

# **Country Review Report of Greece**

**Review by Ireland and Gabon of the implementation by Greece of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015**

## **I. Introduction**

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

## **II. Process**

5. The following review of the implementation by Greece of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Greece, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Ireland, Gabon and Greece, by means of telephone conferences and e-mail exchanges and involving Ms. Xanthippi PAPPA, Professor Maria GAVOUNELI and Dr. Ioannis N. ANDROULAKIS from Greece, Mr. Henry MATTHEWS, Mr. Eamon KEOGH and Mr. Michael DREELAN from Ireland, as well as Mr. Dieudonné ODOUNGA AWASSI, Mr. Sosthène MOMBOUA, Mr. Pierre NDONG ABOGHE and Mrs. Sarah Hortense NDOCKO MBOUMBA from Gabon. The staff members from the Secretariat were Ms. Tanja Santucci and Ms. Chadia Afkir.
6. A country visit, agreed to by Greece, and conducted jointly with the Organisation for Economic Co-operation and Development (OECD) phase 3bis evaluation of Greece's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, was conducted in Athens from 3 to 6 November 2014. During the on-site visit, meetings were held with the Ministry of Justice, Transparency and Human Rights, National Coordinator Against Corruption Mr. Ioannis Tentes, Public Prosecutor's Office (including Public Prosecutor against Crimes of Corruption and Public Prosecutor for Economic Crime), Court of Appeal in Athens, Court of First Instance in Athens, Thessaloniki and Piraeus, National School of Judges, the Special Secretariat of the Financial and Economic Crime Unit (SDOE), the Hellenic Police, the Independent Authority for Combating Money Laundering, the Ministry of Finance, Ministry of Foreign Affairs, Hellenic Capital Markets Commission, Bank of Greece, Hellenic Aid, Export Credit Insurance Organisation (OAEP), Hellenic Single Public Procurement Authority (HSPPA), and Ministry of Development and Competitiveness in the General Secretariat of Commerce.
7. Meetings were also held with representatives of the following institutions: Hellenic Bank Association (HBA), National Bank of Greece, Piraeus Bank, Alpha Bank, Eurobank, Hellenic

Federation of Enterprises (SEV), Athens Chamber of Commerce and Industry (EBEA), Chamber of Commerce and Industry of Thessaloniki (EBETH), International Chamber of Commerce (ICC), The Panhellenic Exporters Association (PSE), Hellenic Exchanges Group (HELEX), COSTAMARE Shipping Company S.A., Danaos Shipping Co. Ltd., Navios Maritime Holdings, SIDENOR Holdings S.A., Titan Cement Company S.A., Hellenic Petroleum S.A., Space Hellas, Transparency International Greece, Citizens' Movement for an Open Society, as well as representatives from academia, private law practitioners and the media.

### **III. Executive summary**

#### **1. Introduction: Overview of the legal and institutional framework of Greece in the context of implementation of the United Nations Convention against Corruption**

*Greece signed the Convention on 10 December 2003. It was ratified by Parliament on 21 May 2008 and signed by the President of the Hellenic Republic on 9 June 2008 in Law 3666/2008 (Government Gazette A 105/10.6.2008). Greece deposited its instrument of ratification with the Secretary-General of the United Nations on 17 September 2008.*

*Generally accepted rules of international law and international conventions, when ratified by an act and in effect, form an integral part of Greece's domestic law and override any other contrary provision of domestic law (Article 28 Constitution). The Convention ranks high among statutory instruments, just below the Constitution but above other laws.*

*Relevant institutions in the fight against corruption include, notably: the Ministry of Justice, Transparency and Human Rights, Public Prosecutor's Office, the Financial and Economic Crime Unit (SDOE), the Hellenic Police and the Independent Authority for Combating Money Laundering.*

#### **2. Chapter III: Criminalization and law enforcement**

##### **2.1. Observations on the implementation of the articles under review**

*As a cross-cutting observation concerning the implementation of chapter III, the reviewers note the plethora of laws in Greece that leads to complexity of administration. Greece has taken measures to address this, including Law 4254/2014, which is designed to harmonize fragmentation in the Criminal Code and to close legal gaps.*

##### *Bribery and trading in influence (arts. 15, 16, 18 and 21)*

*Articles 235 and 236 of the Criminal Code (CC), respectively cover passive and active corruption of public officers. Passive and active corruption of judges is penalized in article 237 of CC. Articles 159 and 159A address passive and active corruption of political functionaries.*

*Active and passive corruption of foreign public officers is also provided for in articles 235 and 236 CC.*

*Article 237A as amended by law N4254 dated April 7, 2014 and modified by law No 4258 dated April 14, 2014 criminalizes passive and active trading in influence.*

*Article 237B CC, amended by Law N4254 and modified by law number 4258, criminalizes active and passive corruption in the private sector.*

##### *Money-laundering, concealment (arts. 23 and 24)*

Law 3691/2008 addresses the prevention and suppression of money laundering and terrorism financing. Article 2 of said law defines the constitutive elements of money laundering and covers the conversion, transfer, concealment, disguise, acquisition, possession and use of property or products derived from crime.

However, article 45(g) of CC limits the penalty for money laundering to the one imposed for the commission of the predicate offence except in respect of bribery offences or where the perpetrator exercises such activities professionally, is a recidivist, or is part of a criminal organization (article 45(1)(h)).

Article 2 paragraph 2 (e) of Law 3691/2008 criminalizes acts of association and conspiracy to money laundering, and the general provisions of the CC on participation and attempt also apply.

Article 3 of Law 3691/2008 is partially in conformity with article 23(2)(b) of the Convention insofar as there are some Convention offences that are not predicate offences to money laundering.

Foreign predicate offences are covered, subject to dual criminality (article 2 of Law 3691/2008). A person may be sentenced for both money laundering and the predicate the offence.

Greece furnished copies of its anti-money laundering legislation to the United Nations on 22 April 2015.

Greece's legislation criminalizes concealment in Law 3691/2008 and in article 394 CC.

#### Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Greece's legislation covers embezzlement (article 375 CC). The "embezzlement" of immovable property is covered under related offences, including the broad infidelity offence (arts. 256 and 390 CC). Moreover, Articles 257 and 258 CC criminalize the exploitation of entrusted assets and embezzlement committed by public officials.

Article 259 CC criminalizes abuse of official duty. It is considered a crime that a public officer intentionally violates his service obligations to obtain undue advantages for himself or others.

Greek legislation does not define illicit enrichment as a criminal offence. Nonetheless, Law 3213/2003, recently amended by Law 4281/2014, requires a fairly large category of persons to deliver complete annual declarations of their assets and income under penalty for non-declaration, false declaration, omission or negligence on such declaration.

Article 375 CC criminalizes the illegal appropriation of moveable assets .

#### Obstruction of justice (art. 25)

Article 228 CC provides that any person who attempts in any way to persuade another to commit the crime of perjury, shall serve a sentence of up to three years in prison. Provisions on inciting bribery are also applicable.

Article 167 CC criminalizes the use of violence or threat to force an authority or public official to execute an act within his capacities or to refrain from a legitimate act.

#### Liability of legal persons (art. 26)

In addition to the administrative liability of legal persons, Greece has established civil liability in the general provisions of the Civil Code and provisions allowing annulment of contracts.

