at the on-site visit that its

²¹ UNCAC Law Article 9 and CoE Convention Law Article 11 provide that SDOE is competent to investigate the offences in those laws. The provisions then add that “the authority of the official/bodies according to the Code of Penal Procedure will remain intact”, thus giving the Hellenic Police concurrent jurisdiction with SDOE.

staff included forensic accounting and auditing experts. Civil society representatives at the on-site visit acknowledged the competence and expertise of EPS staff. The financial crisis has also impacted resources, with SDOE's staff decreasing by 13% from 1 207 in 2006 to 1 053 in 2012. SDOE's financial budget (excluding salaries) decreased by almost 30% over the same period. SDOE and Hellenic Police staff have also had suffered significant pay reductions. Meanwhile, the EPS stated at the on-site visit that it was actively recruiting and expanding.

Commentary

The lead examiners believe that prosecutors in foreign bribery cases should be able to call upon not only the SDOE, but also the Hellenic Police and EPS to conduct investigations where appropriate. This is already the arrangement for foreign bribery offences under the UNCAC and CoE Convention Laws. Unfortunately, the lead examiners were unable to fully assess whether the same arrangement applies to foreign bribery offences under the OECD Convention Law. Materials such as the constituting legislation of these bodies were provided after the on-site visit or not at all. EPS was also created only recently. Problems with competence and co-ordination may arise only as practice develops. The lead examiners therefore recommend that the Working Group re-assess these issues in a future evaluation of Greece. They also recommend that Greece consider issuing guidelines to prosecutors on how to decide which investigative body should have conduct of specific foreign bribery investigations.

(c) Training and Awareness-Raising

69. The National School of Judicature provides training to new and existing judges and prosecutors. The Association of Juridical Studies provides additional training to appellate judges on legal developments. Courses cover bribery (including foreign bribery) and money laundering. Seminars have been held on topics such as financial crime. A seminar in 2011 covered international bribery. The number and frequency of training sessions are unknown.

70. Greece also listed a number of training initiatives for law enforcement officials. Greece stated that courses on financial crimes, including domestic and foreign bribery, are taught in the Police Academy and the National Security School. Cadets in the Hellenic Police have attended lectures on corruption and bribery, including foreign bribery. Courses that dealt with the OECD Convention were taught in Athens in 2006-2007 and in Xanthi, Thrace in 2007-2008 and 2008-2009. In May 2007, more than 100 police officers attended a course on the OECD Anti-Bribery Convention. Police officers also regularly attend seminars on economic crime and corruption. SDOE indicated the number of training programmes but not the topics involved or the number of attendees. Greece added that a Training Unit has been set up in the EPS to ensure proper in-house training of its staff.

71. The lead examiners are also concerned about the level of awareness and training of foreign bribery among judges and prosecutors. As noted at p. 19, judges and prosecutors likely knew of the foreign bribery allegations in the *Magyar Telekom* case but did not open a criminal investigation. Whether this was due to a lack of awareness of the foreign bribery offence is unknown, since the lead examiners did not have an opportunity to meet the prosecutors and judges in question.

Commentary

Phase 2 Recommendation 5(a) asked Greece to provide additional training on the practical aspects of foreign bribery investigations. The lead examiners could not properly assess the implementation of this Recommendation, given the limited information provided by SDOE.

Furthermore, while the Hellenic Police stated that it had provided foreign bribery-specific training, it is unclear whether these concerned the practical aspects of investigations. As well, it is unknown whether the judges and prosecutors failed to begin a domestic investigation in the Magyar Telekom case because of a lack of awareness of the foreign bribery offence.

For these reasons, the lead examiners recommend that Greece provide additional training to judges, prosecutors and law enforcement officials on the Convention and the foreign bribery offence. The training should include the practical aspects of foreign bribery investigations. They also recommend that the Working Group re-assess the training and awareness of foreign bribery among these officials in a future evaluation.

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

72. The statute of limitations applicable to foreign bribery is, on its face, unremarkable. The Phase 2 Report (para. 152-154) noted that the foreign bribery offence was subject to a 5-year limitation period. Nevertheless, the Working Group was concerned that delays in the criminal justice process could pose problems. Recommendation 6(c) thus asked Greece to ensure that delays in proceedings do not result in the expiry of limitation periods in foreign bribery cases.

73. The limitation period that applies to foreign bribery has increased since Phase 2. The limitation period remains at 5 years when the offence is a misdemeanour, i.e. when the bribe is less than EUR 73 000. The period is 15 years where the bribe is over this limit and the offence is a felony. Time runs from the commission of the offence, but is suspended for up to 5 years (for felonies) or 3 years (for misdemeanours) when prosecution cannot commence or continue (Penal Code Articles 111-113). Greece responded to a question during the Working Group discussions of this draft report by clarifying that the statute of limitations is suspended when a case goes to court.

74. As in Phase 2, the greater concern is actual delay in the justice process. Greece did not provide statistics on the number of domestic corruption cases that have been statute barred. Nevertheless, information from other sources raises significant concerns. The Greek General Auditor for Public Administration reported that, out of the 450 domestic corruption cases that were brought before a court of law in 2004-2010, only one resulted in a final judgment by 2010.²² Another report in 2009 cited two domestic corruption cases that were barred by the statute of limitations.²³ While these cases concern domestic corruption, delays will likely be even greater in foreign bribery cases, as these matters are often complex and involve gathering evidence from overseas. The Council of Europe Commissioner for Human Rights also highlighted in 2007 the number of complaints before the European Court of Human Rights about delays in the administration of justice in Greece.²⁴ Civil society representatives at the on-site visit also mentioned the slowness of the Greek justice system. Against this backdrop, the eight-year period (5-year limitation period plus 3-year suspension) for misdemeanour foreign bribery offences may well be inadequate in practice. This is especially concerning since misdemeanours offences could include cases in which bribes of significant values are paid (see p. 16).

²² Transparency International Greece (2010), *Countdown to Impunity: Statutes of Limitation in the European Union – Greece: National In-Depth Assessment*, p. 16 (en.transparency.gr/Content.aspx?page=63).

²³ GRECO (2009), *Third Evaluation Round: Evaluation Report on Greece*, para. 101.

²⁴ Viewpoint of the Council of Europe Commissioner for Human Rights in 2007 (www.coe.int/t/commissioner/Viewpoints/071015_en.asp)

Commentary

The lead examiners recommend that Greece take steps to ensure that the limitation period for foreign bribery offences qualified as misdemeanours is sufficient to allow adequate investigation and prosecution. They also recommend that Greece compile statistics on criminal cases (particularly those involving corruption) that are barred by the statute of limitations.

(e) Statistics and Level of Enforcement in Practice

75. The Greek authorities openly acknowledged that collecting enforcement statistics remains a challenge. Information related to liability of legal persons is not centralised and remains very partial. Nevertheless, Greece did provide some figures (see Annex 6). SDOE provided data on “domestic corruption” investigations that were commenced and discontinued in 2009-2011. Hellenic Police provided figures on domestic bribery cases in 2006-2011, while its Internal Affairs Division provided a different set of numbers.

76. The statistics provided by Greece show a certain level of enforcement activity but allow few other conclusions to be drawn. For instance, the EPS indicated that six individuals have been prosecuted since it began operation in July 2011, but these cases did not involve bribery or corruption charges. EPS figures also promisingly show 13 investigations against legal persons. However, they do not indicate the underlying crime in these cases, although it appears that they do not relate to bribery. The data also does not suggest which legal provision on corporate liability had been invoked. The SDOE and Internal Affairs Division statistics do not indicate to what misconduct the data refers. The SDOE data do not show how many cases were successfully prosecuted, or what sanctions were imposed. The figures also show but do not explain a sharp increase in the level of enforcement since 2011 despite cuts in budget and resources (see p. 21). The data provided by the Hellenic Police appear inconsistent with data provided by its Internal Affairs Division. Unfortunately, the evaluation team was unable to ask these questions at the on-site visit since the statistics were provided only after the visit. Data on SDOE enforcement actions against legal persons were also not provided.

Commentary

The lead examiners recommend that Greece strengthen its efforts to compile more detailed enforcement statistics for domestic and foreign bribery committed by natural and legal persons.

(f) Political Offences and Offences Affecting International Relations

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

78. Greece has implemented this Recommendation but further action is required. In 2008, Article 2(4) of the OECD Convention Law was amended to stipulate that Article 30(2) does not apply to foreign bribery offences under that Law. However, this amendment does not affect the foreign bribery offences in other laws, such as the Penal Code, CoE Convention Law, UNCAC Law, and EC Corruption and Financial Interests Laws.

Commentary

The lead examiners note that Greece has implemented Phase 2 Recommendation 6(b) by excluding the application of Article 30(2) of the Criminal Procedure Code from the foreign bribery offence in the OECD Convention Law. Since then, Greece has enacted additional foreign bribery offences. Offences in the EC Corruption and Financial Interest Laws may also apply to foreign bribery. The lead examiners therefore recommend that Greece exclude the application of Article 30(2) of the Criminal Procedure Code from all offences that could apply to foreign bribery.

(g) Investigative Tools

79. Article 253A of the Criminal Procedure Code provides for special investigative techniques such as lifting the confidentiality of communications, sound and video recordings, and examination of all related personal data. In addition, these techniques have been expressly extended to the foreign bribery offences in the UNCAC and CoE Convention Law but not the OECD Convention Law. It is also unclear whether SDOE may rely on these provisions in the CPC. Wiretapping is not available for investigations of foreign bribery.

80. Additional provisions allow the lifting of other types of confidentiality. The EPS may lift tax, banking, stock exchange and business secrecy during preliminary investigations (Article 32(4) of Law 3986/2011). SDOE may also override confidentiality “following an official order” (Article 30(6) of Law 3296/2004) although this has not been confirmed by the Greek authorities.

81. Legislation also provides for interim measures such as seizure and freezing. Penal Code Article 238 (as amended) permits seizure of gifts, any assets given, and property deriving from them. However, the provision appears to apply only to the Penal Code bribery offences, and not offences such as the one in the OECD Convention Law. SDOE provided limited data indicating that these measures have been used 27 times in 2006-2011. There was no information on the types of assets seized or the offences involved, though clearly foreign bribery was not concerned. In addition, the FIU issued 19 asset freezing orders in 2010 and 187 in 2011 (for a total amount of almost EUR 224 million). The FIU could not indicate whether some of these assets related to corruption or foreign bribery.

82. Finally, there are some concerns about Greece’s ability to investigate complex financial crime cases. The *Johnson & Johnson/Dougall/DePuy* case, *Smith & Nephew* case and *Siemens* case involved foreign companies and individuals bribing Greek officials.²⁵ In 2008-2012, foreign jurisdictions imposed substantial sanctions against the parties who paid the bribes. Yet, proceedings against the Greek officials who accepted the bribes were still ongoing in these cases in January 2012. Greece pointed out that these cases involved numerous persons. The Greek authorities informed the lead examiners that Greece reached an out-of-court settlement with Siemens in March 2012, and that proceedings in the case against natural persons were continuing. The Greek authorities cited the need to obtain, translate and process voluminous documentary evidence as the main cause of delay. Greece will likely encounter these same difficulties when it prosecutes its own foreign bribery cases. Just before the Working Group’s discussion of this draft report, in addition Greece pointed out that suspects have been arrested pending trial in the *Ferrostaal* case, which also involved bribery of Greek officials by foreign companies. It should be noted, however, that this case too has experienced delay, as the alleged misconduct occurred in 2000 and that Greece’s investigation began at least in 2010.

²⁵ For further information on these cases, please see the websites of the UK Serious Fraud Office (www.sfo.gov.uk) and the US Department of Justice (www.justice.gov).

Commentary

The lead examiners recommend that Greece make the special investigative techniques in Article 253A CPC available to all foreign bribery offences, including the one in the OECD Convention Law. They also recommend that Greece take steps to ensure that its prosecutors and law enforcement officials have the capacity to investigate complex financial crime cases. Finally, given the lack of foreign bribery cases in Greece, the lead examiners recommend that Greece increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage both to increase sources of allegations and enhance investigations.

6. Money Laundering

83. There have been substantial changes to Greece's anti-money laundering laws and institutions since Phase 2. Unfortunately, the evaluation team had some difficulties in assessing the operation of this new regime. At the on-site visit, the banking sector was well represented, but only one representative of Greece's financial intelligence unit (FIU) attended the on-site visit despite requests for broader representation.

84. The Anti-Money Laundering Law (AML Law) was enacted in 2008 to address deficiencies identified in FATF's 2007 Mutual Evaluation Report and has since been amended by Law 3932/2011 in March 2011. All serious offences (including foreign bribery) are predicate offences for money laundering. Self-laundering is criminalised. The Law provides administrative and not criminal liability of legal persons for money laundering, contrary to FATF's recommendations. The AML Law also strengthened the regime on customer identification and reporting. Law 3842/2010 created a tax amnesty programme in 2010 to repatriate assets to Greece (see p. 35). Article 18(8) of the Law states that the programme does not affect the AML Law's implementation.

85. Despite recent positive developments recognised by the FATF, there have not been investigations or convictions of money laundering predicated on foreign bribery. The FIU reported some money laundering cases related to domestic bribery but could not provide statistics. It reported that, as a result of its efforts, over 20 natural persons were examined after the on-site visit and reported to the relevant Public Prosecutor for further investigation regarding corruption and mainly bribery. Both the public authorities and the private sector seem to rely heavily on the implementation of the requirements related to politically exposed persons to detect domestic and foreign bribery cases. The FIU has not issued guidance on detecting foreign bribery or corruption generally.

86. One particular concern is that the FIU may be devoting much greater resources and priority to tax and other offences rather than corruption. The FIU stated that the number of suspicious transaction reports (STRs) has increased significantly (from 1 432 in 2007 to 3 507 in 2011). But this was due to increased reporting of tax offences, according to Greece. The FIU also stated that, of the 62 cases in 2010 that involved seized assets, the most common offence by far was tax fraud; corruption was involved in just three cases.

87. The FIU's resources may also be insufficient. Since Phase 2, Greece has set up the independent "Anti-Money Laundering, Counter Terrorist Financing and Source of Funds Investigation Authority" (Law 3932/2011). The previous FIU was re-assigned as one of three units under the Authority's umbrella; the other two units concern terrorism financing and analysing asset declarations filed by individuals. Greece indicated after the on-site visit that the FIU is comprised of 7 board members, 31 full-time employees and 8 financial analysts. In October 2011, FATF concluded that this number of financial analysts was not sufficient given the number of STRs received by the FIU.

Commentary

The lead examiners commend Greece for its recent efforts to improve its anti-money laundering framework. Regrettably, the FIU's representation at the on-site visit was limited. The lead examiners thus could not fully assess the FIU's operation in practice. Nevertheless, the limited information available suggests concerns about the functioning of the FIU, especially in relation to foreign bribery cases. The lead examiners therefore recommend that Greece provide guidance and training to the FIU on detecting and reporting foreign bribery. They also recommend that the Working Group follow up the FIU's functioning, including the priority and resources given to corruption cases. Finally, Greece should take measures to ensure that all stakeholders involved in fighting money laundering are adequately aware that bribery of foreign public officials is a predicate offence to money laundering.

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

88. This section of the report considers accounting standards and laws prohibiting the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, and other conduct described in Article 8(1) of the Convention. Particular attention is again given to the multiplicity of provisions. The section then considers the role of external auditing, including conflicting information on an auditor's obligation to report foreign bribery. This is followed by a discussion of post-Phase 2 developments in corporate compliance, internal controls and ethics programmes among Greek companies.

(a) Accounting Standards

89. Greece has changed its accounting standards since Phase 2. Listed companies are now required to prepare annual financial statements in accordance with International Financial Reporting Standards (IFRS). Other companies may choose between IFRS or Greek accounting standards. These requirements implement the European Commission's Regulation on international accounting standards.²⁶ After the on-site visit, the evaluation team learned that additional accounting requirements may be found in the Code of Books and Records (Presidential Decree No. 186/1992). However, the Greek authorities were unable to provide further information despite being requested. Greece also states that the Code of Books and Records may soon be overhauled. However, the evaluation team notes that the Code is the current law and thus should be considered in this evaluation.

90. One issue relates to accounting standards that apply to state-owned enterprises (SOEs). Unlike their private sector counterparts, SOEs continue to use a cash-based rather than double-entry system of accounting, according to accountants and auditors at the on-site visit. As a result, SOEs are more susceptible to fraudulent accounting, including for the purposes of conducting foreign bribery. This issue is of some concern because, according to two representatives of civil society at the on-site visit, certain Greek SOEs operate internationally. But just before the Working Group discussed this draft report, the Greek authorities stated that Greek SOEs do not operate internationally, and that many Greek SOEs may soon be privatised. Given the timing when this information was received, the evaluation team could not resolve the contradictory statements.

²⁶ Company Law (Law 2190/1920) Articles 134-143; Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002.

(b) Offence of False Accounting

91. Like the foreign bribery offence, a multitude of provisions may apply to the accounting misconduct described in Article 8(1) of the Convention:

- (a) Article 3 of the OECD Convention Law states that the conduct described in Article 8(1) of the Convention is “punishable by at least three years’ imprisonment, if the act is not punishable by another more aggravated disposition.”
- (b) Article 8 of the CoE Convention Law prohibits the creation or use of an invoice, accounting document or record that contains false or incomplete information, or the unlawful omission to record a payment, for the purpose of concealing or disguising a bribery offence under the Penal Code or the CoE Law itself. Breach of this provision is punishable by “imprisonment and a pecuniary punishment if the act is not punished more severely by another penal provision”. As noted at p. 10, the CoE Convention Law only covers foreign bribery where the bribed official is of a country that is party to that Convention.
- (c) Three tax offences in the Tax Penalties Law (Law 2523/1997) may also apply, according to the Greek authorities:²⁷ (i) Article 17 states that anyone evading income tax by failing to submit a tax return or submitting a false tax return is punishable by imprisonment of one to ten years; (ii) Article 19(1) states that anyone who issues false tax records is punishable by imprisonment of at least three months; and (iii) also under Article 19(1), anyone who gives or accepts a tax record for a non-existent transaction is punishable by imprisonment of one to ten years. Greece did not provide translations of these provisions to the evaluation team in Phase 3.²⁸ In its questionnaire responses, the Greek authorities stated that these provisions were “subject to wholesale review as part of the reform to the tax code”.
- (d) Accountants and auditors at the on-site visit also referred to the Company Law (Article 57(b) of Law 2190/1920), which penalises a failure to prepare proper balance sheets by imprisonment and/or a minimum EUR 1 000 fine. However, this provision appears to only apply to misstatements in a balance sheet, not a company’s books and records as required under Article 8(1) of the Convention.
- (e) As noted above, the evaluation team learned after the on-site visit that the Code of Books and Records may impose additional accounting requirements. Breach of these requirements may result in fines of up to EUR 1 200 (Article 5 of the Tax Penalties Law). Unfortunately, the evaluation team was unable to discuss with participants at the on-site visit these provisions’ operation and their interaction with the other false accounting offences. Greece did not provide a translation of the relevant provisions.

92. The Greek authorities stated that these provisions are not duplicative. They explained that Article 8(1) of the Convention is principally implemented by the offences in the Tax Penalties Law. The provisions in the OECD and CoE Convention Laws do not create separate offences but merely “streamline” the offences in the Tax Penalties Law.

²⁷ See also the Phase 1 Report (pp. 14-15) and Phase 2 Report (para. 177).

²⁸ After the on-site visit, the evaluation team obtained an official translation of these provisions from other parts of the OECD Secretariat. This translation had been provided by Greece as part of its review under the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes.

93. This view seems doubtful, however. The OECD Convention Law Article 3 stipulates a specific penalty for certain prohibited accounting misconduct described therein. Furthermore, both the OECD and CoE Convention Laws state that accounting misconduct described in those provisions are punishable by imprisonment and fines “if the act is not punished more severely by another penal provision”. This implies that both provisions could be a legal basis for sanctioning misconduct under certain circumstances. They are thus, by definition, standalone offences.

94. A further problem with Greece’s position to rely principally on the Tax Penalties Law is that this Law does not cover all of the misconduct described in Article 8(1) of the Convention. These offences target tax-related misconduct, not false accounting *per se*. For example, the offence in Article 17 requires proof that the defendant intended to evade income tax; Article 8(1) of the Convention is not restricted in such terms. The offences in Articles 17 and 19(1) of the Tax Penalties Law also deal with tax returns and tax records. They do not cover falsification of a company’s internal books and records that are not directly related to tax, as required by the Convention. The provisions also do not appear to apply to legal persons, as they only prescribe imprisonment as punishment. It is unclear whether the offence in Article 5 of the Tax Penalties Law suffers from similar defects; the evaluation team did not have a translation of this provision.

95. A final concern is enforcement. The OECD and CoE Convention Laws designate SDOE as the agency for enforcing the false accounting offences in those laws. As noted at p. 21, SDOE’s main mission is enforcing laws on tax, not foreign bribery. Whether it gives sufficient priority to enforcing the false accounting offences in the OECD and CoE Conventions Laws is questionable. It may thus be preferable that responsibility for enforcing these offences also be given to the Economic Police Service (EPS) and Economic Crime Prosecutor. There are also concerns that EPS has expertise in forensic accounting and auditing but that SDOE does not (see p. 22). There is also likely insufficient awareness of the false accounting offences in the OECD and CoE Convention Laws. Finally, as with the foreign bribery offence, multiple false accounting offences could apply to the same case and create confusion.

Commentary

The lead examiners recommend that Greece (a) rationalise and eliminate its multiple offences that could apply to accounting misconduct described in Article 8(1) of the Convention, (b) give, SDOE, the EPS and Economic Crime Prosecutor concurrent jurisdiction to investigate and prosecute foreign bribery-related accounting offences under the OECD Convention Law, (c) take steps to ensure effective co-ordination among all law enforcement agencies and prosecutors that may investigate and prosecute false accounting offences, and (d) raise awareness of the false accounting offence in the OECD Convention Law among all law enforcement agencies that may investigate and prosecute this offence.

In addition, the lead examiners note that they were unable to discuss some legislative provisions concerning false accounting with on-site visit participants. The Greek authorities also stated certain provisions may be overhauled. The lead examiners therefore recommend that the Working Group re-assess the issue of false accounting in a future evaluation.

(c) *Role of External Auditing*

(i) *Entities Subject to External Audit and Auditing Standards*

96. Greek auditing standards have also changed since Phase 2. A certified auditor must conduct an annual external audit of all banks, insurance companies, listed companies, certain specialised companies, and non-listed corporations that exceed two of the three size criteria set by EU Directives. All remaining

corporations must be audited by two auditors who are registered with the Economic Chamber of Commerce. Since 2008, Greek external auditors have been required to apply International Standards on Auditing (ISAs) set by the International Auditing and Assurance Standards Board (IAASB) as modified by the Greek Accounting and Auditing Oversight Board (ELTE).²⁹

(ii) *Awareness and Detection of Foreign Bribery*

97. External auditors in Greece are obliged to detect material misstatements of financial statements due to fraud (ISA 240) or non-compliance of laws and regulations (ISA 250). Auditors at the on-site visit acknowledged that the application of ISAs could lead to the detection of foreign bribery. No cases of foreign bribery have been detected in practice. However, on-site visit participants gave some anecdotal examples of cases in which external audits uncovered domestic bribery or fraud.

98. A greater concern is that audit plans prepared by Greek external auditors do not always consider the risk of foreign bribery when appropriate. On-site visit participants stated that Greek audit firms would generally take risks of foreign bribery into account only when they audit companies that are subject to the jurisdiction of the US foreign bribery legislation, the Foreign Corrupt Practices Act (FCPA). The same measures are not taken when auditing Greek companies that are subject to Greek foreign bribery laws but not the FCPA, regardless of these companies' exposure to risks of foreign bribery.

99. An associated concern is the lack of training on foreign bribery for the accounting and auditing profession. On-site visit participants stated that the large, international accounting firms in Greece provide in-house training on the FCPA. Other firms likely do not have similar training. The profession's entrance examinations and continuing education programmes do not specifically deal with foreign bribery. There is no training on the Greek (as opposed to the US) foreign bribery laws at any of the Greek accounting and auditing firms, regardless of size.

Commentary

The lead examiners observe that there is a low level of awareness of Greece's foreign bribery laws among accountants and auditors. They therefore recommend that Greece make efforts to raise awareness of Greece's foreign bribery laws among Greek accountants and auditors. Particular emphasis should be given to encouraging accountants and auditors to make efforts to detect foreign bribery among all Greek companies, and not only those subject to FCPA jurisdiction. In particular, the practices for auditing companies that are subject to the FCPA should be extended to audits of all Greek companies.

(iii) *Reporting of Foreign Bribery by External Auditors*

100. The duty of external auditors to report foreign bribery to an audited company is largely governed by the ISAs.³⁰ Participants at the on-site visit stated that auditors in these circumstances are required to report the matter to company management and, where appropriate, to the company's general meeting of shareholders. The company board is in turn expected to report the matter to the competent authorities.

101. External auditors at the on-site visit unanimously believed that they are not required to report foreign bribery to law enforcement. They stated that their duty of confidentiality towards their clients

²⁹ Company Law (Law 2910/1920) Articles 36 and 36a; Law 3693/2008 Article 24.

³⁰ See also Articles 21 and 24 of Law 3693/2008, which state that information obtained during an audit is subject to existing provisions on professional secrecy and applicable auditing standards.

precluded external reporting. No legal provision was cited by the Greek authorities before the on-site visit, or by the participants at the visit. This position was a complete reversal from that in Phase 2 (para. 66). . Some auditors at the on-site visit were also concerned that they could be exposed to prosecutions or law suits for false reporting if they were required to report foreign bribery to law enforcement. The Written Follow-Up Report (para. 6) also stated that ELTE issued a circular to accountants and auditors drawing their attention to their duty to report foreign bribery. At the Phase 3 on-site visit, ELTE clarified that this circular only related to reporting suspicious money laundering transactions, not foreign bribery *per se*.

102. After the visit, research conducted by the evaluation team revealed two legislative provisions that appear to support the auditors' position. Under Articles 63 and 63c of the Company Law (Law 2190/1920), auditors who breach their secrecy obligations are punishable by imprisonment of up to three months. Greece's responses to the Phase 3 questionnaire did not refer to these provisions. In fact, the responses did not discuss an auditor's reporting obligations at all. The evaluation team obviously did not have an opportunity to discuss with the on-site visit participants the operation of the provisions in the Company Law. Most importantly, the evaluation team could not discuss how these provisions interact with the duty on all individuals to report crime under Article 40 of the Criminal Procedure Code (see p. 42).

103. Just before the Working Group's discussion of this draft report, Greece insisted that external auditors have a legal obligation to report foreign bribery to law enforcement authorities as required by the Criminal Procedure Code. The duty of confidentiality in the Company Law only applies between an auditor and another private party, not viz. law enforcement authorities.

Commentary

In Phase 2, Greece's external auditors stated that they were required to report suspicions of foreign bribery to law enforcement. In Phase 3, they took the complete opposite view that they are prohibited from doing so. The Company Law, on its face, supports the auditors' current position, but the Greek authorities take the position that the Law does not apply in this context. Unfortunately, the lead examiners were unable to discuss at the on-site visit the Company Law provisions prohibiting auditor reporting. They therefore recommend that the Working Group re-assess this issue in a future evaluation. They also recommend that Greece clarify that the Company Law does not impede external auditors from reporting foreign bribery to law enforcement authorities. Greece should also raise awareness among external auditors of their obligation to report crimes to law enforcement.

(d) Court of Audit

104. The Phase 2 Report (para. 69) stated that the Court of Audit was not directly relevant to foreign bribery. The Court was principally responsible for auditing the Greek public sector. Private sector auditors, not the Court, audited state-owned or controlled entities which the legislature has designated as private bodies (e.g. banks and power companies).

105. The situation has changed since Phase 2. Greece did not respond to questions in the Phase 3 questionnaire concerning the role of the Greek Court of Audit. At the on-site visit, the Court stated that it did audit some SOEs in which the state owns a majority interest and when authorised by Parliament to do so. The Court is under a legal obligation to report crimes that it detects to a prosecutor. It is also required to report annually to parliament, and may provide additional reports to a ministry or competent authority. As noted at p. 28, participants at the on-site visit stated that Greek SOEs are internationally active. Prior to the Working Group's discussion of this draft report, Greek officials disagreed with this statement. In their view, presently only one Greek SOE may operate internationally, and this company is publicly-listed and subject to external audit.

(e) *Corporate Compliance, Internal Controls and Ethics Programmes*

106. Many large Greek companies appear to have developed some form of corporate compliance, internal controls and ethics programmes that are relevant to detecting and preventing foreign bribery. Several major, internationally active Greek corporations attended the on-site visit, including ones in sectors at risk of committing foreign bribery. Most of these companies indicated that they had developed codes of ethics that address bribery, channels for whistleblower reporting, policies on gifts and hospitality etc.

107. The compliance programmes in some of these companies deal specifically with foreign bribery, largely because of the US Foreign Corrupt Practices Act (FCPA). The companies in question are subject to FCPA jurisdiction, and their compliance programmes either refer specifically to the FCPA or closely follow that statute's language. None of the compliance programmes described at the on-site visit referred to Greece's own foreign bribery laws. In one example, a company's code of conduct allowed employees to make facilitation payments if the requirements for such payments under the FCPA were met. This provision thus appears to contravene Greek law, which according to Greek officials prohibits facilitation payments under any circumstance (see p. 12). The failure of these companies' compliance programmes to refer to Greece's foreign bribery laws is likely because the Greek authorities have not sufficiently raised awareness of and enforced these laws (see p. 39).