*Article 51 of Law 3691/2008 provides for the liability of legal entities for most corruption offences but does not cover all offences provided for in chapter III of the Convention.*

*Article 51(4) of Law 3691/2008 provides for the independent liability of legal persons from that of natural persons. However, in practice, administrative proceedings against corporations commence once the notification under Art. 51(5) of the aforesaid law is made.*

*Participation and attempt (art. 27)*

*Articles 45 to 49 CC criminalize participation, including direct accessories, instigation and complicity to commit a crime.*

*In most cases, articles 42 to 44 CC penalize attempt with a reduced penalty in relation to the completed offence. The CC also provides for the criminalization of preliminary acts.*

*Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)*

*Pursuant to Greek criminal legislation penalties are fixed in proportion to the gravity of offences, and comprise a range of prison terms, fines and other sanctions. Law 3691/2008 on money laundering also provides for a series of criminal penalties according to the seriousness of the offence. Repeated offences are considered aggravating circumstances.*

*Article 62 of the Constitution provides special immunity for members of Parliament, which may be suspended by decision of a plenary session of the Parliament. Article 86 of the Constitution regulates the immunities of the Prime Minister and members of the Government. Article 49 of the Constitution regulates the immunity of the President. Of concern are provisions in the Omnibus law addressing, inter alia, the immunity of employees in State-owned companies, staff involved in privatization of assets, and others.*

*Prosecutors are bound by the principle of mandatory prosecution and have only limited discretion not to prosecute where the case appears unfounded and there is no adequate factual basis to proceed.*

*The Criminal Procedure Code (CPC) establishes the measures that shall be taken on the arrest and release of accused individuals, taking into account the need to guarantee public safety and the appearance of defendants in future proceedings (articles 282 to 304). Procedures relating to parole of sentenced individuals are provided for in articles 115-110A CC.*

*Greek law has specific regulations on disciplinary sanctions such as suspension and removal of public officials accused of offences. Reassignment to other duties has not been provided for.*

*In articles 59 to 63, the CC provides for deprivation of civil rights, including disqualification to hold public office, for any convicted person.*

*Articles 81 and 82 of Law 2776/1999 as well as Presidential Decree 300/2003 provide for the social reintegration of persons convicted of any kind of crime.*

*The CC, in article 263B paragraphs 1 to 5, as amended by Law 4254/2014, provides for mitigated punishment of persons who cooperate to detect corruption acts. It also provides for the immunity of certain cooperating offenders before proceedings are initiated. Moreover, Law 2928/2001 provides for physical protection of witnesses and their families previous to the proceedings, as well as confidentiality of their identities for the creation or involvement in a criminal organization.*

*Protection of witnesses and reporting persons (arts. 32 and 33)*

*Article 9 of Law 2928/2001 provides protection measures from acts of potential retaliation or intimidation against witnesses, persons who collaborate with the authorities, whistleblowers and their families. Measures for relocation and resources to testify using communication technologies such as videolink are also provided for in the Greek legislation. Victims may become civil parties during the criminal proceedings.*

*Article 45B CPC, added by Law 4254/2014, provides for protection against unjustified prosecution of persons who cooperate with law enforcement to uncover corruption crimes.*

*Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)*

*Article 46 of Law 3691/2008 and article 238 CC establish the legal regime on the confiscation of proceeds of crime, of assets of an equivalent value or of instruments used or intended to be used in the commission of offences. While this legislation does not appear to cover all corruption-related offences, other Convention offences are covered by the general provision of article 76 PC, which, however, is limited to confiscation of assets from principals or accomplices. The definition of covered property varies across the CC and other legislation.*

*Laws 3842/2010, 3296/2004, 3691/2008 and 4022/2011 provide a set of measures to allow for the identification, location, freezing and seizure of proceeds or instruments of crime.*

*Greece has a set of measures at its disposal to manage frozen, seized or confiscated assets.*

*Law 3691/2008, Law 3213/2003 and the CC address seizing and confiscation of transformed, converted or mixed assets, as well as income or benefits derived therefrom. Laws 4022/2011, 3691/2008, 3932/2011 and the CPC, among others, forbid appealing to bank secrecy within a legal procedure.*

*Statute of limitations; criminal record (arts. 29 and 41)*

*In Greece, the prescription period is 15 or 20 years for felonies, five years for misdemeanors and two years for petty violations. Suspension of the prescription period is provided for in the CC and the CPC.*

*Greece is party to a number of international agreements relating to the exchange of data on criminal records, including several agreements on mutual legal assistance. This information may be taken into account in the investigation of corruption cases.*

*Jurisdiction (art. 42)*

*Article 5 CC provides jurisdiction for crimes committed within the Greek territory, including offences committed by foreigners in Greece. Greek vessels and aircraft are also part of Greek territory.*

*Jurisdiction also applies to crimes committed by Greek citizens abroad (article 6 CC) and offences committed abroad by foreigners against Greek nationals (article 7 CC) if the double criminalization principle is satisfied.*

*Greece recognizes foreign criminal decisions, and its jurisdiction applies to Greek nationals and other persons found guilty abroad (article 11 CC).*

*Consequences of acts of corruption; compensation for damage (arts. 34 and 35)*

*Law 2957/2001 provides for the annulment of legal acts in cases of corruption. It also provides that any person has the right to demand compensation for damages in addition to the annulment of the legal act in cases of corruption. Law 4271/2014 further provides for the exclusion of bidders found guilty of corruption.*

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Greece has established various specialized institutions responsible for fighting corruption through law enforcement, including the Public Prosecutor against Corruption, the Financial and Economic Crime Prosecutor, the Financial and Economic Crime Unit (SDOE), the Greek Financial Police, the General Inspector of Public Administration, Inspectors-Controllers body for public administration (SEEDD) and the Financial Intelligence Unit.

The specialized institutions engage in a variety of coordination mechanisms among themselves and with the judicial and investigative authorities. Article 37 paragraph 2 CPC establishes an obligation of Greek public officials to report crimes of which they become aware during the exercise of their duties.

Greek legislation provides for cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions.

Article 40 CPC obliges all persons who become aware of a crime to report the matter to the public prosecutor or any law enforcement authority. However, the failure to fulfill this obligation is not sanctioned.

**2.2. Successes and good practices**

- The supervisory concept built into the bribery offence, covering supervisors who fail to prevent the commission of offences by supervised persons (arts. 235(4) and 263(3) CC).
- The undue influence at the base of the punitive function of the offence of trading in influence (art. 237A CC).
- Disciplinary offences that encompass a wider range of conduct than criminal acts referred to in paragraph 8 of article 30 of the Convention.

**2.3. Challenges in implementation**

Although Greece has established a solid criminal justice system and implements a large number of the provisions of the Convention, the reviewers identified a few challenges in implementation or grounds for further improvement. It is recommended that:

- Greece continue its efforts to simplify the legal and administrative framework, as already largely done by Law 4254/2014, in light of the plethora of applicable laws leading to a complexity of administration.
- Greece take steps to collect more detailed statistics on the implementation of anti-corruption measures across institutions.
- In respect of money laundering (article 23), the penalty be established independent of the sanctions for the predicate offence for Convention offences not involving bribery; and all Convention offences qualify as predicate offences in respect of article 3 of Law 3691/2008.
- Greece address the administrative liability of legal persons for all Convention offences; amend Article 51(5) of Law 3691/2008, which provides for the Minister of Justice, Transparency and Human Rights to be involved in the determination of administrative penalties; and ensure that its legislation, as well as its interpretation and application, provides for the liability of legal persons irrespective of the criminal liability of natural persons involved. Moreover, Greece should ensure that proceedings against legal persons can be instituted in the absence of criminal charges against natural persons (article 26).

- Greece remove the special statute of limitations protecting ministers whereby, after two legislative sessions, a minister can no longer be prosecuted and consider taking measures to address delays in the administration of justice (article 29).
- Greece amend article 99 CC, which allows the discretionary conversion of 1-3 year sentences to a fine (article 30, paragraph 1).
- Greece revise the scope of immunities and parliamentary privileges, as well as the measures for their suspension, in line with article 30, paragraph 2 of the Convention, including in particular the adoption of the proposed amendment to article 86 of the Constitution.
- Greece consider adopting measures to provide for the reassignment of public officials accused of corruption-related offences; and adopt measures to enhance the efficiency of removal and suspension of such officials (article 30, paragraph 6).
- Greece consider adopting measures to fully implement paragraph 7(b) of article 30 of the Convention.
- Noting that not all Convention offences qualify for purposes of confiscation under article 46 of Law 3691/2008 and article 238 CC, and further that article 76 CC is limited to confiscation of assets belonging to principals or accomplices, Greece ensure that all offences are included among the offences subject to the measures in article 31, regardless of the ownership of the property involved.
- Greece consider harmonizing the relevant definitions of property subject to confiscation and ensure that all property referred to in article 31 of the Convention are taken into account.
- Greece continue to strengthen the administration of frozen, seized and confiscated assets (article 31).
- Noting that the Greek legislation has measures in place addressing the protection of witnesses, experts and informants in corruption cases, but does not cover all Convention offences, Greece strengthen applicable witness protection measures, and conduct awareness raising of the new legislation and available protections (article 32). The same recommendations are applicable to the protection of reporting persons, especially in the private sector (article 33).
- Greece consider establishing a national debarment or blacklisting register to reinforce the existing procedures (article 34).
- The FIU ensure that statistics on suspicious transaction reports (including by offence/region) are collected; indications by the FIU that this will be done in 2015 are welcome (article 36).
- Greece may consider entering into relevant protection agreements under article 37(5).
- Greece enhance coordination among relevant agencies, clarify mandates in light of competing priorities, and establish a consistent practice of sharing case related information among institutions (article 38).
- Greece consider continuing to enhance cooperation between investigating and prosecuting authorities and entities of the private sector so that the reporting of corruption becomes systematic in practice (article 39).

### **3. Chapter IV: International cooperation**

#### **3.1. Observations on the implementation of the articles under review**



*International treaties are transposed into Greek law through the adoption of domestic legislation, or, in the case of EU legislation, by Presidential decree or Ministerial decision. According to the presumption principle, Greek law is presumed to be in accordance with Greece's international law obligations. Conversely, domestic law and the principle of reciprocity are applied when no multilateral or bilateral treaty, convention or agreement exists.*

*Extradition, transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45, 47)*

*The extradition system in Greece relies on several bases. Usually, the European Convention on Extradition of the Council of Europe of 1957 (Law No. 4165/1961) is used. Basic rules on extradition are contained in Arts. 436-456 CPC, which are generally applicable also where there is a convention, unless they are in conflict with it. If there is no treaty in place, Greece applies the principle of reciprocity. Greece is party to a number of bilateral and international agreements and also considers this Convention as a basis for extradition.*

*Greece applies the dual criminality principle and a two-year minimum imprisonment term for offences to be extraditable (Article 437 CPC), except under the European Arrest Warrants framework for offences punishable by deprivation of liberty for at least three years (Article 10(2), Law No. 3251/2004) and in relation to EU Member States in respect of offences punishable under the laws of both requesting and requested States by at least one year (article 2, Law 4165/1961). According to Article 437 CPC, in cases of multiple crimes extradition is permitted for all acts, if one of them satisfies the minimum imprisonment term. Extradition is limited to the extent that Greece has not fully criminalized some offences under the Convention.*

*Greece has reportedly received no extradition requests and has dealt with no extradition cases for Convention offences during the last three years.*

*Greece applies mandatory grounds for refusal, such as the non-extradition of its nationals (Article 438 CPC), but will prosecute nationals in appropriate cases (e.g., Article 6, Law No. 4165/1961). Greece does not recognize the conditional extradition of its citizens, except as provided in the execution of European arrest warrants (Article 13, Law 3251/2004).*

*Greece will not extradite a person, inter alia, if the request concerns a political, military, fiscal or press offence, was made for political reasons, or if the act is not punishable or prosecution or execution of the sentence is precluded; extradition will also be refused if the prosecution and punishment of the crime come within the jurisdiction of the Greek courts (Article 438 CPC).*

*Article 438(c) CPC specifically precludes extradition for offences classified as fiscal under Greek law, although the matter is satisfactorily addressed with respect to countries that have ratified the Schengen Agreement (Article 63, Law No. 2514/97).*

*Except in the case of European Arrest Warrants, Greek law does not expressly prohibit extradition on the grounds that the request was to prosecute or punish a person on account of gender or ethnic origin; however, case law was provided (by the Court of Appeal of Eastern Crete) where extradition was refused on grounds that the requested person risked being prosecuted due to racial, religious, political or ethnic views (see also the Strasbourg case of Radu v. The Republic of Moldova, Judgment No. 50073/07, of 15 April 2014).*

*Fair treatment protections are in place, including under EU directives on the right to interpretation and translation in criminal proceedings (No. 2010/64/EU) and on the right to information in criminal proceedings (No. 2012/12/EU), incorporated into the Greek legal order by Law No. 4236/2014.*

*The European Arrest Warrants and bilateral treaties (USA; Mexico) provide for expedited extradition procedures. Law No. 4022/2011, which establishes the public prosecutor on corruption and refers to the trial of public officials for corruption offences, could also extend to expedite cases.*

*Greek legislation provides for a consultation process before extradition is refused (Article 444 CPC; Article 13, Law No. 4165/1961).*

*Greece is party to several bilateral and multilateral agreements on the transfer of prisoners, including the Council of Europe Convention on the Transfer of Sentenced Persons. There have been numerous case examples, mainly based on the afore-mentioned Strasburg Convention.*

#### *Mutual legal assistance (art. 46)*

*Greece has bilateral mutual legal assistance (MLA) treaties in force with 14 countries. Ten other bilateral MLA treaties are no longer in use because international cooperation with those countries is based on the 1990 Convention applying the Schengen Agreement or the European Convention on Mutual Assistance in Criminal Matters (1959 Convention). Greece considers this Convention as a basis for MLA.*

*In the absence of a treaty, domestic law is applied on conditions of reciprocity (Article 28 Constitution). In such cases, Greece can provide MLA under Articles 457-461 CPC.*

*Dual criminality is a fundamental principle for the provision of MLA. Thus, the Minister of Justice, with the consent of the competent council of appeals judges, may refuse an incoming MLA request if the underlying offence is not extraditable (Article 458(3) CPC), including on the grounds of dual criminality. An important exception are the 32 categories of offences in the European Arrest Warrant. Supreme Court jurisprudence confirms that in verifying dual criminality, consideration is given to the relevant conduct rather than the strict terminology of offences. Nonetheless, the need to find an appropriate legal basis for addressing requests is one of the main reported sources of delay.*

*There are no provisions in the Greek legislation providing that assistance will not be refused on the ground that the offence involves fiscal matters.*

*Greece may provide MLA in cases involving legal persons, provided there is an offence and criminal proceedings are underway in another State.*

*Greece has received 14 requests related to Convention offences during the last three years. The majority of incoming and outgoing requests are satisfied, including all corruption-related requests addressed to Greece.*

*Banking secrecy may only be lifted for felonies under the Greek penal law, including the most serious but not all Convention offences. Fixed case law has been established regarding such matters (Judgment No. 27/2011 by Katerini Magistrate Court sitting in Council).*

*Regarding the procedure for MLA, there are three main avenues for executing requests:*

*1) For countries that have not incorporated the Schengen Agreement into their domestic law, the MLA request is transferred from the Ministry of Justice through the locally competent Prosecutor of the Court of Appeal to the investigating officer who executes the request. The response is transferred through the Prosecutor to the Ministry of Justice and to the requesting authority.*

*2) For countries that have domesticated the Schengen Agreement, requests may be directly made to the locally competent Prosecutor of the Court of Appeal and the aforementioned procedure is followed. The response is sent from the Prosecutor directly to the foreign requesting authority.*

3) A separate process is in place for requests filed on the basis of article 21, 1959 Convention, which involve prosecution. These are submitted to the Ministry of Justice, which transfers them to the locally competent Prosecutor of the Court of Appeal and the latter to the locally competent Prosecutor of the Court of First Instance, which reviews the case.

The procedure for processing requests, which involves multiple authorities at different stages, is a reported source of delays in providing MLA.

Although the types of assistance enumerated in the CPC are limited, the Greek judicial authorities may make use of all modern judicial and technological “tools” under Greek legislation for the investigation of cases (e.g., Article 253A CPC) when executing MLA requests. However, hearings by videoconference are not foreseen in Greek law, with the limited exception of cases involving the U.S.A. (Article 3, Act 3771/09).

The transfer of prisoners for MLA is provided in all bilateral and multilateral treaties and under Article 459 CPC.

The competent central authority for MLA is the Ministry of Justice. Relevant requests and accompanying documents shall be translated into the Greek language.

The content and format requirements for incoming MLA requests, as well as a limitation on the use of information transmitted through MLA, are not enshrined in the legislation or any written procedure or guidance.