108. Even for companies that have compliance programmes which deal with bribery, it is not entirely clear that these programmes have been effectively implemented. Many Greek companies may not have properly assessed their risk profiles for engaging in foreign bribery. The Greek companies at the on-site visit, all of which are internationally active, largely denied that their employees or contractors were at risk of committing foreign bribery. Several companies stated that they had little to do with foreign public officials, even though they had operations in or exported to countries in the Balkans or Africa. All of the companies stated that they had never received any reports that their employees had committed foreign bribery or were solicited for bribes by foreign officials. A few on-site visit participants admitted hearing "unprovable rumours" of *other* Greek companies bribing foreign officials. Only one company at the on-site visit stated that it had trained its employees specifically on bribery and corruption issues.

109. The disregard for risks of foreign bribery extends to the Greek shipping industry and is a particular cause for concern. Greek companies in this sector generally operate their own ships or charter out their ships with a crew. In either case, the ships are usually operated by these companies' employees. These employees thus frequently come into contact with foreign public officials in foreign ports, and thus could be at risk of being solicited for bribes, including facilitation payments. Yet, of the several shipping companies that attended the on-site visit, all but one denied that they were exposed to risks of foreign bribery. The one exception was a representative who candidly acknowledged that ships visiting foreign ports are often required to pay "taxes" on non-existent cargo to port officials before the ship is allowed to dock. Another representative stated that their crews sometimes encountered "problems" in foreign countries but refused to elaborate. In sum, Greek shipping industry representatives at the on-site visit appeared extremely reluctant to acknowledge any exposure to the risks of foreign bribery.

110. Another sector of concern is Greek small- and medium-sized enterprises (SMEs). SMEs form a major part of the Greek economy and many export to or have operations in foreign countries (see p. 7). Only one SME and one organisation representing SMEs attended the on-site visit. These representatives, like their counterparts from larger enterprises, denied that they were exposed to risks of committing foreign bribery. Representatives of large enterprises and the accounting, auditing and legal professions believed that Greek SMEs generally do not have adequate corporate compliance, internal controls and ethics programmes to address foreign bribery. Several civil society participants also believed that a significant number of SMEs operate internationally and may be at risk of committing foreign bribery.

111. The Greek authorities have made some efforts to promote corporate compliance programmes to deal with foreign bribery. The Hellenic Capital Markets Commission (Greece's securities regulator) circulated the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance. The Ministry of Justice, Transparency and Human Rights distributed the Convention and Guidance at a speaking engagement organised by a chamber of commerce and attended by SMEs in September 2011. More should be done, however. Private sector participants at the on-site visit were asked but could not identify any government efforts to promote corporate compliance measures or to raise awareness of foreign bribery.

112. The private sector has also made some efforts to promote corporate compliance. The Good Practice Guidance was circulated by the Athens Stock Exchange. One business organisation held a seminar two months before the on-site visit which discussed the Guidance. Another organisation promoted the OECD Guidelines on Multinational Enterprises. The International Chamber of Commerce translated into Greek the 2008 version of its Rules for Combating Corruption.

Commentary

The lead examiners are extremely concerned that Greek enterprises may not have adequately implemented corporate compliance, internal controls and ethics programmes to address foreign bribery. Greek enterprises generally do not acknowledge that they may be at risk of committing foreign bribery and are thus ill-prepared to address this crime. The government has done little to rectify this perception. The lead examiners therefore recommend that the Greek authorities play a much more proactive role in encouraging companies (especially SMEs) to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance.

8. Tax Measures for Combating Bribery

(a) Tax Deductibility of Bribes

113. In Phase 2, Greece stated that bribe payments were not tax deductible, even though there was not a legislative provision that expressly prohibited such deductions. Phase 2 Recommendation 2 thus suggested that Greece consider introducing an express prohibition. In 2006, Greece added Article 31(16) to its Income Tax Code (Law 2238/1994) which states that "Payments in case or in kind are not considered deductible expenses from the gross income when such payments constitute a criminal offence, even when payable abroad." In 2007, the Working Group concluded that Greece had fully implemented Phase 2 Recommendation 2 (Written Follow-Up Report, paras. 1 and 12).

114. Subsequent research by the evaluation team revealed that this express prohibition does not apply to Greek shipping companies. The Income Tax Code does not apply to profits from the operation of ships flying the Greek flag that are obtained by Greek companies, co-operatives or unions of co-operatives (Income Tax Code Article 103(1)(g)). Such profits are taxed under a separate regime created by a different law (Law 27/1975) which does not expressly prohibit the tax deduction of bribes. Just before the Working Group's discussion of this draft report, Greece stated that the Income Tax Code does not apply if a separate law applies. This would appear to be the case for Greek shipping companies, as Law 27/1975 creates a specific regime to these companies. The evaluation team also recognises that Greek shipping companies may not be allowed to deduct bribes from their income taxes under the current law. Nevertheless, the issue is whether there is an *express* prohibition in Greek law prohibiting shipping companies from making such deductions as required by the 2009 Recommendation.

115. A further concern is the enforcement in practice of the non-deductibility of bribes. Greece stated that after an individual or company is determined to have committed (domestic or foreign) bribery, it is “standard practice” for the Greek tax authorities to re-examine the tax returns of the individual or company for the relevant years to determine whether bribes were deducted. However, Greece could not provide statistics or examples to demonstrate this practice.

Commentary

Given the Greek shipping sector’s size and exposure to risks of foreign bribery, the lead examiners recommend that Greece amend Law 27/1975 to expressly prohibit Greek shipping companies from deducting bribe payments from their taxes. Greece should also establish a written policy of re-examining the tax returns of individuals and companies that have engaged in bribery to verify whether bribes had been deducted.

(b) *Detecting and Reporting Foreign Bribery*

116. At the on-site visit, an official from the Ministry of Finance described steps taken by tax officials to detect bribery during a tax examination. For instance, tax examiners would look for false invoices and documentation by cross-checking with bank account information. Invoices for abnormal expenses or amounts could trigger further inquiries. One example was cited in which a construction company hid a bribe as an expense to a foreign engineering company. Greek tax authorities determined that the foreign company was fictitious after inquiring with their counterparts overseas. An internal control department regularly reviews the adequacy of audit procedures.

117. It is not clear, however, whether these steps to detect bribes are routinely taken in every tax examination. As in Phase 2, the OECD Bribery Awareness Handbook for Tax Examiners has not been translated and distributed to Greek tax examiners. Greek officials stated that the entire contents of the Handbook have been incorporated into domestic legislation. This is doubtful, since the Handbook is a step-by-step guide for tax examiners to detect bribes, and hence its contents are likely unsuitable for inclusion in legislation. A translation of the relevant provisions was also not provided. Finally, Greece could not provide statistics on cases of bribery detected by tax examiners.

118. Efforts to detect bribes are also undermined by frequent tax amnesties. Greece has long had an enormous backlog of uncollected tax arrears and unaudited tax returns. To address this problem, taxpayers have been allowed to pay a predetermined sum to avoid a tax audit, or to finalise his/her unaudited pending taxes for a certain period. Five amnesties were granted in 2004-2011 alone.³¹ Additional schemes were introduced in 2010 to encourage the repatriation of funds from abroad. These measures allow tax revenues to be collected while avoiding time-consuming tax audits. Yet, they also allow the above-mentioned measures to disallow deduction of and to detect bribes to be by-passed. Furthermore, successive tax amnesties discourage compliance with tax laws as taxpayers come to expect future amnesties.

119. As with all public officials, Greek tax officials are under a duty to report crime. Officials at the on-site visit stated that tax auditors and heads of audit units have to report to the prosecutor any cases of criminal acts (including cases of bribery) that they detect during a tax audit. In addition, under the AML Law, bribery (both domestic and foreign) is a predicate offence for money laundering. As a result, cases of potential bribery that are detected during a tax audit must also be reported to the FIU and Economic Crime Prosecutor.

³¹ OECD (2011), *Economic Survey: Greece* at pp. 16 and 86; OECD (2009), *Economic Survey: Greece* at pp. 10 and 64; Malherbe, J. (ed.) (2011), *Tax Amnesties*, pp. 82-96; Questionnaire Responses 7.2.3.

Commentary

The lead examiners are encouraged that the Greek tax authorities have made some efforts to detect bribes during tax examinations. However, they are unable to fully assess the effectiveness of these efforts in the absence of relevant statistics. They also believe that detection efforts could be more effective if they are performed more systematically. They therefore recommend that the Greek tax authorities include bribery in their risk assessments and audits. These efforts will focus tax examiners on identifying bribes during the examination of tax returns, and encourage them to carry out relevant compliance checks. The lead examiners also recommend that measures to detect bribes be incorporated into future tax amnesties. Finally, Greece could consider translating and distributing the OECD Bribery Awareness Handbook to all tax examiners.

(c) Tax Secrecy and Access to Tax Information by Greek Law Enforcement

120. The ability of some investigators and prosecutors in foreign bribery cases to obtain confidential tax information is unclear. Tax officials are obliged to maintain confidentiality of information gathered during the course of their duties (Income Tax Code Article 85). Notwithstanding this provision, the Economic Police Service may obtain such confidential information while conducting a preliminary investigation (Law 3986/2011 Article 32(4)(a)). A similar provision allows SDOE to also access confidential tax information (Law 3296/2004 Article 30(6)). The situation with the Hellenic Police, Economic Crime Prosecutor and the Financial Intelligence is less clear. After reviewing a draft of this report, the Greek authorities stated that the Internal Affairs Division of the Hellenic Police have similar powers. However, it is unclear whether these powers may be used in foreign bribery cases.³² At the on-site visit, a Greek official stated that Income Tax Code Article 85 allows the Economic Crime Prosecutor and the Financial Intelligence Unit to obtain confidential tax information. However, the translation of this provision provided by the Greek authorities after the on-site visit does not corroborate this statement. Just before the Working Group's discussion of this draft report, Greece insisted that tax secrecy would not impede investigations of foreign bribery. Again, no supporting legislation was provided.

Commentary

The lead examiners recommend that Greece ensure that all law enforcement officials who could be involved in foreign bribery cases may access information protected by tax secrecy in the course of a foreign bribery investigation or prosecution.

(d) Sharing Tax Information with Foreign Law Enforcement Authorities

121. Greece has not provided information on its ability to share tax information with foreign authorities. The OECD Model Tax Convention contains optional language which allows tax information to be shared with foreign law enforcement and judicial authorities for use in investigations of foreign bribery and other crimes.³³ In Phase 2 (para. 60), Greece stated that it intended to amend its bilateral tax treaties to include this language and to adopt the language in future tax treaties. There is no information on any progress made in this regard. Just before the Working Group discussed this draft report, Greece stated that all of its recent tax treaties contain this provision. A similar provision is found in Article 22(4) of the

³² The Greek authorities cited Law 3938/2011 Article 5(7), which states that the Internal Affairs Division may access secret tax information when investigating "crimes of this legislation". It is unclear whether the "crimes of this legislation" includes foreign bribery, since the text of the entire law was not available.

³³ Paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention.

multilateral Convention on Mutual Administrative Assistance in Tax Matters of the OECD and Council of Europe, which Greece signed in February 2012 but has not yet ratified. A recent EU Directive also requires Greece to enact legislation by 2013 to share tax information.³⁴

Commentary

The lead examiners recommend that Greece promptly ratify the Convention on Mutual Administrative Assistance in Tax Matters of the OECD and Council of Europe.

9. International Co-operation

122. Greece is party to several multilateral and bilateral treaties that could apply to MLA in foreign bribery cases, though the precise number is unclear. Greece's questionnaire responses referred to 16 treaties, but the 2007 FATF MER (para. 783) mentioned 21. After reviewing a draft of this report, Greece indicated that it has bilateral MLA treaties in force with 14 countries.³⁵ Ten other bilateral MLA treaties are no longer in use because international co-operation with those countries is only based for the time being on the 1990 Convention applying the Schengen Agreement or the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. In addition to these two multilateral treaties, Greece is also party to multilateral criminal law conventions that contain provisions on MLA, including the UN Conventions on Corruption and Transnational Organised Crime, and the CoE Conventions on corruption and money laundering. Greece is not party to the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. Assistance may also be sought and provided by the tax authorities and FIU (see pp. 36 and 27 respectively), and the Hellenic Capital Markets Commission (through the International Organization of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding (MMoU)).

123. In the absence of a treaty or administrative arrangement, Greece indicated that domestic law is applied on the condition of reciprocity. In such cases, Greece can provide or grant MLA under Articles 457-461 of the Criminal Procedure Code (CPC). The authorities further stated that dual criminality is not explicitly required under these Articles. Furthermore, Greece asserts that dual criminality will always be met in foreign bribery cases since all domestic legal provisions, including Article 458(3) CPC, are interpreted by Greek jurists in combination with treaties on extradition and MLA to which Greece is party (e.g. the UN Convention against Transnational Organized Crime Article 18(9), UN Convention against Corruption (Article 46(9)(b) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Article 18(1)(f)). Bank secrecy could be waived by a three-judge panel (MER para. 790). It is unclear whether certain types of assistance - such as production and seizure of documents - are available since they are not expressly mentioned in these provisions (MER para. 784). Greece states that it can provide MLA in investigations against legal persons, even though its own legal system does not recognise criminal liability of legal persons (see p. 12) since Greece can provide MLA in relation to the natural persons involved in the criminal activities of the legal person.

124. MLA requests may be transmitted directly between law enforcement or through a central authority, depending on the underlying legal framework. Requests under the EU Schengen agreement and

³⁴ Information and documents received in accordance with this EU Directive may be used for purposes other than the administration and enforcement of taxes with the permission of the Member State providing the information. A Member State must grant this permission if it could use the information for similar purposes domestically (Directive 2011/16/EU on Administrative Cooperation in the Field of Taxation, Article 16.2).

³⁵ Greece explained that the discrepancy in the number of treaties was due to different counting methodologies.

urgent requests under some treaties such as the 1959 European Convention may be sent directly to the “competent” Court of Appeal. Requests in all other cases must be channelled through the Central Authority in the Ministry of Justice. This includes requests sent under the Anti-Bribery Convention, UNCAC, CoE Criminal Law Convention on Corruption, and the CPC.³⁶

125. Prior to the on-site visit, Greece could not provide detailed MLA statistics, such as on the offence underlying requests, time required for execution, and nature of assistance sought. It only estimated that many requests are “addressed within days” but in “exceptional” cases response times “range from a week to a maximum of six months”. It explained that more detailed statistics were not available since most incoming requests are sent directly to the courts. This position is puzzling, since it does not explain the absence of statistics on requests processed by the Central Authority. As well, most incoming requests are presumably sent to the Courts of Appeals covering Athens and Thessaloniki. Statistics from those two courts would have provided an incomplete but nevertheless useful picture. This position is even more surprising since Greece did provide some (albeit partial) statistics after reviewing a draft of this report. These figures indicated that from 1 January 2010 to 27 April 2012, the Greek authorities sent two MLA requests in relation to bribery and five relating to money laundering. Greece also received four requests related to bribery and five to money laundering during this period. The time taken to execute seven of these requests ranged from 1 to 15 months. Two of the requests remain outstanding, including one for the past ten months.