Consultations are held before assistance is postponed or refused, and reasons for declining assistance are communicated, as a matter of practice.

Greece addresses the issue of costs of MLA through its agreements.

The transfer of criminal proceedings is possible in accordance with Greece’s domestic legislation and international treaties, including at the level of EU Member States (Article 21, 1959 Convention); case examples were provided.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49, 50)

There are several channels and networks facilitating law enforcement cooperation, including INTERPOL, EUROPOL, OLAF, EUROJUST, Southeast European Cooperative Initiative (SECI), and Southeast European Prosecutors Advisory Group (SEEPAG). Assistance is also sought and provided by tax authorities, the FIU (including through the Egmont Group), and the Hellenic Capital Markets Commission. Simplified arrangements are in place for the exchange of information and intelligence between law enforcement authorities of the EU Member States (Presidential Decree 135/2013 transposing Council Framework Decision 2006/960/JHA), through the Schengen Information System, and among EUROPOL members through the Secure Information Exchange Network Application (SIENA).

Greece engages in the exchange of personnel and other experts internationally, including the posting and receiving of liaison officers.

Greece considers this Convention as the basis for mutual law enforcement cooperation. There has been no experience in its application; however, Greece has conducted a joint investigation on the implied legal basis of the United Nations Convention against Transnational Organized Crime (UNTOC) in a drug trafficking/money laundering investigation.

Joint investigations may be conducted on the basis of domestic legislation and Greece’s international agreements and arrangements, including Law 3663/2008 implementing EU Council Framework Decision of 13 June 2002 on joint investigation teams and Article 39 of the Convention Implementing the Schengen

Agreement of 14 June 1985. Moreover, Article 62 of Law 4249/2014 on the Reorganization of Police Forces allows for the formation of joint investigations in serious crime matters.

Greece may conduct special investigative techniques in response to MLA requests (Article 253A CPC) and on the basis of reciprocity, as well as in accordance with international agreements. Such evidence is admissible if the operation was lawfully conducted and procedural safeguards are satisfied.

### **3.2. Successes and good practices**

- *The extensive outreach and cooperation that Greek law enforcement authorities display in their cooperation with counterparts at the European level and beyond, including through the provision of technical assistance and sharing of expertise.*
- *The rapid response of Greek authorities to requests for law enforcement cooperation, including the freezing of financial accounts.*
- *The high level of awareness exhibited by Greek authorities of the Convention and multilateral conventions as basis for law enforcement cooperation; for example, SDOE officers are trained specifically in the use of international cooperation tools.*

### **3.3. Challenges in implementation**

*While Greece interprets its domestic legislation in accordance with international treaties such as the Convention, and notwithstanding the application of the monist system in Greece and the self-executing nature of many Convention provisions, the following steps could strengthen existing anti-corruption measures:*

- *Continue to ensure that extradition procedures are applied expeditiously.*
- *Monitor the application of MLA in practice in cases of offences involving legal persons and consider legal clarification, if it appears that the involvement of a legal person has actually impeded MLA.*
- *Adopt appropriate measures to address cases where judicial lifting of bank secrecy is requested for misdemeanors.*
- *Adopt a clear provision providing assurance that dual criminality will not impede the provision of MLA in corruption-related cases where the request involves non-coercive measures.*
- *Adopt measures to address the safe conduct of prisoners transferred for MLA and credit for service of their sentence (art. 46(11)).*
- *Streamline the process for executing MLA requests and maintain statistics on timeframes for responding to requests; although the timeframes indicated do not suggest inordinate delay, Greece could consider the adoption of relevant guidelines.*
- *In the context of ongoing domestic reforms and in the interest of greater certainty for non-treaty partner countries, Greece may wish to:*
  - *Consider adopting specific measures that would permit the authorities to consider enforcing the remainder of a sentence where extradition of nationals is refused, even in the absence of a relevant treaty basis or convention (art. 44(13)).*
  - *Clarify in its CPC that extradition will not be refused in cases involving both Convention offences and fiscal matters (art. 44(16)); and adopt a corresponding provision for MLA (art. 46(22)).*

- Consider specifying in its legislation in more detail, on a non-exhaustive basis, the types of assistance that can be provided for MLA requests that are not based on a treaty (art. 46(3)).
- Specify the required content and format requirements for MLA requests, beyond the treaties Greece is party to, and consider adoption of relevant guidelines in this regard (art. 46(17)).
- Adopt measures providing for a limitation on the use of information transmitted through the exchange of MLA (art. 46(19)).
- Specify that reasons shall be given for any refusal of MLA (art. 46(23)) and that consultations be held before assistance is postponed or refused (art. 46(26)), including through the adoption of relevant regulations or guidelines.
- Adopt clear provisions providing for the transfer of persons other than prisoners for purposes of MLA (art. 46(27)) and address the issue of costs of MLA (art. 46(28)).

*The reviewers welcome indications that a comprehensive programme to digitalize justice is underway, which would allow Greek authorities to collect data on the type of requests (e.g., underlying offences), the timeframe for responding to requests, and the response provided, including any grounds for refusal.*

## IV. Implementation of the Convention

### A. Ratification of the Convention

8. Greece signed the Convention on 10 December 2003 (C.N.1452.2003.TREATIES-61<sup>1</sup>). It was ratified by Parliament on 21 May 2008 and signed by the President of the Hellenic Republic on 9 June 2008 in Law 3666/2008 (Government Gazette A 105/10.6.2008). Greece deposited its instrument of ratification with the Secretary-General of the United Nations on 17 September 2008 (C.N.762.2008.TREATIES-31<sup>2</sup>). The Convention entered into force for Greece on 17 October 2008 in accordance with its article 68 (2).
9. At the time of ratification, Greece made the following reservations and notifications:
  - “1. The Hellenic Republic declares that, pursuant to article 66 paragraph 3 of the Convention ratified by this law, it is not bound by paragraph 2 of the same article of the Convention.
  2. The Hellenic Republic declares that the competent Central Authority to which applications pursuant to chapter IV of the Convention are addressed is the Ministry of Justice and that every relevant request, as well as its accompanying documents shall be translated into the Greek language.”
10. On 5 January 2010 Greece made the following notification (C.N.3.2010.TREATIES-1<sup>3</sup>):

<sup>1</sup> <https://treaties.un.org/doc/Treaties/2003/12/20031209%202002-50%20PM/Related%20Documents/CN.1452.2003-Eng.pdf>

<sup>2</sup> <https://treaties.un.org/doc/Publication/CN/2008/CN.762.2008-Eng.pdf>

<sup>3</sup> <https://treaties.un.org/doc/Publication/CN/2010/CN.3.2010-Eng.pdf>

“... the central authority designated by the Greek Government to receive requests for mutual legal assistance is the following:

Department for Special Penal Affairs and International Judicial Cooperation on Penal Affairs,  
Director Ms. Eleftheriadou

Ministry of Justice, Transparency & Human Rights

Mesogeion 96, 11527, Athens, Greece

Tel: +30 210 77 67 056

Fax: +30 210 77 67 497

Email: minjustice.penalaffairs@justice.gov.gr”

11. The implementing legislation includes, inter alia:

- Constitution of Greece
- Criminal Code, as amended (CC) (also referred to hereinafter as the Greek Penal Code, or GPC)
- Code of Criminal Procedure, as amended (CPC)
- Law No. 3666/2008 (Ratifying the UN Convention against Corruption)
- Law 1608/1950 (for the protection of the State's funds)
- Law 3213/2003 (“Declaration and audit of the assets of members of parliament, public officials and servants, mass media owners and other categories of individuals”), as amended
- Law 3691/2008 (“Prevention and suppression of money laundering and terrorist financing and other provisions”), as amended
- Law 3528/2007, as amended (“Code of Civil Servants”); Law 3584/2007 (“Code of Civil Servants of the primary and secondary municipal authorities”); and Law 1756/1988 (“Code on the Justice organization and the official status of Judges and Prosecutors”)
- Law 2776/1999 (“Penitentiary Code”) and Presidential Decree 300/2003
- Law 4312/2014 (“Setting frozen or confiscated financial assets and cash and other provisions”)
- Law 4022/2011 (“Adjudication of corruption offences committed by politicians and senior state officials, cases of great social importance and major public interest as well as other provisions”)
- Law 2928/2001 (Concerning Criminal Organisations and Other Provisions)
- Law 4254/2014 (“Measures to support and develop the Greek economy in the context of implementation of Law 4046/2012 and other provisions”)
- Law 2713/1999 (Respecting the Internal Affairs Service of the Greek police), as amended
- Law 4249/2014 (On the Reorganization of Police Forces)

#### The Convention and Greece’s legal system

12. Article 28 par. 1 of the Constitution states that generally accepted rules of international law and international conventions when they have been ratified by an act and have come into effect shall form an integral part of Greece’s domestic law and shall override any other contrary provision of domestic law.

13. Accordingly, the UN Convention against Corruption has become an integral part of Greece’s domestic law following ratification of the Convention by the Parliament on 21 May 2008, signature by the President of the Hellenic Republic on 9 June 2008, and entry into force on 10

June 2008 in accordance with Article 68 of the Convention. The Convention ranks high among statutory instruments, just below the Constitution but above other laws.

## **B. Legal, institutional and political system of Greece**

14. Greece is a parliamentary republic, with a multi-party system. The legislative branch consists of a 300-seat unicameral Parliament (Vouli ton Ellinon) whose members are elected by direct popular vote to a maximum four-year term. The Parliament has exclusive jurisdiction to enact criminal laws. The chief of state is a President who is elected to a five-year term by Parliament, with a maximum of two terms in office. The President holds limited powers, such as the power to declare war, conclude international agreements and grant pardon. The executive branch of government is led by an elected Prime Minister, who also commands the absolute majority of 151 out of 300 in Parliament. The Council of Ministers (cabinet) is appointed by the President upon the recommendation of the Prime Minister.
15. The court system is based on the separation between the administrative courts and the ordinary (civil and criminal) courts. The administrative courts adjudicate disputes arising between the administration on the one hand and members of the public on the other; they also review the legality of administrative acts and the validity of public contracts. The administrative courts consist of the administrative tribunals, the administrative courts of appeal and the Council of State. The Court of Audit, which is a supreme court like the Council of State, is not part of the administrative courts system.
16. The ordinary courts include first-instance courts, 19 courts of appeal and the Supreme Court (Areios Pagos), the court of cassation which rules on appeals on points of law. Commercial disputes and those relating to employment contracts come under the jurisdiction of ordinary civil courts. Judicial decisions do not have the same legal weight as the law. However, every judge is obligated to review the constitutionality of the applicable laws and regulations and refuse to apply them on grounds of unconstitutionality. There is no stare decisis: the lower courts are not obliged to follow Areios Pagos although such decisions do hold persuasive power.
17. The Supreme Court generally follows its own precedents. The works of legal scholars are not sources of law but can be very influential in shaping jurisprudence.
18. The judges are career public officials appointed by the President of the Republic. The independence of judges and prosecutors is enshrined in Articles 87 and 88 of the Constitution. Both the judges and the members of the prosecution service cannot be dismissed, unless found guilty of criminal offences, but they are transferable. Their professional career and transfer depend on the Judicial Service Commission, which is made up exclusively of judges and prosecutors under the chairmanship of the President of Areios Pagos. Since 1996 Greek judges and prosecutors have been trained at the National School of the Judiciary, entry to which is by competition. During their training, students choose between posts of judge and posts of prosecutors, as the career paths of the two branches of the judicial service are separate.
19. Prosecutions are conducted by the Public Prosecutors Office, which is divided by geographic region and level of court. Prosecutors are bound by the principle of mandatory prosecution, i.e. they must commence proceedings upon receiving information of a crime; they have limited discretion not to proceed. Criminal offences are classed as petty offences (punishable by up to a month of imprisonment), misdemeanours (punishable by up to five years imprisonment) and

felonies (punishable by up to twenty years' incarceration or incarceration for life). Depending on the legal classification of the offences charged, cases are heard by the competent court.

20. Regarding previous assessments of the effectiveness of anti-corruption measures, Greece indicated that, as with almost everything else in times of crisis, the anti-corruption action plan and legislation has been under intense scrutiny in the past three years. Indeed, reference in this report is made to the outcome of such an examination, which has resulted in the adoption of significant institutional and statutory innovations.

<http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=BxWqJ1E9N1E%3d&tabid=253>

Council of Europe- Group of States against Corruption (GRECO)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/reports\(round1\)\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/reports(round1)_en.asp)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports\(round2\)\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports(round2)_en.asp)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp)

## **C. Implementation of selected articles**

### **Chapter III. Criminalization and law enforcement**

21. As a cross-cutting observation concerning the implementation of chapter III, the reviewers note the plethora of laws in Greece that leads to complexity of administration. The reviewers welcome measures being taken by Greece to address this, including Law 4254 (2014), which is designed to harmonise fragmentation in the Criminal Code and to close legal gaps, and they encourage Greece to continue its efforts to simplify the legal and administrative framework. This was also welcomed by representatives from the government and the non-governmental sector during the country visit.
22. The reviewers further welcome steps being taken by Greece to collect more detailed statistics on the implementation of anti-corruption measures across institutions. In this context, reference is made to the observations in the introduction to chapter IV.
23. The reviewers commend Greece on the efficient organization of the joint UNCAC/OECD onsite visit, which was conducted in Athens from 3 to 6 November 2014.

### **Article 15 Bribery of national public officials**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*



**(a) Summary of information relevant to reviewing the implementation of the article**

24. Greece provided the following applicable measures on the implementation of the article under review.

Bribery of national public officials, including judges and members of parliament is covered in Articles 235-237 (in combination with Articles 13a and 263A par. 1) and 159-159A of the Criminal Code. These provisions were drastically amended recently by Law 4254/2014, in order to improve their scope and effectiveness and also fulfil the country's obligations at the international level.

Article 235(1) typifies the classical scheme of venality for an act of an official which relates to the exercise of his/her duties without, however, being in conflict with them. This includes all manner of illegal fees, services or any other consideration an official may demand or accept to act in favour of the donor or any other person in a manner which (apart from the fact that he/she should not receive remuneration) does not conflict with his/her official duties. Any such advantage should also be able, either objectively or subjectively (in case of an object that has value only for the particular offender), to affect his/her will to act.

The adjective 'undue', whose further elaboration rests with legal theory and jurisprudence, is used to exclude from criminal liability advantages or gestures of minimum value or symbolic in nature, which the citizen concerned may perform in the context of socially appropriate ("adequate") manifestations of kindness or decency. In some legal systems specific limits are established in terms of the value of gifts that an official may accept without this being considered objectionable, as well as procedures whereby such gestures can be reported by the receiving official to his/her service, for the sake of transparency. Where such provisions exist in the Greek legal system - as well as where they will be introduced in the future - it is reasonable that the term "due" shall coincide with the maximum value specified in each case or be associated with compliance with the procedure laid down for the official recording the receipt of a gift.

Under the new regime, there is improvement with respect to the relation of the action or omission of the offending official to the circle of his/her official duties, notably his/her functions. In accordance with the previous wording of Article 235 of the Criminal Code, the competence of the official to make the official act in respect of which the gift was requested or given was considered an objective element of the offence and lack of such competence constituted a negative assertion for the accusation. The wording introduced widens the circle of acts to which the giving of a gift may be directed, in order to include acts not related to the narrow circle of the responsibilities entrusted to an official but which the official can commit in the course of performing his/her duties or by taking advantage of his/her position.