126. At the on-site visit, the evaluation team also queried about delays in specific cases. In *Johnson & Johnson*, Greece did little to act upon an MLA request for approximately one year after receipt. While part of the delay was unavoidable because the investigating officer passed away, Greece admitted that additional delay was due to changes in personnel and inaction by some officials. In *Magyar Telekom*, Greece received the MLA request in April 2010. The evidence was transmitted sometime after February 2011, though Greece did not provide the exact date. Additional evidence was transmitted thereafter. In both *Johnson & Johnson* and *Magyar Telekom*, the response times were longer than the six-month maximum initially described by the Greek authorities for “exceptional cases”. Despite these delays, the authorities in the requesting state publicly expressed appreciation of Greece’s co-operation in cases such as *Johnson & Johnson*.

127. Another source of delay may be the rather lengthy procedure for processing requests. Requests received by the Central Authority are sent to the Court of Appeal for execution. When the Court of Appeal receives an MLA request (whether from the Central Authority or directly from a foreign authority), it must transfer the request to the Prosecutor General of the Court of First Instance, who then forwards it to the President of the Court of First Instance, who finally sends it to an Investigating Judge for execution. The gathered evidence retraces this route on its way to the foreign authorities. Just prior to the Working Group’s discussion of this draft report, Greece explained that only a prosecutor at the Court of Appeal and an Investigating Judge are involved in the actual execution of the request; the remaining officials merely pass on the request without reviewing its contents.

128. On its face, this convoluted process is a recipe for unnecessary delay. Greece stated that it takes one to three days for a request to be transmitted from the Court of Appeal to an Investigating Judge. The reliability of this figure is questionable, given that Greece does not maintain statistics on MLA (see above). The figures were also provided after the on-site visit; the evaluation team thus did not have an opportunity to discuss them with participants in Athens. In any event, the necessity of involving up to five different bodies to transmit and execute an MLA request is highly doubtful. For instance, Greece stated that the

³⁶ See Phase 1 Report p. 17; UNCAC Law Article 11(2); CoE Convention Law Article 13; CPC Article 458(1).

Central Authority plays a “peripheral role” and “simply channels information to and from the competent authorities” and conducts “a perfunctory review of whether the conventional requirements are met”. The President of the Court of First Instance plays a similar role, based on information received just before the Working Group discussed this draft report. Furthermore, the prosecutor at the Court of Appeal also examines the legal basis for a request, according to a participant at the on-site visit. The prosecutor and the Central Authority thus perform similar functions. Greece did not explain the other bodies’ roles, but they likely involve similarly formalistic and possibly duplicative functions.

129. As for outgoing MLA requests, Greece has sought MLA in one foreign bribery case (see p. 7). The request was sent in December 2011 to a Central Asian country with which Greece has a bilateral treaty. Greece has yet to receive a reply at the time of this report.

130. Greece provided some information on extradition. According to the Phase 2 Report and the FATF MER (paras. 819-833) Greece can seek and provide extradition in corruption cases based on bilateral treaties, multilateral treaties, the European Arrest Warrant (for EU members), and CPC Articles 436-456. Greece does not extradite its nationals (except under a European Arrest Warrant) but will prosecute them in Greece for the same crime (*aut dedere aut judicare*). In the absence of an applicable treaty, the grounds for refusing extradition are stipulated in the CPC and are the same as those for refusing MLA. After the on-site visit, Greece indicated that, from 1 January 2010 to 27 April 2012, the authorities received 80 extradition requests. Only one of them related to corruption and money laundering. For the same period, Greece submitted 18 extradition requests. Two of them related to corruption and money laundering.

Commentary

The lead examiners are disappointed that they did not have an opportunity to properly assess Greece’s ability to seek and provide MLA in foreign bribery cases. During this evaluation, Greece provided very limited information in its questionnaire responses. Discussions with the relevant officials yielded only basic information. Some information and a translation of the relevant CPC provisions were provided only after the on-site visit, thus depriving the lead examiners of an opportunity to discuss it with Greek representatives in Athens.

Nevertheless, the limited information available suggests that Greece’s system for seeking and providing MLA needs to be improved. Greece should also clarify the types of assistance available for requests that are based on the CPC rather than a treaty. Finally, to assess the effectiveness of its system, Greece must maintain detailed statistics of MLA requests, including the offence underlying requests, time required for execution, and nature of assistance sought. To this end, the Court of Appeal should be required to send a copy of requests that it receives from foreign authorities to the Central Authority. Finally, the lead examiners recommend that the Working Group re-assess Greece’s system for seeking and providing MLA in a future evaluation.

10. Public Awareness and the Reporting of Foreign Bribery

(a) Efforts to Raise Awareness of Foreign Bribery

131. Since Phase 2, the Greek authorities have engaged in limited awareness-raising efforts aimed at the private sector that referred specifically to foreign bribery. Phase 2 Recommendation 1(d) asked the Hellenic Capital Markets Commission (HCMC) to engage in more awareness-raising. In 2007, Greece reported to the Working Group that HCMC and the Athens Stock Exchange (ASE) were preparing an awareness-raising circular for listed companies. In the event, work on the circular was abandoned because

of more urgent tasks. As noted at p. 34, HCMC and ASE distributed the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance instead. The Guidance was also distributed at a 2011 seminar organised by the Ministry of Justice. Unfortunately, none of the Greek authorities followed up whether Greek companies have implemented the Guidance in practice. The Ministry of Foreign Affairs did not describe activities by its staff or overseas diplomatic missions to raise awareness among Greek companies.

132. Conspicuously absent is the Ministry of Development, Competitiveness and Shipping,³⁷ which is responsible for company regulation and SME promotion. At the on-site visit, the Ministry could not describe any awareness-raising activities directly related to foreign bribery or the Convention. Of particular concern was the lack of efforts directed at the shipping industry and SMEs. One Greek representative stated that 70 SMEs were contacted through Greek embassies, but further details were not available. The Greek authorities added that the government's trade promotion agency had been dissolved. Information was not provided on this agency's awareness-raising efforts (if any) before its dissolution. The Ministry stated that after March 2012 it would acquire the ability to contact all companies in Greece electronically. This could be a convenient and low-cost method of raising awareness.

133. There have also been few awareness-raising efforts aimed at the general public. Some government bodies have posted the Anti-Bribery Convention and Recommendation on their websites. However, there was no information about any proactive awareness-raising activities or campaigns directed at the public that specifically covered foreign bribery.

134. Efforts to raise awareness of foreign bribery within the Greek public sector, which was the focus of Phase 2 Recommendation 1(b), appeared equally lacking. The Phase 3 questionnaire responses stated that regular events were held to raise awareness among relevant agencies but details were not provided. The Ministry of Citizen Protection (previously the Ministry of Public Order) raised awareness among police officers but not other government officials. Some efforts made in the areas of tax and officially supported export credits are described at pp. 35 and 44 respectively.

135. The Greek authorities explained that they preferred to raise awareness of corruption generally, rather than specifically highlighting foreign bribery. In their view, foreign and domestic corruption "go hand-in-hand". They added that the current financial crisis has led to greater public focus on corruption, both domestic and foreign. As a result, Presidential Decree 94/2010 created a "General Secretariat on Transparency and Human Rights" to establish, elaborate, co-ordinate and implement anti-corruption policies, measures and programmes, including legislative initiatives. In addition, all relevant agencies attended a brainstorming workshop in June 2011 organised by the National Centre on Public Administration. The Greek authorities stated that the results of the workshop were published for wider consultation, but did not indicate how these results were directly relevant to foreign bribery. The 2007 Written Follow-Up Report (pp. 5-9) mentioned additional awareness-raising activities directed at corruption generally, such as the ratification of UNCAC and enactment of the Civil Service Code.

136. Unlike the Greek authorities, some representatives from the private sector and civil society saw a need to raise awareness of foreign bribery specifically. They opined that the recent uproar in Greece over corruption caused by the financial crisis might not necessarily extend to transnational bribery. Some Greek citizens also might not object to foreign bribery because this crime could help Greek companies win business without reducing the integrity of Greek officials. Greek companies may also take the position that their integrity comes second to the need for survival in these difficult economic times.

³⁷ In 2009, the Ministry of Economy and Finance split into the Ministry of Finance and a second ministry which ultimately became the Ministry of Development, Competitiveness and Shipping in 2011.

137. The Greek authorities may also have deferred to the private sector on the issue of awareness-raising. In response to a question concerning the level of awareness of SMEs, the Greek authorities replied that the evaluation team should inquire with Greek business organisations. As noted at p. 34, some Greek business organisations have made limited efforts to raise awareness of foreign bribery, mostly by disseminating the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance. Other organisations, however, have only worked on corruption issues generally and not specifically on foreign bribery. One organisation believed that the issue of foreign bribery is of declining importance.

138. Given this backdrop, it is not surprising that awareness of the Convention and foreign bribery among Greek citizens and public officials appears low. This was the view of several civil society representatives at the on-site visit. As noted at p. 34, larger Greek companies may be aware of foreign bribery issues because of the US FCPA and not the Greek foreign bribery legislation. Greek SMEs are likely unaware of these issues at all. Representatives of Greek companies and business organisations at the on-site visit were asked but could not identify any government efforts to raise awareness of foreign bribery.

Commentary

The lead examiners believe that the awareness of foreign bribery and the Convention in Greece may be unacceptably low. The Greek authorities have not engaged in sufficient efforts to raise awareness of foreign bribery. Efforts by the Greek authorities to raise awareness of corruption generally without specifically referring to foreign bribery are insufficient. Most Greek individuals and business will likely interpret “corruption” in this context to mean only domestic corruption. This lack of awareness-raising efforts is compounded by the absence of enforcement of the foreign bribery offence. Experience in other countries shows that proactive enforcement can raise awareness significantly. Finally, as pointed out during the on-site visit, Greek individuals and businesses may also be more tolerant of foreign bribery during the current economic difficulties. The need to raise awareness may thus be even more pressing.

For these reasons, the lead examiners recommend that Greece proactively raise awareness of foreign bribery among Greek individuals, businesses and public officials. These efforts should particularly aim at the shipping, export, and SME sectors, which are particularly exposed to risks of foreign bribery. Greek overseas diplomatic missions should also be more proactive in raising awareness of Greek companies operating overseas.

(b) Reporting of Foreign Bribery by Public Officials

(i) Reporting of Foreign Bribery by Public Officials Generally

139. Post-Phase 2 legislative developments may raise some questions concerning Greek officials’ obligations to report foreign bribery. The Phase 2 Report (para. 44) noted that Greek public officials are obliged to report crimes of which they become aware “in the exercise of their duties” (Article 37(2), Criminal Procedure Code (CPC)). In 2007, Greece enacted the Civil Service Code (Law 3528/2007). Greece’s Written Follow-Up Report (p. 7) stated that “Law 3528/2007 reiterates the obligation of every public servant to report a criminal offence”. In Phase 3, Greece stated that the Code does not impose such an obligation; the obligation arises from the CPC. The evaluation team further notes that Article 26 of the Code appears to require civil servants to maintain the confidentiality of information obtained while performing their duties. Breach of this Article may lead to disciplinary sanctions. Greece has not explained whether and how this provision hinders the reporting of crimes by officials, or provided a translation of this provision.

Commentary

The lead examiners are somewhat concerned that Article 26 of the Civil Service Code may hinder the longstanding obligation of public officials to report crimes. The Article appears to place an unqualified obligation on civil servants to maintain confidentiality of information obtained while performing their duties. An argument could be made that the Article prevails over Article 37(2) of the Criminal Procedure Code because it was enacted more recently. The lead examiners therefore recommend that Greece clarify this ambiguity.

(ii) *Reporting by Overseas Diplomatic Missions*

140. Greek officials working in overseas diplomatic missions, as with other Greek officials, are subject to the mandatory obligation to report crime under CPC Article 37(2). Phase 2 Recommendation 1(e) asked Greece to instruct these officials on how and to whom to report foreign bribery cases. In 2008, the Ministry of Foreign Affairs issued a circular to all Greek overseas missions instructing staff to report foreign bribery allegations involving Greek individuals and companies to the competent authorities in Greece. At the on-site visit, the MoFA stated that the circular had not been reissued since 2008, and that it did not receive any feedback about the circular.

Commentary

The lead examiners note that Greece's overseas diplomatic mission has not reported any cases of foreign bribery involving Greek companies to Greek law enforcement. The MoFA also has not raised awareness of foreign bribery among its overseas staff since 2008. The lead examiners therefore recommend that Greece remind its officials in overseas diplomatic missions of their obligation to report foreign bribery, and re-issue the guidance on how such reports should be made.

(c) *Reporting of Foreign Bribery by Other Individuals and Whistleblower Protection*

141. CPC Article 40 obliges all persons who become aware of a crime to report the matter to the public prosecutor or any law enforcement authority. The CPC does not specify any penalties for persons who breach this provision. In Phase 2 (para. 89), Greece stated that there have been many convictions under this provision for failure to report a crime but could not provide supporting statistics. In Phase 3, Greek officials stated that an individual who fails to report as required is guilty as an accessory to the substantive offence. No case or jurisprudence was cited in support of this proposition. Even if this position were true, a conviction as an accessory may require proof beyond a reasonable doubt that the substantive offence had been committed. This may thus be impractical as a sanction for failure to report.

142. Greece has put in place some measures to facilitate the reporting of corruption. In 2007, the then Ministry of Interior created a telephone hotline for citizens to report alleged corruption of public servants. The tax authorities also have a hotline for reporting tax-related corruption. These measures, however, are clearly directed at tackling domestic corruption.

143. A more disconcerting issue is the low rate of reporting in practice. The Greek authorities said that they have not received reports of foreign bribery from Greek citizens. This may be unsurprising, given the lack of awareness of this offence (see p. 39). Greek companies, many of which are internationally active, also have not reported foreign bribery allegations. Some participants at the on-site visit believed that the absence of reports was because Greek companies have had less international business in recent years.

144. Whistleblowing (e.g. employees who report wrongdoing within the company) is also rare. The Phase 2 Report (para. 90) noted that this may be due to historical reasons. The situation appears unchanged

in Phase 3. Greek officials stated that whistleblowing would increase during the financial crisis but could not provide data to support this assertion. Non-governmental participants at the on-site visit disagreed and thought that there was no correlation between whistleblowing and the financial crisis. Some thought that whistleblowing was a “novelty” and was not widely used. Reasons cited ranged from difficulties associated with small companies to Greece being a small country. The private sector reported little or no whistleblowing in their companies.

145. The lack of protection against reprisals is another obstacle to whistleblowing. Greece has enacted legislation that protects witnesses from physical harm. The provision, however, does not deal with whistleblower protection. At the on-site visit, non-governmental participants agreed that Greece does not have a law on whistleblower protection.