Based, moreover, on the relation of the act of an official to such official's duty, paragraph 2 differentiates the way in which the official shall be treated in terms of the penalty provided for. It is considered that the damage caused by the corrupt act is lower if the official claims a personal advantage for an official action (or inaction) which the official would take even if he/she had not received a gift. On the contrary, it is considered that the intention of gearing the official duty towards an outcome different from that which would have been attained had the appropriate official actions been taken (i.e. a breach of duty), constitutes a significantly more severe damage of the legally-protected interest of the integrity of public service and, therefore, should be punished more severely. It is worth noting that this differentiation between bribes aimed at

“legal” acts and bribes aimed at a breach of duty was also made by the original version of the Criminal Code of 1950. As regards the less clear-cut category of official acts that fall within the discretion of a public official in the discharge of his/her duty, it is accepted in both theory and practice that they can certainly be considered as acts running contrary to one’s duties, independently of whether the formal procedures for reaching the relevant decision were kept, to the extent that the corrupt act is objectively linked to the performance of the official duty and played (or was intended to play) some role in the way such discretion would be applied, by turning the scales or at least by co-shaping or influencing the final judgement of the official.

Paragraph 3 typifies as a criminal offence (above and beyond the international obligations of the country) receiving or accepting advantages not in view of a certain official action or omission of the employee, but aimed to associate with him/her, namely to create a climate of social or personal obligation to pave the way towards repayment through an official action or inaction - if and whenever this should become possible or necessary - or to make it easier to approach him/her in order to request an action or action relevant to the exercise of his/her duties. The meaning of the term 'undue' is the same as in paragraph 1. Here too the advantages should be such as to exceed those expected in terms of social decency or courtesy. To establish criminal liability, these advantages should be offered to the official exactly because of his/her capacity and become accepted by him/her the latter being aware of this fact - namely that he/she is being offered gifts of a certain value because of his/her capacity and not as part of any private activity of his/hers or other social or biotic relationship, existing or intended.

Article 235(4) of the Criminal Code, establishes the responsibility of the supervisor of the offending official or of such person entrusted with the official's disciplinary control, where such supervisor fails to prevent the offender from committing the offences of venality and acceptance of undue advantages. This offence is not new in Greek criminal law, as it has existed since 1950 in similar form in Article 3 of Law 1608/1950, indeed including not only bribery offences but also the offences under Articles 216, 218, 242, 256, 258, 372, 375 and 386 of the Criminal Code when directed against the State. The main differentiation introduced by this provision is that the responsibility of the supervisor or the inspector arises regardless of the size of the economic damage incurred or threatened and whether such damage was incurred or threatened against the Government or any other person (which also constitutes unjustified discrimination against the individual who is damaged by the discriminatory conduct of the official achieved through bribery).

It should be noted that the provision of Article 235(4) does not place under criminal penalty the participation of the supervisor in the act of the subordinate official, but typifies as a criminal offence another, independent behaviour, a separate matter in relation to the conduct of the official and in particular a negligent breach of duty causally associated with the intentional committing of the offence by the subordinate. The criminalization of such behaviour follows from the rule that the supervisor or inspector of a service has the official duty to see to it that his/her subordinates are specifically prevented from committing acts of venality. Reference to a specific official duty indicates that, in order to establish the criminal liability of the supervisor, a specific administrative action must be identified, which he/she negligently omitted although he/she was obligated to perform it (or which he/she committed in a manner carrying particular irregularity), in accordance with the law or the rules established for the functioning of his/her service and which (the action) could certainly or with a high degree of probability have deterred the offending subordinate from committing his/her own offence, which is also consistent with the way the provision of Article 3 of Law 1608/1950 has already been interpreted in case-law (Supreme Court Judgement 2/2011). So far as any intentional inaction of the supervisor is concerned, Article

261(b) of the Criminal Code is applicable.

Article 236(1) and (2) criminalizes bribery for an official's action which is either simply related to the exercise of his/her duties, but does not conflict with them, or conflicts with his/her official duties and is intended to alter the outcome of official actions. Here applies what has respectively been cited in relation to Article 235 of the Criminal Code. However, advantages not linked to a specific official action aimed to create a favourable climate for the donor are not punished. This differentiation is subject to the assumption that responsibility for defending public confidence in the integrity and impartiality of the public service lies principally with the official himself/herself, who may harm it by taking advantage of his/her capacity for his/her own benefit.

The responsibility of the supervisors of officials liable for venality corresponds to the responsibility of heads of businesses to the benefit of whom their employees perform bribery. Greece as a country has an obligation to criminalize such responsibility in respect of all criminal offences in office under relevant instruments of the European Union, ratified by Laws 2802 and 2803/2000. The above mentioned correspondence exists in the sense that in both cases an independent obligation is established for supervisors to prevent acts of active and passive corruption of their subordinates and it appears consistent that this obligation is described at a punitive level in a similar way.

Article 237 of the Criminal Code typifies as a distinct form of venality and bribery the one that concerns judges, as it aims to affect the function of the judge in the administration of justice or that of the arbitrator during the resolution of disputes entrusted to him/her. The wording 'for an action or inaction ... relating to the performance of his/her duties...' was preferred to the previous wording 'to judge a case assigned to them for or against someone' so that there is no doubt that such standardisation also encompasses cases involving the performance of judicial duties containing no case 'judgement', such as prosecution, imposing restrictive conditions, conducting investigations or other preliminary procedural acts of civil or administrative proceedings, etc. In this provision no distinction is made between influencing the outcome of the judicial function and simply receiving a gift for an outcome that would in any case occur, as it is considered that the impartiality of the judicial function belongs by definition to the fundamental obligations of each judge and thus requesting or receiving advantages is always contrary to the fundamental duty of such office.

This does not apply in terms of any non-judicial duties of a judge, for instance internal administration or other administrative duties that may be entrusted to him/her, with regard to which the general provisions of Articles 235 and 236 of the Criminal Code apply.

Article 159 lays down as a distinct form of corruption the one concerning bodies of the legislative, executive or self-governing branches, if aimed at influencing persons possessing such powers to exercise them in a particular manner or fail to exercise them. As in Article 237 of the Criminal Code, no distinction is made between influencing the outcome of the legislative, executive or self-governing function and the plain receipt of gift for an outcome that would occur anyway, because it is considered that the duty of the officers of all the above functions to act uninfluenced by undue advantages is one of their fundamental obligations and thus requiring or receiving such advantages is always inconsistent with a fundamental duty of their office.

Similarly to what is set out above in relation to Article 235 of the Criminal Code, it is left to legal theory and jurisprudence to further elaborate on the 'undueness' of the advantages, especially in view of the political functions performed by such persons and the factor of political advantages -

personal or partisan - that one or the other decision may have for the bearer of such powers. This provision does not seek thereby to cover established and accepted manifestations of political transactions, nor does it extend to legal and transparent practices of financial support to the electoral efforts of politicians and their parties.

The penalties provided for are consistent with those also envisaged for the other case of distinct venality of public authorities, which is accorded special importance for social life, namely those relating to the venality of judges. The establishment of more severe penalties also restores the original form of the Criminal Code, in accordance with which cases of corruption of politicians and judges are standardised separately as aggravated instances of the base offence under Article 235 of the Criminal Code and not as specific offences.

Similarly to Article 236 of the Criminal Code, the provision of Article 159A standardises as a distinct case of bribery that of a bearer of legislative, executive or self-governing function for an act related to the exercise of his/her power. The acts of the donor are punishable by the same penalties as the corresponding actions of the graft recipient. Paragraph 2 of that Article punishes the inaction of the head of a business in favour of which the act under Article 159 was committed also as a distinct form of the offence of Article 236(3) of the Criminal Code (see above).

25. The provisions mentioned above read as follows:

#### GREEK CRIMINAL CODE

“Article 235 [\*]

Venality of an official

1. An official who requests or receives, directly or through a third party, for himself/herself or for a third party, an undue advantage of any nature, or accepts the promise to be provided with such an advantage, for any action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by at least one year of imprisonment and a fine of EUR 5.000 to 50.000.

If the offender commits the act of the previous section in a professional or a habitual way or if the undue advantage is of a significantly high value, he shall be punished by incarceration of up to ten years and a fine of EUR 10.000 to 100.000.

2. If the aforementioned action or omission of the offender contravenes his/her duties, it shall be punished by up to ten years incarceration and a fine of EUR 15.000 to 150.000.

If the offender commits the act of the previous section in a professional or a habitual way or if the undue advantage is of a significantly high value, he shall be punished by incarceration of up to fifteen years and a fine of EUR 15.000 to 150.000.