Commentary

The lead examiners note the absence of any reports of foreign bribery that have been made to the Greek authorities. This may partly be due to the lack of enforcement of the foreign bribery offence, since individuals and companies may be disinclined to report this crime if they believe that the authorities would not react to the report. The absence of reports may also be due to the low level of awareness of the foreign bribery offence in Greece. The absence of whistleblower protection is a further contributing factor.

For these reasons, the lead examiners recommend that Greece put in place appropriate measures to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery.

11. Public Advantages

146. This section addresses the denial of public advantages as sanctions for foreign bribery, particularly recent developments in the areas of public procurement, official development assistance (ODA), and officially supported export credits. It also considers awareness-raising efforts by some of these agencies, which was the focus of Phase 2 Recommendation 1(d).

(a) Public Procurement

147. As in Phase 2, multiple ministries conduct public procurement in Greece.³⁸ A new development, however, was the creation of a Single Public Procurement Authority (SPPA) in 2011 by Law 4013/2011. The purpose of the SPPA is to implement national and European public procurement law on a uniform, nationwide basis. The various ministries that conduct public procurement are required to apply the policies and procedures set by SPPA. An electronic procurement system was also recently introduced. Unfortunately, the evaluation team was only able to engage in a limited discussion of the SPPA at the on-site visit. This was because the team was handed a paper copy of Greece’s questionnaire responses on public procurement just minutes before the relevant meeting at the on-site visit began.

³⁸ Procurement contracts for goods are handled by the Ministry of Development, Competitiveness and Shipping; contracts for services by the Ministry of Finance; contracts for public works by the Ministry of Infrastructure, Transport and Networks; and contracts for pharmaceuticals and medical products by the Ministry of Health and Social Solidarity.

148. Greece has enacted new legislation since Phase 2 to implement EU directives on debarment from public procurement.³⁹ Translations of these laws were not provided by Greece but were obtained through the evaluation team's own research. PD 60/2007 Article 43 provides mandatory debarment against individuals with final convictions for corruption, money laundering, fraud and participation in a criminal organisation. The provision applies to procurement by Greek state and local authorities as well as public bodies for works, goods and services over specified threshold values. For public procurement in the water, energy, transport and postal services sectors, contracting authorities may (but are not required to) implement a similar debarment regime (PD 59/2007 Article 44(3)).

149. PD 118/2007 Article 6 sets out the documentary requirements for participating in public procurement tenders. Greek citizens seeking procurement contracts must provide an official document certifying that he/she has not been convicted of an offence that would trigger mandatory debarment. Foreign citizens are required to submit an equivalent document issued by a competent authority. However, legal persons, whether Greek or foreign, are not subject to a similar requirement. Instead, the chief executive officer (CEO) of a company – not the company itself – must provide a certificate stating that he/she has not been personally convicted of foreign bribery or other relevant offences. Greece stated that PD 118/2007 was being amended but did not indicate whether the amendment would affect debarment for foreign bribery.

150. This debarment regime is unlikely to be effective against legal persons. A company that has been sanctioned for foreign bribery could avoid debarment by employing a CEO who does not have a foreign bribery conviction. The Greek authorities contend unconvincingly that it would be difficult for companies, especially SMEs, to change CEOs. To the contrary, companies implicated in bribery scandals often try to turn over a new leaf by changing its management. Greek procuring authorities also do not verify whether a company has been blacklisted by a multilateral development bank for corrupt misconduct. Greece could not provide statistics on the number of natural and legal persons that have been debarred.

Commentary

The lead examiners commend Greece for enacting legislation to impose debarment from public procurement. Unfortunately, like many of Greece's anti-corruption efforts, the problem with this regime lies in its implementation. The lead examiners therefore recommend that Greece amend its legislation to require a legal person seeking a public procurement contract to certify that it has not been found guilty of foreign bribery. All authorities involved in procurement should receive training to ensure that debarments are imposed in practice whenever appropriate. Finally, the lead examiners were unable to explore in detail the operation of the new SPPA because they did not receive timely information on this topic from the Greek authorities. The Working Group could consider re-assessing the SPPA in a future evaluation.

(b) Officially Supported Export Credits

151. The 2009 Anti-Bribery Recommendation (para. XII.ii) asks member countries to support the efforts of the OECD Working Party on Export Credits and Credit Guarantees (ECG) to implement and to monitor the implementation of the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits (2006 Export Credits Recommendation). Greece has adhered to the 2006 Export Credits Recommendation. The Export Credit Insurance Organisation (ECIO) is Greece's officially

³⁹

Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council.

supported export credit agency. ECIO is a non-profit organization that is supervised by the Ministry for Regional Development and Competition and holds EUR 1.47 billion of state-guaranteed capital.⁴⁰

152. ECIO provided very little information in the Phase 3 questionnaire responses and at the on-site visit. ECIO stated that it requires a client who applies for support to declare in writing that he/she had not engaged in bribery. If support is approved and a client was subsequently found to have engaged in bribery, then support would be withdrawn. There was no information on whether this has occurred in practice. ECIO's website does not refer to the current OECD anti-bribery instruments⁴¹ but only to their outdated predecessors. The 2007 Written Follow-Up Report (para. 2 and pp. 5, 7 and 9) stated that ECIO had made regular presentations on foreign bribery issues to the Greek private sector. There is no indication whether these awareness-raising activities have since continued.

153. ECIO also provided much information at the on-site visit that contradicted its responses provided in 2008 to a survey conducted by ECG. ECIO does not provide support for commissions and fees payable by a client to an agent. The survey responses state that ECIO nevertheless requires a client to disclose the identity of an agent and the amounts of commissions and fees (though not the purpose of the payments). At the on-site visit, ECIO denied that it collects such information. ECIO also stated at the on-site visit that it does not have any policies for reporting suspicions of foreign bribery to law enforcement authorities. It further stated that, prior to granting support, it does not check whether a prospective client has been convicted of foreign bribery, or has been debarred by the World Bank. Both statements contradict ECIO's responses to the ECG survey. Just before the Working Group discussion of this draft report, Greece stated that ECIO had the relevant anti-foreign bribery policies in place, and that the official at the on-site visit was merely lacking in awareness.

Commentary

The lead examiners are seriously concerned about ECIO's efforts to fight foreign bribery. ECIO provided very limited information in this evaluation. What was provided contradicted many of the anti-corruption measures described in ECIO's responses to the ECG survey. This suggests poor implementation and insufficient awareness of ECIO's anti-bribery measures at best. At worst, the measures described in the survey responses do not exist at all in practice.

The lead examiners therefore recommend that ECIO take steps to implement all aspects of the 2006 Export Credits Recommendation. This should include measures concerning preventing, detecting and reporting foreign bribery, as well as denial of support as a sanction for foreign bribery. ECIO should also raise awareness of these measures among its staff and the private sector, including by training its new and existing staff.

(c) *Official Development Assistance*

154. Greece has a modest official development assistance (ODA) programme.⁴² The aid budget has decreased in recent years and is expected to be further slashed due to Greece's financial crisis. The budget

⁴⁰ ECIO Website (www.oaep.gr).

⁴¹ The 2009 Anti-Bribery Recommendation, the 2006 Export Credits Recommendation, and the 2011 OECD Guidelines for Multinational Enterprises.

⁴² In 2009 (the last year for which data was available) Greece had the fourth lowest amount of ODA in nominal terms and as a percentage of gross national income among the 23 members of the OECD Development Assistance Committee. In 2003-2009, the largest recipients of Greek ODA were Albania (22%), Serbia (17%), Afghanistan (7%), Bosnia and Herzegovina (4%), and Egypt (3%). Sub-Saharan

in 2010 was USD 500 million. Most of the funding was provided to multilateral development organisations; only 2% was provided directly to Greek NGOs to implement specific projects in a recipient country. In 2011, funding to NGOs ceased altogether. Hellenic Aid within the Ministry of Foreign Affairs manages Greece's ODA programme.

155. Greece provided very little information on efforts to prevent and detect foreign bribery in projects funded by ODA. Hellenic Aid's procedure for providing grants and contracts to NGOs and companies is unclear. The Phase 2 Report (para. 25) referred an anti-bribery clause in Hellenic Aid's contracts. It is unclear whether the clause is still in use, or whether Hellenic Aid has taken other steps to raise awareness of foreign bribery. At the on-site visit, Greek officials referred to a draft law that would preclude NGOs whose members have been convicted of certain crimes from receiving ODA funding.

Commentary

The lead examiners recognise that Hellenic Aid may have a limited role in preventing, detecting and sanctioning foreign bribery, given its modest ODA budget, and little or no direct funding to NGOs and companies. Nevertheless, Greece intends to resume direct ODA funding to companies and NGOs in the future, as demonstrated by the draft law that is being developed. The lead examiners therefore recommend that Greece ensure that future funding to NGOs or companies for ODA projects are accompanied by adequate measures to prevent, detect and report foreign bribery. NGOs and companies that have engaged in foreign bribery should also be denied ODA funding where appropriate.

(d) Additional Administrative Sanctions

156. Three additional provisions on administrative sanctions for foreign bribery against legal persons are found in the OECD Convention Law (Article 5), CoE Convention Law (Article 10) and the EC Financial Interests Law (Article 8). All three provisions provide that a legal entity that has committed foreign bribery may be subject to temporary or definitive "prohibition of exercise of its business activity" or "exclusion from public benefits or aid".

157. These provisions raise three issues. First, they are duplicative to some extent. Other laws and measures already provide for some administrative sanctions such as debarment from public procurement and export credits (see above). Second, the provisions state that a regional director of SDOE decides whether to impose such administrative sanctions. It is unclear whether or how SDOE's decision binds or is communicated to the various government bodies (e.g. procurement authorities, ECIO, and Hellenic Aid) that must ultimately implement the sanctions. Given these uncertainties, these provisions are of doubtful utility in practice. Third, the EC Financial Interests Law (but not the other two laws) states that the length of "temporal and permanent exclusion" is between one month and two years. Why a "permanent exclusion" would be capped at two years is wholly unclear. This issue could not be discussed with on-site visit participants since a translation of the Law was provided only after the visit.

Africa accounted for 7% of the total. Source: OECD Development Co-operation Directorate Aid Statistics; OECD (2011), *Geographical Distribution of Financial Flows to Developing Countries 2011: Disbursements, Commitments, Country Indicators*; Hellenic Aid Annual Report 2009.

Commentary

The lead examiners recommend that Greece amend its legislation or provide guidelines to clarify how the provisions on administrative sanctions in the OECD Convention Law Article 5, CoE Convention Law Article 10, and EC Financial Interests Law Article 8 are implemented in practice. Greece should also amend Article 8 of the EC Financial Interests Law to clarify that “permanent exclusions” are not limited to two years in duration.

12. The Need for a Supplemental Evaluation

158. As noted throughout this report, many important questions concerning Greece’s implementation of the Convention remain unanswered in this evaluation. Among the most serious and pressing issues are those pertaining to Greece’s enforcement efforts. The evaluation team did not have an opportunity to thoroughly examine why a domestic investigation had not been opened in the *Magyar Telekom* case. The team also was unable to fully inquire whether Greece’s inaction in this case was symptomatic of broader systemic deficiencies in its enforcement framework. Greece did not provide detailed statistics on the enforcement and sanctioning of domestic corruption offences until after the on-site visit. The evaluation team thus could not ask questions for clarification during the visit. Laws relating to the competence and investigative powers of law enforcement bodies were also provided late or not at all. Another possible foreign bribery case was brought to the evaluation team’s attention only just before the Working Group’s discussion of this draft report.

159. The absence of timely information and translated legislation also affected the evaluation team’s ability to assess several other areas. These include: the multiplicity of provisions on foreign bribery, corporate liability and false accounting; confiscation against legal persons; revised investigative powers of the Hellenic Police; obligations of external auditors to report foreign bribery to law enforcement; whether Greek SOEs are internationally active; framework and practice for seeking and providing MLA; and debarment from public procurement. The lack of information was sometimes compounded by Greek officials at the on-site visit who appeared unfamiliar with the relevant issues, such as the roles of overseas diplomatic missions, export credit agencies, and ministries responsible for the shipping industry and SMEs. The level of representation in the panels with the FIU and Greek SMEs was less than adequate.

160. Finally, the evaluation team note that there are recent and upcoming developments which impact Greece’s implementation of the Convention. The Economic Police Service, Economic Crime Prosecutor and the Single Public Procurement Authority were set up only in 2011. At the time of this report, the Penal Code and the false accounting offences in tax legislation were expected to be overhauled shortly. The effect of these developments can only be assessed in the near future after practice has accumulated.

161. To conclude, the evaluation team regret that they are unable to assess many key issues in this evaluation because Greece has not provided timely information. This was likely due to the on-going financial crisis in the country, which has resulted in major resource constraints and other more pressing priorities for the Greek government. The evaluation team is very sympathetic to these difficult circumstances. Nevertheless, many of the issues that have not been fully assessed are of significant importance. Furthermore, the Working Group’s Phase 3 Procedure (para. 68) contemplates a supplemental evaluation where the evaluation team cannot properly assess a country’s implementation of the Convention (albeit for a different reason, namely insufficient attendance at the on-site visit). A supplemental evaluation would also give Greece more time to prepare, such as by assembling the necessary statistics, translations, and on-site visit participants.

162. The lead examiners note that, when commenting on a draft of this report, Greece acknowledged that it was experiencing major economic and political upheaval which seriously affected its capacity to

duly address and fully respond to the exigencies of the present evaluation. The Greek authorities indicated that they would, therefore, welcome a supplemental evaluation.

Commentary

The lead examiners recommend that the Working Group conduct a supplemental evaluation of Greece at the earliest possible time to re-assess the issues that could not be assessed during this Phase 3 evaluation.

C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

163. The Working Group on Bribery appreciates the preparations made by the Greek authorities for the Phase 3 on-site visit and their co-operation during the Phase 3 evaluation. However, the Working Group was not able to adequately and fully assess Greece's implementation of the Convention. The failure of the Greek authorities to provide timely information, detailed statistics and translated legislation precluded a proper examination of numerous matters. For example, the Working Group could not fully assess the serious issues raised by the *Magyar Telekom* case, including Greece's possible non-compliance with Article 5 of the Convention and 2009 Recommendation Annex I.D (para. 2). Also unanswered are broader questions regarding Greece's enforcement efforts and capacity, and concerns over duplicative legislation in multiple areas. In some cases, the lack of information was exacerbated by the unsatisfactory representation of the Greek authorities at the on-site visit. There are also recent and upcoming legislative and institutional developments in Greece because of the on-going financial crisis. The impact of these developments on Greece's implementation of the Convention can only be assessed after practice has accumulated. For these reasons, the Working Group decides that Greece should undergo and complete a Phase 3bis evaluation. The Working Group will decide the precise timing and scope of the Phase 3bis evaluation in June 2013. The evaluation should include an on-site visit of Greece. It should cover the issues which the Working Group could not fully assess in this evaluation as identified throughout this report. The evaluation should also cover issues that are affected by recent and upcoming developments. As well, Greece has commenced investigations in the *Magyar Telekom* case. The Phase 3bis evaluation will also examine this enforcement action.