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

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

[\*] As amended by Law No 4254 of the 7th April 2014 and modified by Law No 4258 of the 14th April 2014.

“Article 236 [\*]

#### Bribery of an official

1. Whosoever offers, promises or gives to an official, directly or through a third party, an undue advantage of any nature, for himself/herself or for a third party, for an action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by at least one year imprisonment and a fine of EUR 5.000 to 50.000.
2. If the aforementioned action or omission contravenes the duties of the official, the offender shall be punished by up to ten years incarceration and a fine of EUR 15.000 to 150.000.
3. A head of business or any other person who is vested with a decision-making or a control power in business shall be punished by imprisonment, if the act is not punished more severely by another criminal provision, if he/she by negligence failed to prevent a person under his/hers command or subject to his/hers control from committing, to the benefit of the business, any act of the preceding sections.
4. With regard to the applicability of this article to acts committed abroad by a Greek national, it is not necessary that the conditions under Article 6 are satisfied.

[\*] As amended by Law No 4254 of the 7th April 2014 and modified by Law No 4258 of the 14th April 2014.

“Article 237 [\*]

#### Venality and bribery of judges

1. Whosoever invited under the law to perform judicial duties or an arbitrator who requests or receives, directly or through a third party, for himself/herself or for a third party, an undue advantage of any nature, or accepts the promise to provide such an advantage for an action or omission on his/her part, future or already completed, related to the performance of his/her duties in the administration of justice or in the resolution of a dispute, shall be punished by incarceration and a fine of EUR 15.000 to 150.000.
2. The same penalties shall apply to punish any person who for the above purpose promises or provides such advantages, directly or through a third party, to the persons in the previous paragraph, for themselves or for another person.
3. A head of business or any other person who is vested with a decision-making or control power in a business shall be punished by imprisonment, if the act is not punished more severely under another criminal provision, if he/she by negligence failed to prevent a person under his/hers command or subject to their control from committing, to the benefit of the business, the act under the paragraph 1.”

[\*] As amended by Law No 4254 of the 7th April 2014 and modified by Law No 4258 of the 14th April 2014.

“Article 13

#### Definition of terms used in the Code

The following terms are used throughout the Code with the following meaning:

- (a) An official is a person lawfully assigned, even temporarily, with the exercise of a public, municipal or community service or the service of any other legal entity established under public law;[...].”

“Article 263A[\*]

1. In so far as articles 235, 236, 239, 241, 242, 243, 245, 246, 252, 253, 255, 256, 257,258, 259, 261, 262 and 263 are concerned, the term “official” includes also any person serving permanently or temporarily and under any capacity or relation:

- (a) in enterprises or organisations belonging to the State, in organisations of local government or legal entities established under public or private law that through exclusive or privileged exploitation serve the supply of water, light, heat, power or means of transport or communication or mass media to the public,
- (b) in banks seated within Greece according to the law or their articles of association,
- (c) in legal entities organised under private law and established by the state or in legal entities organised under public law or legal entities listed in the previous paragraphs, provided that such establishing legal entities participate in their administration or, in cases of a societies anonymes, in their capital, or that the established legal entities are assigned with the execution of state programs of financial reconstruction or development, and
- (d) in institutions or bodies of the European Union, including the members of the European Commission and the Court of Justice and the Court of Auditors of the European Union organs or in organizations of the European Union.
- (e) in legal persons under private law, to which according to the provision in force grants or funding may be allocated by the State, by legal persons under public law or by the above banks.

(Subsection (e) above was added by Law 4264/2014.)

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

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

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

[\*] As amended by Law No 4254 of the 7th April 2014.

“Article 159[\*] Venality of political functionaries

1. The Prime Minister, members of government, deputy ministers, prefects, deputy prefects and mayors shall, if they request or receive, directly or through a third party, for themselves or for a third party, an undue advantage of any nature, or accept the promise to provide such an advantage for an action or omission on their part, future or already completed, related to the performance of their duties, shall be punished by incarceration and a fine of EUR 15.000 to 150.000.

2. The same penalty shall apply to punish members of Parliament, local government councils and their committees if in relation to any election or vote carried out by the above bodies or committees they accept the offer or promise of any nature of an undue advantage for themselves or for a third party, or request such an undue advantage to refrain from taking part in such election or vote, to support a specific issue subject to vote or to vote in a certain way.

3. Paragraphs 1 and 2 shall apply accordingly also when the act is committed by members of the European Commission or the European Parliament.

4. The provisions of Articles 238, 263(1) and 263B(2-5) shall apply also to the crimes referred to in the previous paragraphs.”

[\*] As amended by Law No 4254 of the 7th April 2014 and modified by Law No 4258 of the 14th April 2014.

“Article 159A[\*] Bribery of political functionaries

1. Whosoever promises or offers an undue advantage of any nature, directly or through a third party, to the persons mentioned in article 159, for themselves or for a third party, for the purposes referred to respectively therein, shall be punished by incarceration and a fine of EUR 15.000 to 150.000.

2. A head of business or any person who are vested with a decision-making or control power in a business shall also be punished by imprisonment, if the act is not punished more severely under another criminal provision, if by negligence they failed to prevent a person under their command or subject to their control from committing, to the benefit of the business, the act under paragraph 1.

3. The provisions of Articles 238, 263(1) and 263B shall apply also to the crime referred to in paragraph 1.”

[\*] As amended by Law No 4254 of the 7th April 2014 and modified by Law No 4258 of the 14th April 2014.

26. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article and good practice**

27. During the country visit, the Greek authorities provided additional information regarding the applicable sanctions. The authorities highlighted that the Greek Criminal Code uses three different terms for sanctions against liberty: detention (for minor offences, which ranges from 1-30 days), imprisonment (for misdemeanors, which ranges from 10 days to 5 years) and incarceration (for serious offences/felonies, which is either from 5 to 20 years or for life). As explained below under Article 30 par. 1 UNCAC, when a criminal provision mentions simply “imprisonment” this means a prison term from 10 days to 5 years, whilst “incarceration” means a term from 5 to 20 years. When reference is made to “imprisonment of at least 2 years” this means a term ranging from 2 to 5 years, whilst “incarceration of up to 10 years” means a term from 5 to 10 years, etc.

28. In view of the above the Greek law does identify specific (and quite severe) sanctions for the aggravated cases of bribery of magistrates, members of Government, elected officials etc. in Articles 159 and 237 of the Criminal Code, i.e. incarceration (ranging from 5 to 20 years) plus a fine ranging from EUR 15.000 to 150.000. Similarly, for the novel offence concerning negligent acts of heads of businesses, the law provides for imprisonment (which can reach up to 5 years). Greece stressed that these sanctions are above average in comparison to the legislation of other countries and quite dissuasive for the purposes of the Convention.

29. With respect to the implementation of the cited provisions, Greece indicated that these are not “new” offences, but that the Law 4254/2014 has amended and improved their content. It was recalled that equivalent provisions have existed since the creation of the modern Greek State and that there is abundant jurisprudence with respect to their application in practice. In that regard, Greece provided the below cases examples in reference to article 235 of the Criminal Code.

30. Case 1: In Supreme Court case N. 417/2013, an agrarian police officer was found guilty of the offence described in art. 235 PC, because he demanded 1.000 € in order to provide a citizen with a certificate which would falsely attest that a well on his property had been drilled prior to 1972, although in truth the well had been constructed, without a permit, more than a decade later. Thus, the well would be deemed legitimate, since at the time of its supposed construction a permit was not required and it could be connected to the power grid to be mechanically operated. The accused was sentenced to imprisonment for a total of 2 years and 8 months.