164. In addition, the Phase 2 evaluation report on Greece adopted in April 2005 included recommendations and issues for follow-up (as set out in Annex 1). Of the recommendations that had not been fully implemented at the time of Greece's 2007 Written Follow-Up Report, the Working Group concludes that Recommendations 1(b), 1(d), 5(a) and 6(c) remain partially implemented and Recommendations 1(e), 6(b), 6(d) and 7 remain not implemented.

165. In conclusion, based on the findings in this report, regarding implementation by Greece of the Convention and the 2009 Recommendation, the Working Group: (1) makes the following recommendations to enhance implementation of the Convention in Part 1; and (2) will follow up the issues identified in Part 2. The Working Group invites Greece to report orally on the implementation of Recommendations 1, 4(a), 4(b), 4(f), 4(g), 5(a), 9 and 14(c) within one year (i.e., by June 2013). The Working Group invites Greece to submit a written follow-up report on all recommendations and follow-up issues within two years (i.e., by June 2014).

1. Recommendations of the Working Group

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

1. Regarding duplicate statutory provisions, the Working Group recommends that Greece rationalise and eliminate its multiple legislative provisions that apply to (i) the offence of foreign bribery, (ii) liability and fines against legal persons for foreign bribery, (iii) confiscation in foreign bribery cases, and (iv) accounting misconduct described in Article 8(1) of the Convention (Convention Articles 1, 2, 3 and 8).

2. With regard to the offence of foreign bribery, the Working Group recommends that Greece clarifies that its foreign bribery offence covers (i) all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competence, and (ii) bribery committed by a best-qualified bidder (Convention Article 1).

3. With regard to the liability of legal persons for foreign bribery, the Working Group recommends that Greece:

- (a) ensure consistency in its laws on liability of legal persons for foreign bribery by replacing “the fault of the legal person’s manager” in Article 5 of the OECD Convention Law with alternate language found in other laws (Convention Article 2; 2009 Recommendation, Annex I.B);
- (b) issue guidance on what amounts to adequate supervision and control to prevent foreign bribery (Convention Article 2; 2009 Recommendation, Annex I.B);
- (c) clarify that the liability of legal persons is not restricted to cases where the natural person(s) who perpetrated the offence is prosecuted or convicted, and that proceedings against legal persons may be commenced in the absence of criminal charges against a natural person (Convention Article 2 and 2009 Recommendation, Annex I.B); and
- (d) clarify that the Joint Decision of the Ministers of Finance and Justice to ensure that proceedings against legal persons may be commenced in the absence of criminal charges against a natural person, and that the Decision applies to all laws that could result in corporate liability for foreign bribery, including the OECD Convention Law (Convention Article 2 and 2009 Recommendation, Annex I.B).

4. With respect to investigation and prosecution, the Working Group recommends that Greece:

- (a) take all necessary measures to ensure that it assesses credible allegations of foreign bribery and seriously investigates complaints of this crime, and proceed proactively and without delay against both natural and legal persons in a foreign bribery-related case whenever appropriate (Convention Article 5 and 2009 Recommendation, Annex I.D));
- (b) provide additional training to judges, prosecutors and law enforcement officials on the Convention and the foreign bribery offence, including the practical aspects of foreign bribery investigations (Convention Article 5);
- (c) take steps to ensure that the limitation period for foreign bribery offences qualified as misdemeanours is sufficient to allow adequate investigation and prosecution (Convention Article 6);
- (d) amend its legislation to exclude the application of Article 30(2) of the Code of Penal Procedure from all foreign bribery offences (Convention Article 5);
- (e) make the special investigative techniques in Article 253A CPC available to all foreign bribery offences and take steps to ensure that its prosecutors and law enforcement officials have the capacity to investigate complex financial crimes (Convention Article 5);
- (f) ensure that foreign bribery allegations provided to Greek officials through MLA or in multilateral fora on international co-operation (e.g. Eurojust), or otherwise, are promptly forwarded to Greek law enforcement authorities and that domestic investigations are subsequently opened as appropriate (Convention Article 5 and 2009 Recommendation, Annex I.D).

5. Regarding the attribution and assignment of cases, the Working Group recommends that Greece:
 - (a) take all necessary measures to ensure that foreign bribery can be investigated by SDOE, Hellenic Police and EPS where appropriate, and establish procedures for co-ordination, sharing information and resolving conflicts of competence among these authorities (Convention Article 5); and
 - (b) consider issuing guidelines to prosecutors on how to decide which investigative body should have conduct of specific foreign bribery investigations (Convention Article 5).

6. With respect to sanctions, the Working Group recommends that Greece:
 - (a) increase the maximum fines available against natural persons for foreign bribery and ensure that fines are available in all foreign bribery cases, regardless of whether the crime “emanates from causes of profit” (Convention Article 3);
 - (b) lower the felony threshold for foreign bribery offences, and allow the consideration of other mitigating and aggravating factors in determining whether an offence is a misdemeanour or felony (Convention Article 3);
 - (c) ensure that a fine may be imposed against a legal person for foreign bribery irrespective of whether a benefit is achieved or intended, or whether the benefit is a contract or other types of business advantages (Convention Article 3); and
 - (d) ensure that law enforcement authorities and prosecutors routinely seek confiscation in corruption cases (Convention Article 3(3)).

7. Regarding mutual legal assistance (MLA), the Working Group recommends that Greece improve its system for seeking and providing MLA, and clarify the types of assistance available for requests that are based on the Criminal Procedure Code rather than a treaty (Convention Article 9).

8. Regarding statistics, the Working Group recommends that Greece maintain detailed statistics on (i) enforcement actions against natural and legal persons in foreign corruption; (ii) sanctions, confiscation and interim measures against natural and legal persons, especially in corruption and foreign bribery cases; (iii) criminal cases (particularly those involving corruption) that are barred by the statute of limitations; and (iv) MLA requests, including the offence underlying requests, time required for execution, and nature of assistance sought (Convention Articles 3, 9).

Recommendations for ensuring effective prevention and detection of foreign bribery

9. With respect to detection generally, the Working Group recommends that Greece increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage both to increase sources of allegations and enhance investigations (Convention, Article 5 and Commentary 27; 2009 Recommendation IX.i and Annex I.D).

10. With respect to money laundering, the Working Group recommends that Greece ensure that all stakeholders involved in fighting money laundering are adequately aware that foreign bribery is a predicate offence for money laundering, and provide guidance and training to the FIU on detecting and reporting foreign bribery (Convention Article 7).

11. Regarding accounting requirements, external audit, and corporate compliance, the Working Group recommends that Greece:

- (a) give, SDOE, the EPS and Economic Crime Prosecutor concurrent jurisdiction to investigate and prosecute foreign bribery-related accounting offences under the OECD Convention Law, and raise awareness of the offences and ensure co-ordination among all law enforcement agencies that may investigate and prosecute this offence (Convention Article 8 and 2009 Recommendation X.A);
- (b) raise awareness of Greece's foreign bribery laws among Greek accountants and auditors, with particular emphasis on detecting and reporting foreign bribery among all Greek companies, and clarify that the Company Law does not impede external auditors from reporting foreign bribery to law enforcement authorities (Convention Article 8 and 2009 Recommendation X.A and X.B.v);
- (c) encourage companies (especially SMEs) to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance (2009 Recommendation X.C.i).

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

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

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

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

- (a) clarify that Article 26 of the Civil Service Code does not hinder the reporting of crimes, including foreign bribery, by Greek public officials (2009 Recommendation IX.ii);

- (b) remind its officials in overseas diplomatic missions of their obligation to report foreign bribery, and re-issue the guidance on how to make such reports (2009 Recommendation IX.ii); and
- (c) put in place appropriate measures to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery (2009 Recommendation IX.iii).

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

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

2. Follow-up by the Working Group

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

- (a) whether Greece imposes liability against a legal person for foreign bribery where (i) the legal person benefits indirectly from the bribery, (ii) the legal person obtains a non-pecuniary benefit such as an improved competitive situation, (iii) the principal offender committed foreign bribery in the interest of him/herself or a third party but the legal person benefits coincidentally, and (iv) whether a parent company would be liable if its subsidiary commits foreign bribery (Convention Article 2; 2009 Recommendation, Annex I.B);
- (b) whether sanctions imposed against natural persons for foreign bribery are effective, proportionate and dissuasive, in light of Greece’s system of converting and suspending sentences of imprisonment (Convention Article 3); and
- (c) the FIU’s functioning, including the priority and resources given to corruption cases (Convention Article 7).

**ANNEX 1 PREVIOUS WORKING GROUP RECOMMENDATIONS TO GREECE AND
WORKING GROUP ASSESSMENT OF THEIR IMPLEMENTATION**

2005 Phase 2 Recommendation	2007 Working Group Evaluation
<i>Recommendations Concerning Detection and Prevention of Foreign Bribery</i>	
1. With respect to raising awareness of the Convention, the Revised Recommendation and Law 2656/1998, the Working Group recommends that:	
a) Greece take measures to further raise the level of awareness of the foreign bribery offence among officials in government agencies that could play a role in detecting and reporting it, and undertake effective public awareness activities for the purpose of educating and advising the private sector on the offence (Revised Recommendation I);	Fully Implemented
b) Greece further raise awareness of these instruments within the public sector, particularly in the Ministries of Finance and Economy, Justice, and the Interior, Public Administration and Decentralisation, the Hellenic Capital Markets Commission, the Export Credit Insurance Organisation, Hellenic Aid and among tax officials (Revised Recommendation I);	Partially Implemented
c) Greece work proactively with the accounting, auditing and legal professions to establish training and awareness-raising activities about the foreign bribery offence in order to maximise the opportunities for prevention and deterrence within the business community (Revised Recommendation I);	Fully Implemented
d) the Export Credit Insurance Organisation, Hellenic Aid and the Hellenic Capital Markets Commission make greater efforts to promote these instruments and the consequences of engaging in bribery to their clients and prospective clients (Revised Recommendation I);	Partially Implemented
e) Greece issue guidance to foreign representations and embassy personnel concerning the steps that should be taken where non-frivolous allegations arise that a Greek company or individual has bribed or taken steps to bribe a foreign public official, including the reporting of such allegations to the competent authorities in Greece (Revised Recommendation I).;	Not Implemented
2. With respect to measures to disallow the tax deductibility of bribe payments to foreign public officials, the Working Group recommends that Greece consider introducing an express denial of deductibility in order to strengthen the mechanisms available for detecting and deterring the offence (Revised Recommendations IV).	Fully Implemented
3. With respect to prevention and detection of foreign bribery through accounting and auditing, the Working Group recommends that Greece devise guidelines on reporting foreign bribery and false accounting for accountants and auditors, and require external auditors to report indications of bribery to corporate monitoring bodies (such as the Hellenic Capital Markets Commission) as appropriate (Revised Recommendations V.B.iii and V.B.iv).	Fully Implemented
4. Concerning other measures to prevent and detect foreign bribery, the Working Group recommends that Greece undertake initiatives to (i) remind employees of their legal obligation to report crimes, and (ii) consider introducing specific measures to further protect employees who report suspicious facts involving bribery in order to encourage them to report such facts without fear of retribution (Convention, Article 5; Revised Recommendation I).	Fully Implemented

<i>Recommendations Pertaining Investigation of Foreign Bribery</i>	
5. With respect to <u>investigation</u> of foreign bribery, the Working Group recommends that Greece:	
(a) establish procedures for co-ordination, sharing information and resolving conflicts of competence between the Internal Affairs Division of the Hellenic Police and the Special Investigations Service, and consider assigning the competence for investigating domestic and foreign bribery to a single law enforcement agency, and provide further training on the practical aspects of foreign bribery investigations to members of the relevant law enforcement agencies (Revised Recommendation I);	Partially Implemented
(b) ensure that the National School of Judicature continue its training programmes on foreign bribery for prosecutors and judges, including new recruits (Revised Recommendation I).	Fully Implemented
<i>Recommendations Pertaining to Prosecution and Sanctioning of Foreign Bribery</i>	
6. With respect to the prosecution of foreign bribery, the Working Group recommends that Greece:	
(a) eliminate the requirement of a complaint from the government of the country in which the crime was committed before asserting nationality jurisdiction to prosecute foreign bribery (Convention Article 4(2));	Fully Implemented
(b) amend its legislation to exclude the application of Article 30(2) of the Code of Penal Procedure (which exempts “political offences” and “offences through which the international relations of the state may be disturbed” from prosecution) from foreign bribery cases (Convention Article 5 and Commentary 27);	Not Implemented
(c) ensure delays in proceedings do not result in the expiry of limitation periods in foreign bribery cases (Convention Article 6);	Partially Implemented
(d) ensure that liability of legal persons for foreign bribery is effective, particularly regarding (i) the threshold for imposing liability, and (ii) the categories of persons whose acts may trigger the liability of a legal person (Convention Article 2).	Not Implemented
7. With respect to sanctions for foreign bribery, the Working Group recommends that Greece ensure that the amount of an administrative fine against a legal person does not depend solely on the value of a contract obtained by the briber (Convention Article 3(2)).	Not Implemented
<i>Follow-up by the Working Group</i>	
8. The Working Group will follow up the issues below as cases and practice develop in Greece:	
(a) whether Law 2656/1998 covers the following situations (i) bribery of a foreign public official who uses his/her position in excess of his/her powers, and (ii) a briber who is the best-qualified bidder (Convention Article 1);	Continue to follow-up
(b) the application of the defence of “effective regret” in Article 236 of the Penal Code in foreign bribery cases (Convention Article 1);	Continue to follow-up
(c) whether the effective seat theory provides a sufficiently broad jurisdictional base for imposing liability against legal persons for foreign bribery (Convention Articles 2 and 4);	Continue to follow-up
(d) effectiveness of the system of concurrent proceedings against the principal offender and a legal person in Greece, and whether in practice proceedings against legal persons will be taken independently of proceedings against a principal offender, including whether conviction of the principal is a prerequisite (Convention Article 2);	Continue to follow-up
(e) sanctions imposed against natural persons (including confiscation) for foreign bribery based on statistics provided by Greece (Convention Article 3);	Continue to follow-up
(f) whether sanctions imposed against legal persons for foreign bribery are effective, proportionate and dissuasive, in view of Article 5 of Law 2656/1998 which imposes an administrative fine of up to three times the value of the benefit (Convention 3(2)).	Continue to follow-up

ANNEX 2 PARTICIPANTS AT THE ON-SITE VISIT

Government Ministries and Bodies

- Ministry of Justice, Transparency and Human Rights
- Public Prosecutors Office, including the Office of Public Prosecutor for Economic Crime
- Ministry of Finance
- Body for the Prosecution of Economic Crime (SDOE)
- Ministry of Citizen Protection and Hellenic Police, including the Economic Police Service
- Ministry of Development, Competitiveness and Shipping
- Ministry of Foreign Affairs
- Ministry of Health and Social Solidarity
- Independent Authority for Combating Money Laundering
- Bank of Greece
- Hellenic Capital Market Commission
- Ministry of Infrastructure, Transport and Networks
- Hellenic Aid
- Export Credit Insurance Organisation (ECIO)

Judiciary

- Judges from the Courts of First Instance of Athens, Chania, Lesbos
- Supreme Court of Audit
- Judges from the Court of Appeals of Athens
- National School of Judges

Legislature

- Members of the Hellenic Parliament, including members of the Committee for Transparency

Judiciary

- Judges from the Courts of First Instance of Athens, Chania, Lesbos
- Supreme Court of Audit
- Judges from the Court of Appeals of Athens
- National School of Judges

Private Sector

Private enterprises

- Alpha Bank
- Bizart Galleries S.A.
- Danaos Shipping Co. Ltd.
- EAS (Ellinika Amyntika Systemata)
- Eurobank EFG Group
- Euroseas Ltd.
- Hellenic Petroleum S.A.
- National Bank of Greece
- Navios Maritime Holdings
- Piraeus Bank Group
- Skeberis Plastics S.A.
- Titan Cement Company S.A.
- Viohalco S.A.

Business associations

- Athens Chamber of Commerce and Industry (EBEA)
- Chamber of Commerce and Industry of Thessaloniki (EBETH)
- Global Compact Network Hellas
- Hellenic Banking Association Hellenic Exchanges Group (HELEX)
- Hellenic Federation of Enterprises (SEV)
- International Chamber of Commerce (ICC)
- Panhellenic Exporters Association (PSE)

Legal profession and academics

- Athens Bar Association
- Dr. A. Syrigos, Assistant Professor of International Law, Panteion University of Social and Political Sciences
- Dr. I. Androulakis, Lecturer of Criminal Law, University of Athens

Accounting and auditing profession

- Auditing Oversight Board (ELTE)
- Institute of Certified Public Auditors (SOL)
- KPMG
- Deloitte
- Pricewaterhouse Coopers
- Ernst & Young

Civil Society

- Transparency International Greece
- Citizens' Movement for an Open Society
- Journalist from Kathimerini (newspaper) and SKAI (T.V.)

ANNEX 3 LIST OF ABBREVIATIONS AND ACRONYMS

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

ANNEX 4 LIST OF RELEVANT LEGISLATION

Legislation	Short Name Used in Report
Law 1492/1950 Ratifying the Penal Code	Penal Code
Law 1493/1950 Ratifying the Criminal Procedure Code	Criminal Procedure Code
Law 27/1975 on Taxation of Shipping Companies	
Law 2238/1994 Ratifying the Income Tax Code	Income Tax Code
Law 2523/1997 on Administrative and Criminal Sanctions in Tax Law	Tax Penalties Law
Law 2656/1998 Law Ratifying the OECD Anti-Bribery Convention	OECD Convention Law
Law 2713/1999 on Hellenic Police Internal Affairs Division	
Law 2802/2000 Ratifying Convention on Fighting Bribery Involving Officials of the European Communities or State-Members of European Union	EC Corruption Law
Law 2803/2000 Ratifying the Convention on the Protection of the Financial Interests of the European Communities and Protocols	EC Financial Interests Law
Law 3103/2003	
Law 3251/2004 on the European Arrest Warrant	EAW Law
Law 3296/2004 on Income Tax of Natural Persons and Legal Entities, Tax Audits and Other Provisions	
Law 3528/2007 Ratifying the Civil Service Code	Civil Service Code
Law 3560/2007 Ratifying the Council of Europe Criminal Law Convention on Corruption	CoE Convention Law
Law 3666/2008 Ratifying the UN Convention against Corruption	UNCAC Law
Law 3691/2008 on Anti-Money Laundering	AML Law
Law 3693/2008 Implementing EU Directive 2006/43/EC	
Law 3842/2010 on a Tax Amnesty Programme	
Law 3849/2010 Amending the Penal Code concerning service-related offences and other provisions	
Law 3932/2011 Creating the Anti-Money Laundering, Counter Terrorist Financing and Source of Funds Investigation Authority	
Law 3943/2011 on Fighting against Tax Evasion, Staffing of Audit Services and other Provisions within the Competence of the Ministry of Finance	
Law 3986/2011 on Economic Police Service	
Law 4013/2011 Creating the Single Public Procurement Authority	
Presidential Decree 186/1992	Code of Books and Records
Presidential Decrees 59 and 60/2007 implementing EU Directives Public Procurement	
Presidential Decree 118/2007 on Documentary Requirements for Public Procurement	
Presidential Decree 94/2010 on the Secretariat on Transparency and Human Rights	
Presidential Decree 9/2011 on the Economic Police Service	

ANNEX 5 EXCERPTS OF RELEVANT LEGISLATION

Law 2656/1998 Ratifying and Implementing OECD Anti-Bribery Convention (OECD Convention Law) (as amended)

Article one

The OECD Convention on combating bribery of foreign public officials in international business transactions, signed in Paris on 17 December 1997, is hereby ratified and enacted in accordance with the provisions of article 28, paragraph 1 of the Constitution. The authentic text of the Convention in English and its translation in Greek have as follows: [Text of Anti-Bribery Convention omitted]

Article second - The offence of bribery of foreign public officials

1. Any person who, in the exercise of international business activities and with the intent of obtaining or retaining an unfair business or other advantage of pecuniary or any other nature that is not due, offers, promises or gives directly or through third parties, a bribe or other advantages that are not due, to a foreign public official, within the meaning of the OECD Convention that is ratified with the first article of the present law, for the official or a third party, in order that the official perform an act or omission related to his service or contrary to his duties, is punishable with imprisonment of at least one year.
2. If the value of the benefits exceeds the amount of €73.000, imprisonment of up to ten (10) years is imposed.
3. The bribe given or the value thereof as well as any proceeds of the crime, as stipulated in the previous paragraph, or the value thereof are confiscated.
4. Article 30 paragraph 2 of the Code of Criminal procedure does not apply in such cases.

Article third - Abetting or concealment of commission of bribing of foreign public officials

Any person who abets or, in order to conceal the commission of the act provided in article two:

1. Maintains off-the-books accounts.
2. Carries out off-the-books transactions or transactions inadequately identified in the books of his business.
3. Records nonexistent expenditures or incorrectly determines their subject-matter, or
4. Uses documents of false content,

is punishable with imprisonment of up to three years, provided that such act is not subject to heavier punishment in accordance with another provision of law.

Article fourth- Jurisdiction of SDOE

The carrying out of searches and preparatory investigations related to the punishable acts of the present law are submitted to the jurisdiction of the Body for the Prosecution of Economic Crime (SDOE).

Article fifth - Administrative sanctions

If any legal entity or undertaking has benefited in any way from punishable acts of the present law by fault of its managers, one of the following administrative sanctions will be imposed thereon by decision of the director of the competent regional directorate of SDOE (article 5 of presidential decree 218/1996, Government Gazette issue A 168):

- a) Administrative fine up to three times the value of the benefit, or
- b) Temporary or definitive prohibition of exercise of its business activity, or
- c) Temporary or definitive exclusion from public benefits or aid.

Article sixth- Laundering of proceeds

1. Points xvii), xviii) and xix), added by virtue of paragraph 1 of article 6 of law 2515/1997 (Government Gazette issue A 154) in article 1 point (a) of law 2331/1995 (Government Gazette issue 173 A) are hereby enlisted as follows: xviii), xix), xx).

2. Following the abovementioned section xx) of law 2331/1995, section xxi) is added as follows: “xxi) The crime provided and punishable by the provisions of article 3 of the present law on combating bribery of foreign public officials in international business transactions.”

Article seventh- Competent Authority

For the purposes of articles 4 paragraph 3, 9 and 10 of the Convention, the Minister of Justice acts as the Competent Authority.

Article eighth

The present law enters into force as of its publication in the Government Gazette; the Convention hereby ratified enters into force in accordance with the provisions of the conditions of article 15 thereof.

Penal Code (as amended)

Article 81 – Pecuniary penalty

1. When a crime emanates from causes of profit, the court may also impose a pecuniary penalty or a fine together with the custodial penalty, even if the law does not provide for a pecuniary penalty in relation to the crime committed.
2. In cases when the law provides only for a pecuniary penalty or a fine in relation to the crime, the court may impose the penalty raised up to three times its maximum limit, as such a limit is provided for the particular crime, provided that the causes of paragraph 1 applies.

Article 235 - Passive bribery

1. The civil servant who, in breach of his duties, requests or receives, directly or through a third party, for himself or a third party, benefits of any nature or accepts a promise thereof in order to carry out an act or omission in relation to his duties or in breach thereof is punishable with imprisonment of at least one year.
2. If the value of the benefits exceeds the amount of €73.000 or the perpetrator is an employee of the Ministry of Finance imprisonment of up to ten (10) years is imposed.

Article 236 - Active bribery

1. Any person who promises or provides to a civil servant, directly or through a third party, benefits of any nature for himself or a third party so that the civil servant, in breach of his duties, carries out an act or omission in relation to his duties related thereto or in breach thereof is punishable with imprisonment of at least one year.
2. If the value of the benefits exceeds the amount of €73.000, imprisonment of up to ten (10) years is imposed.

Article 237 - Bribery of a judge

1. If the person requested by the law to fulfil judicial functions or the arbitrator demands or accepts gifts or other benefits he is not entitled to or the promise that he will receive [such gifts or other benefits] with the intent to carry out or adjudicate on a case assigned to him in favour of or against someone, are punishable with imprisonment of at least one year.
2. If the value of the benefits exceeds the amount of €73.000, imprisonment of up to ten (10) years is imposed.
3. Any person who offers, promises, acts as an intermediary or gives such gifts or benefits to one of the persons listed in paragraph 1 or to one of their closed ones with the abovementioned intent is punishable: a) with imprisonment of at least one year, b) with imprisonment of up to ten (10) years, if the value of the gifts or the benefits exceeds the total amount of €73.000.

Article 238 - Sequestration of gifts

1. In the cases of articles 235, 236 and 237 the decision orders the sequestration of the gifts and any other assets given as well as those acquired directly or indirectly from them. If such proceeds have been mingled with property acquired by legal means, the relevant property is subject to sequestration up to the specific value of the mingled proceeds. The income or other benefits deriving from such proceeds, property acquired by such proceeds or property mingled with such proceeds are also subject to sequestration to the same degree as the proceeds of crime.

2. If the assets subject to sequestration, as per previous paragraph, do not exist anymore, have not been found, are not subject to sequestration or belong to a third party, against whom no sequestration may be ordered, are subject to sequestration assets belonging to the perpetrator of equivalent value with those at the time of the verdict, as specified by the court. The court may also impose a financial penalty of up to the value of such assets, if it considers that there are no additional assets to sequester or the existing assets are of lesser value than the assets to be sequestered.

Law 3560/2007 Implementing the Council of Europe Criminal Law Convention against Corruption (CoE Convention Law) (as amended)

Second Article - Terminology

For the purposes of the present Law the terms “Public Official”, “Official”, “Public Officer”, “Mayor”, “Minister”, “Judge”, “Legal Person” shall have the meanings set out in Article 1 of the Convention which is ratified by the present Law.

Third Article - Bribery of Foreign Public Officials, Officials of International Organisations, etc.

1. The provisions of Articles 235, 236, 237 and 238 of the Penal Code shall also apply to the acts of active and passive bribery committed towards or by civil servants, officials and judges in whom jurors and arbitrators of another state party to the Convention, which is ratified by the present Law, will also be included.
2. The provisions of Articles 235, 236 and 238 of the Penal Code shall also apply to the acts of active and passive bribery committed towards and by officials or other employees under any contractual relationship whatsoever, within the meaning of the pertinent rules on personnel, of any public international or supranational organisation or entity of which the Hellenic Republic is a member, as well as (towards and by) any person, whether seconded or not, performing duties that correspond to those being performed by the above-mentioned officials or employees.
3. The provisions of Articles 237 and 238 of the Penal Code shall also apply to the acts of active and passive bribery that refer to persons who perform judicial duties or arbitrator’s or juror’s duties in international courts, the jurisdiction of which is acceptable to the Hellenic Republic. As regards the act of active and passive bribery committed towards and by the other officers of the above-mentioned international courts the provisions of Articles 235, 236 and 238 of the Penal Code shall apply.

Fourth Article - Bribery of Members of Foreign Public Assemblies

1. The provision of Article 159 of the Penal Code shall also apply to the acts of active and passive bribery committed towards and by any person who is a member of a public assembly which exercises legislative or administrative powers, to wit, a member of Parliament or a Committee thereof or of any Local Authority Council in any other state party to the Convention that is ratified by the present Law.
2. The provisions of paragraphs 1, 2 and 5 of Article 159 of the Penal Code also apply to acts of active and passive bribery committed towards and by members of Parliamentary Assemblies of international or supranational organisations, of which the Hellenic Republic is a member.

Seventh Article - Money Laundering of Proceeds from Corruption Offences

After the section pp’ of paragraph 1 of Law 3424/2005 (Official Gazette No 305A) a sub-section qq’ is added which reads as follows:

“qq’. Those which are laid down in and punished by the provisions of Articles from the third to the sixth inclusive and the provisions of the eighth Article of the Law whereby the Criminal Law Convention of the Council of Europe of 27 January 1999 and the Additional Protocol to the Criminal Law Convention on Corruption of 15 May 2003 are ratified”.

Eighth Article - Account Offences

One who creates or uses an invoice or any other accounting document or record containing false or incomplete information or unlawfully omits to make a record of a payment, provided that such acts are committed for concealing or disguising any of the acts referred to in Articles 159, 235, 236 and 237 of the Penal Code as well as in the Articles from third to seventh inclusive of the present Law shall be punished by imprisonment and a pecuniary punishment if the act is not punished more severely by another penal provision.

Ninth Article - Jurisdiction - Ex Officio Prosecution

1. The Greek Courts will have jurisdiction to try the offences referred to in Article 17 paragraph 1, in conjunction with Articles 2-14 inclusive of the Convention which is ratified by the present Law.
2. The offences provided for by the present Law will be prosecuted ex officio, regardless of the place at which they were committed.

Tenth Article - Liability of Legal Entities

1. If any of the offences of active bribery, trading in influence or money laundering, as such offences are laid down in Articles 159, 235 and 237 of the Penal Code and in the Articles from the third to the eighth inclusive of the present Law, is committed for the benefit of a legal entity implementing business activity by any natural person acting as a perpetrator or instigator or accessory, either individually or as a member of a legal entity's body and holding a management post within the legal entity, on the basis of authority for representing such entity or on the basis of authority for passing a resolution on behalf of such legal entity or on the basis of authority for the exercise of control within such legal entity, in addition to the natural person's penal liability, the following will also be imposed on such legal entity pursuant to a decision issued by the Head of the pertinent Regional Directorate of the Service for Special Audits (YPEE):⁴³
 - a. Administrative penalty up to three times the value of the benefit achieved or intended or
 - b. Provisional, or in the event of repetition, definitive prohibition from exercising business activity or
 - c. Temporary or definitive exclusion from public benefits or aids
2. The same sanctions shall also be imposed on the legal entity when the lack of supervision or control by one of the natural persons referred to in paragraph 1 enabled the commission of any of the penal offences referred to in the same paragraph by a natural person who is subordinate to the above-mentioned natural person.
3. In addition to the above-mentioned sanctions any sanctions which are provided for by other provisions shall not be excluded.
4. The procedure regarding the imposition of the sanctions referred to in paragraph 1, the agencies authorised to collect the penalties as well as any other necessary details for the implementation of the present Article will be laid down in a joint decision issued by the Economy and Finance Minister and the Justice Minister.

Eleventh Article - Special Investigating Authorities

In the offences provided for by the present Law the investigatory operations are performed by the competent officials of the service for Special Audits (YPEE).⁴⁴ At the same time the authority of the officials/bodies according to the Code of Penal Procedure will remain intact.

Twelfth Article - Measures to facilitate the gathering of evidence and for the protection of collaborators of justice and witnesses

1. For the punishable acts provided for by Articles 235, 236 and 237 of the Penal Code and by the Third to the Eighth Articles inclusive of the present Law the provision of Article 253A paragraph 1c, d and e and paragraphs 2 and 3 of the Code of Penal Procedure, which was added by Article 6 of Law 2928/2001, shall apply mutatis mutandis.
2. During the penal pre-trial stage concerning the acts which are referred to in paragraph 1 of the present article the necessary measures may be taken for the effective protection from a probable revenge or intimidation of the persons denouncing such acts or of the pivotal witnesses or the experts or the victims or their relatives or other persons who are closely connected with them, whenever this is necessary, by analogous application of Article 9 paragraphs 2-4 inclusive of Law 2928/2001.

⁴³ YPEE was renamed SDOE by Article 88 of Law 3842/2010.

⁴⁴ *Ibid.*

Thirteenth Article - Central Authority

The competent Central Authority for the purposes of Article 29 of the Convention which is ratified by the present Law will be the Ministry of Justice.

Fourteenth Article - Reservation by the Hellenic Republic

According to Article 37 paragraph 3 of the Convention which is ratified by the present Law, the Hellenic Republic shall not be bound by Article 26 paragraph 1 of such Convention and may refuse the provision of judicial assistance if the request by the state party to the Convention pertains to an offence which the Hellenic Republic regards as a political offence.

Law 3666/2008 Ratifying and Implementing the UN Convention against Corruption (UNCAC Law)

Third Article - Terminology

For the application of the present Law the terms “Public Official”, “Foreign Public Official”, “Official of a Public International Organisation”, “Assets”, “Proceeds of a Crime”, “Freezing” or “Attachment”, “Confiscation”, “Basic Offence”, “Monitored Delivery”, will have the meaning set out in Article 2 of the Convention which is being ratified by the present Law.

Fourth Article - Bribery of Foreign Public Officials, Officials of International Organisations, etc.

1. The provisions of Articles 235, 236, 237 and 238 of the Penal Code shall also apply to the acts of active and passive bribery committed towards or by civil servants, officials and judges in whom jurors and arbitrators of another state party to the Convention, which is ratified by the present Law, will also be included.
2. The provisions of Articles 235, 236 and 238 of the Penal Code shall also apply to the acts of active and passive bribery committed towards and by officials or other employees under any contractual relationship whatsoever, within the meaning of the pertinent rules on personnel, of any public international or supranational organisation or entity of which the Hellenic Republic is a member, as well as (towards and by) any person, whether seconded or not, performing duties that correspond to those being performed by the above-mentioned officials or employees.
3. The provisions of Articles 237 and 238 of the Penal Code shall also apply to the acts of active and passive bribery that refer to persons who perform judicial duties or arbitrator’s or juror’s duties in international courts, the jurisdiction of which is acceptable to the Hellenic Republic. As regards the act of active and passive bribery committed towards and by the other officers of the above-mentioned international courts the provisions of Articles 235, 236 and 238 of the Penal Code shall apply.

Fifth Article - Bribery of Members of Public Assemblies

1. The provision of Article 159 of the Penal Code shall also apply to the acts of active and passive bribery committed towards and by any person who is a member of a public assembly which exercises legislative or administrative powers, a member of Parliament or a Committee thereof or of any Local Authority Council in any other state party to the Convention that is ratified by the present Law.
2. The provisions of paragraphs 1, 2 and 5 of Article 159 of the Penal Code also apply to acts of active and passive bribery committed towards and by members of Parliamentary Assemblies of international or supranational organisations, of which the Hellenic Republic is a member.

Sixth Article - Laundering of money derived from acts of corruption

After section pp’ of paragraph a’ of Law 2331/1995, as it has been amended by paragraph 1 of Article 2 of Law 3424/2995 (Official Gazette No 305A’) a section qq’ is added which reads as follows:

“qq’. Those which are provided for and punished by the provisions of Fourth Article, Fifth Article and Eighth Article of the Law whereby the United Nations Convention against Corruption, which was adopted by the United Nations General Assembly in New York on 31 October 2003, is ratified”.

Seventh Article - Measures to facilitate the gathering of evidence and for the protection of collaborators of justice and witnesses

1. During the penal pre-trial stage with respect to the acts provided for in the Convention ratified by the present Law paragraph the necessary measures may be taken for the effective protection from any probable revenge or intimidation of the persons denouncing such acts or of the pivotal witnesses or the experts or the victims or their relatives or other persons who are closely connected with them, whenever this is necessary, according to the provisions of Article 9 paragraphs 2-4 inclusive of Law 2928/2001.
2. For the punishable acts provided for by Articles 235, 236 and 237 of the Penal Code and by the fourth, fifth and sixth articles of the present Law the provision of Article 253A paragraph 1c, d and e and paragraphs 2 and 3 of the Code of Penal Procedure, shall apply *mutatis mutandis*.

Eighth Article - Liability of Legal Entities

The Tenth Article of Law 3560/2007 (Official Gazette No 103A') shall also apply in relation to acts which are provided for by the Convention being ratified by the present Law and committed in any state party.

Ninth Article - Special Investigatory Authorities

In the offences provided for by the present Law the investigatory operations are performed by the competent officials of the service for Special Audits (YPEE).⁴⁵ At the same time the authority of the officials/bodies according to the Code of Penal Procedure will remain intact.

Tenth Article - Jurisdiction - Ex Officio Prosecution

1. The Greek Courts will have jurisdiction to try the offences referred to in Article 42 paragraph, in conjunction with Articles 23 paragraphs 1 (a) (i) or (b) (i) (ii) of the Convention which is ratified by the present Law.
2. The offences provided for by the present Law will be prosecuted *ex officio*, regardless of the place at which they were committed.

Eleventh Article - Statements made by the Hellenic Republic upon the submission of the document ratifying the Convention.

1. The Hellenic Republic declares that, according to Article 66 paragraph 3 of the Convention which is ratified by the present Law, it shall not be bound by paragraph 2 of the same article of the Convention.
2. The Hellenic Republic declares that the competent Central Authority to which the application made according to Chapter IV of the Convention will be addressed is the Ministry of Justice and any relevant request/application as well as the supporting documents pertaining thereto must be translated into Greek.

Law 2802/2000 Ratifying the Convention on the Fight against Corruption Involving Officials of the European Community or officials of Member States of the European Union (EC Corruption Law)

Second Article - Amendment of Penal Code provisions

The provisions of Articles 235 and 236 of Penal Code are amended as follows:

[Omitted – See Excerpt of Penal Code Articles 235 and 236 above.]

Third Article - Definitions

The following terms have in the present law the under mentioned meaning:

- (a) Official is the communal official and the national public official including the national public officials of another State-member of European Union.
- (b) Communal official is the person referred to under b' in article 1 of the ratified with the present law Convention.⁴⁶

⁴⁵

Ibid.

(c) National public official is any person referred under a' in article 13 and section 263A of penal Code.

The meaning of the national public official of the other State-Members as provided by the corresponding national legislation is in force for the implementation of the present law only if is in consistent with that of the Greek penal Code.

Fifth Article - Penal Liability of the Business Enterprise's Directors

Directors of business enterprises or persons empowered to pass resolutions or having the enterprises' control are punished with a jailing sentence if the act is not punished with other penal provision in case the person under his orders commits on enterprise's behalf a bribery act in the meaning of the present article.

Law 2803/2000 Ratifying the Convention on the Protection of the European Communities' Financial Interests (EC Financial Interests Law)

Article Three - Bribery

1. The perpetrators of the acts of passive and active bribery of an employee which are provided for in Articles 2 and 3 of the Protocol dated 27.9.1996 to the Convention on the protection of the European Communities' financial interests,⁴⁷ which is ratified by the present Law, will be punished by imprisonment for not less than one year.

⁴⁶ Article 1(b) of the Convention on the Fight against Corruption Involving Officials of the European Community or officials of Member States of the European Union reads as follows:

(b) the term 'community official' shall mean:

- any person who is an official or other contracted employee within the meaning of the Staff Regulations of officials of the European Communities or the Conditions of employment of other servants of the European Communities,
- any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions equivalent to those performed by European Community officials or other servants. Members of bodies set up in accordance with the Treaties establishing the European Communities and the staff of such bodies shall be treated as Community officials, inasmuch as the Staff Regulations of the European Communities or the Conditions of employment of other servants of the European Communities do not apply to them;

⁴⁷ Articles 2 and 3 of the Protocol define active and passive corruption of an "official". An "official" is defined in Article 1 as follows:

1. (a) 'official' shall mean any 'Community' or 'national' official, including any national official of another Member State;

(b) the term 'community official' shall mean:

- any person who is an official or other contracted employee within the meaning of the Staff Regulations of officials of the European Communities or the Conditions of employment of other servants of the European Communities,
- any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions equivalent to those performed by European Community officials or other servants. Members of bodies set up in accordance with the Treaties establishing the European Communities and the staff of such bodies shall be treated as Community officials, inasmuch as the Staff Regulations of the European Communities or the Conditions of employment of other servants of the European Communities do not apply to them;

(c) the term 'national official' shall be understood by reference to the definition of 'official' or 'public officer' in the national law of the Member State in which the person in question performs that function for the purposes of application of the criminal law of that Member State.

2. With confinement for not more than ten years they will be punished if the value of the gifts exceeds the amount of seventy-three thousand Euro (EUR 73,000).
3. In these cases the Court shall order the confiscation of the gifts that were given or of their value.

Article Seven - Penal Liability of Executive Officers of Business Enterprises

If a person that de facto exercises the duties of Director or is empowered in taking decisions or control an enterprise to the benefit of which one of the punishable acts referred to in articles third, fourth, fifth, six, nine and ten of this present has been committed against the financial interests of European Communities, has not prevented this act in violation of his duties is punished with a jailing sentence if a graver penalty is not imposed by other penal provisions.

Article Eight - Administrative Sanctions

If the enterprise has been advantaged from the punishable acts of this law in any way by the in tort liability of any person acting individually or as member of the enterprise, having a leading post in it, based on authorization for its representation or power of exercising control on it, it is imposed against the enterprise with the decision of the head of the competent regional directorate of the Corpus of prosecution of Financial crime, in accordance with art. 5 of P.D. 218/1995:

- (a) An administrative fine up to three times over the value of profit or
- (b) Temporal or permanent prohibition of performance of its business activities or
- (c) Temporal or permanent exclusion from public provisions or supports.
- (d) The temporal and permanent exclusion are imposed for a period of time from one month up to two years.

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

ANNEX 6 ENFORCEMENT STATISTICS PROVIDED BY GREECE

SDOE

Statistics in relation to domestic corruption	2006	2007	2008	2009	2010	2011	2012
Commenced Investigations	0	0	3	14	43	391	
On-going investigations							421
Investigations with pre-trial seizure or freezing of assets	0	0	2	12	3	10	
Investigations discontinued without sanctions	0	0	0	0	0	7	
Investigations discontinued or deferred where persons were sanctioned as a result of settlement, mediation, or the like	0	0	0	0	0	0	

Hellenic Police

BRIBERY FOR LEGAL ACTIONS					
	COMMITTED	ATTEMPTS	DETECTED	PERPETRATORS	VICTIMS
2006	5		5	8	4
2007	6		6	7	7
2008	8		8	10	8
2009					
2010	2	1	3	6	3
2011	14		14	17	15

BRIBERY FOR ILLEGAL ACTIONS					
	COMMITTED	ATTEMPTS	DETECTED	PERPETRATORS	VICTIMS
2006	7	2	9	17	5
2007	3	1	4	6	3
2008	8	3	10	12	5
2009	1	5	6	8	7
2010	4	3	7	9	3
2011	10		10	13	5

BRIBERY OF A JUDGE					
	COMMITTED	ATTEMPTS	DETECTED	PERPETRATORS	VICTIMS
2006	1		1	1	1
2007					
2008					
2009					
2010					
2011					

BRIBERY DURING ELECTIONS					
	COMMITTED	ATTEMPTS	DETECTED	PERPETRATORS	VICTIMS
2006					
2007					
2008					
2009	1		1	1	2
2010					
2011					

Economic Police Service

Data since EPS became operational on 18 July 2011

Total number of investigations against natural persons commenced each year	21
Total number of on-going investigations (against natural persons)	21
Total number of prosecutions against natural persons commenced each year	6
The number of convictions with sanctions (natural persons)	0
Total number of investigations against legal persons commenced each year	13
Total number of on-going investigations (against legal persons)	13

Internal Affairs Division of the Hellenic Police (2005-2011)

CASES	4 486
COMPLAINTS	3 675
BRIEFS	1 448

CRIMINAL PROSECUTIONS	1 168	Police Personnel	591
		Civilians	417
		Public Servants	160
ARRESTS	301	Policemen	105
		Special Guards	22
		Border Guards	9
		Public Servants	61
		Civilians	104
PENALTIES	IMPRISONMENT (163)	Officers	7
		Inferior Policemen	41
		Special Guards	3
		Border Guards	3
		Public Servants	36
		Civilians	73
	LENGTHY PRISON SENTENCED (7)	Officers	0
		Inferior Policemen	4
		Special Guards	0
		Border Guards	0
		Public Servants	0
		Civilians	3

PENALTIES	IMPRISONMENT		2005	2006	2007	2008	2009	2010	2011	
		Officers	5	0	0	2	0	0	0	
		Inferior Policemen	12	12	6	3	4	4	0	
		Special Guards	2	1	0	0	0	0	0	
		Border Guards	2	0	0	1	0	0	0	
		Public Servants	6	2	8	5	5	7	3	
		Civilians	28	12	3	18	9	2	1	
		TOTAL	55	27	17	29	18	13	4	163
	LENGTHY PRISON SENTENCED	Officers	0	0	0	0	0	0	0	
		Inferior Policemen	2	0	0	0	2	0	0	
		Special Guards	0	0	0	0	0	0	0	
		Border Guards	0	0	0	0	0	0	0	
		Public Servants	0	0	0	0	0	0	0	
		Civilians	2	0	0	0	1	0	0	
		TOTAL	4	0	0	0	3	0	0	7