31. Case 2: In Supreme Court case N. 125/2013, the defendants, customs officers with the competence to control the quantities of tax-free “naval” petrol that could be purchased by ship-owners to be used exclusively by ships, were found guilty, among others, of passive bribery because they requested a bribe of 30 drachmas per litre, in order to untruly certify the delivery of larger quantities of fuel, which the vender would subsequently smuggle into the domestic market, profiting the value of the tax he had evaded. The accused were sentenced to 4 years imprisonment for the bribery act and 6 years in total.
32. In reference to art. 236 of the Criminal Code, Greece provided the below case examples:
33. Case 3: In Supreme Court case N. 1130/2011, a lawyer and her assistant were found guilty of active bribery for giving a sum of 200 € to a police officer of the immigration office, in order for him a) to approve an application filed on behalf of their Albanian client and untruly stating that he was a person of Greek origin, and b) to issue an identity card provided for foreign citizens of Greek origin. The accused were sentenced to 14 months imprisonment.
34. Case 4: In Supreme Court case N. 9/2010, the defendant was found guilty of active bribery for giving a sum of 765 € to an MOT controller in order for him to issue MOT certificates for seven different vehicles without actually checking them.
35. In reference to art 237 of the Criminal Code, Greece provided the following case example:
36. Case 5: In Supreme Court case N. 696/2010, the defendant, a judge who had been assigned to hear cases of traffic accidents, was found guilty of the offence described in art. 237 of the Criminal Code, because he required a sum of 25.000 € - and finally settled for 5.000 € - in order to rule a case in favour of the claimant. The accused was sentenced to 13 years’ incarceration.
37. The reviewers positively note the supervisory concept built into the bribery offence, whereby the responsibility of the supervisor of the offending public official is established where he or she fails to prevent the offender from committing the offences of venality and acceptance of undue advantages (Art. 235(4) of the Criminal Code) and also the responsibility of heads of businesses to the benefit of whom their employees perform bribery (Art. 263(3) of the Criminal Code).
38. Regarding the coverage of third party beneficiaries, Greek authorities explained that the Greek term “for himself or another” in, e.g. Articles 159 and 256 of the Criminal Code covers legal persons or any form of union or collective entity. This is an established opinion in both legal theory (e.g. N. Bitzilekis, *Offences in Office*, 2<sup>nd</sup> ed., 2001, pp. 180 ff.) and practice, to the extent that the third part benefit reflects on the recipient’s position. For example in judgement 159/1982 of the Piraeus Court of Appeals, the court established a case of passive bribery against the navigators of the Port of Piraeus, where the illicit benefits were transmitted in favour of the common treasury of the pertinent Navigators Service.
39. It was also clarified that acts in excess of an official’s duties are covered in the bribery offence, and were explicitly contemplated by the legislative committee. The matter is addressed in the legislation through the addition of the element “relative to the performance of his/her duties” in e.g. Arts. 235 and 236, CC.
40. In the absence of enforcement statistics, reference is made to the observations in the introduction on the collection of statistics.



## **Article 16 Bribery of foreign public officials and officials of public international organizations**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

41. Greece cited Articles 235 and 236 of the Criminal Code, which refer to passive and active bribery of an official and respectively apply to bribery offences committed by foreign public officials and officials of international organizations in the exact same way as to bribery offences committed by domestic public officials. The equalization clause is to be found in article 263A paragraph 2 of the Criminal Code, as recently amended by Law 4254/2014, which defines an 'official' as also encompassing any officer of an international organization or in another State; any member of parliamentary assemblies of international and supranational organizations as well as national and local assemblies in another State; persons who perform judicial or arbitrator duties in international courts and tribunals as well as persons performing the function of judges, jurors and arbitrators in another State.
42. The terms used are to be construed in a functional sense so as to cover the widest possible variety of public officials and are explicitly used in order to align the domestic legal order with the requirements of the OECD Anti-Bribery Convention (adopted by Law 2656/1998), the Council of Europe Criminal Convention against Corruption and its Additional Protocol (Law 3560/2007) and the UN Convention against Corruption (Law 3666/2008), to which Greece is a party. More specifically, the concept of 'a person exercising a public function or service for another State', includes any person holding a legislative, executive, administrative or judicial office in a foreign country, whether appointed or elected, and any person exercising a public function for it, including for a public agency or public enterprise, as defined in Article 1(4)(a) of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Article 2(b) of the UN Convention against Corruption. The concept of 'another State' should be understood to include all levels and subdivisions of government, from national to local.
43. This generous approach is not essentially curtailed by the addition of a qualifier referring to 'international organizations to which Greece is a member' or 'Jurisdictions recognized by Greece'. Greece has traditionally ascribed to the objective theory in recognizing the legal

personality of international organizations; nevertheless, the possibility of severely limiting the scope of application of this provision is minimal as Greece is a member to all major global and regional organizations.

44. The provisions mentioned above read as follows:

Article 13

Definition of terms used in the Code

The following terms are used throughout the Code with the following meaning:

(a) An official is a person lawfully assigned, even temporarily, with the exercise of a public, municipal or community service or the service of any other legal entity established under public law;[...].”

Article 263A ...

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

(a) the servants or other officials, under any contractual relationship, of any public international or supranational organisation to which Greece is a member, and any person authorised by such organisation to act on its behalf;

(b) the members of parliamentary assemblies of international or supranational organisations to which Greece is a member;

(c) those who perform judicial or arbitrator duties in international courts, whose jurisdiction is recognised by Greece;

(d) any person performing a public function or service for a foreign country, including judges, jurors and arbitrators; and

(e) members of parliaments and local government assemblies of other states.

45. Greece did not provide any cases of implementation or statistics but indicated that practical experience on the above issue is limited as Greece has not as yet had a successful prosecution in a foreign bribery case. Preliminary investigation is currently on-going in at least two cases but no charges have been brought as yet and naturally no final judgment has been issued.

46. Greece indicated that statistics remain a challenge for the administration of justice in Greece. Data are compiled empirically as per request and for specific areas of the law, e.g. for purposes of the OECD Anti-Bribery Convention Annual Report. Inevitably, the possibility of following a case to its end becomes practically impossible.

**(b) Observations on the implementation of the article**

47. With respect to penalties, Greece explained that the same penalties that are applicable to bribery concerning domestic public officials also apply to bribery concerning foreign public officials. Articles 235(1) and (2) and 236 Criminal Code are applicable in the exact same way.

48. Greece highlighted that they have made significant progress in raising awareness and pursuing more effective enforcement strategies during the past few years, resulting in significantly more cases currently under investigation.

49. Greece indicated that there are as yet no examples of successful prosecutions and convictions regarding the application of the foreign bribery offence. Greece added that there are, however, several ongoing investigations, attesting to an increased interest of prosecution and law enforcement authorities in the practical implementation of the relevant provisions.

50. Greece’s legislation is in accordance with the article under review, but Greece has not provided any case of implementation. According to the information provided by the authorities during the country visit, two foreign bribery cases have been terminated and three are under preliminary investigation. Two other cases involve allegations that Greek individuals bribed foreign public

officials. One of the subjects is not subject to investigation and the other is under investigation for another offence.

## **Article 17 Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

51. Greece provided the following applicable measures on the implementation of the provision under review:

Greek criminal law typifies two distinct forms of diversion of property:

- a) Embezzlement, which regards cases where the perpetrator appropriates foreign property that is at his disposal, by making it his own or by treating it as such.
- b) Infidelity, which pertains to cases where the perpetrator, who has foreign property under his administration, does not misappropriate it, but knowingly reduces it in any manner. In the case of article 256 GPC, the damage must be induced with the intention to benefit the perpetrator or another person, while in the case of article 390 GPC, there is not such need for an intention of profit as element of the crime.

Both embezzlement and infidelity are crimes of harm, material object of which is property, as the term is defined in article 2(d) of the Convention, including “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets”. It must be noted though, that according to Greek law misappropriation of immovable assets is not conceivable, since there is no possibility for such assets to be physically extracted from the reach of their owner. Because of their nature as crimes of harm, attempt is also possible.

The law further distinguishes between public and private property, as material object of these crimes, and typifies two distinct variations of infidelity, in articles 256 and 390 GPC, and two distinct variations of embezzlement, in articles 258 and 375 GPC, respectively. Article 256 refers to infidelity affecting public property (or property belonging to a municipal entity or to a public law entity) and article 390 regards private property. Article 258 refers to embezzlement of public assets and article 375 to embezzlement of private assets. The offence of article 256 can be committed only by a public official (as the term is defined in art. 2 par. (a) of the Convention and article 13 par. (a) of the GPC). The offence of article 390 can be committed by any person entrusted with the management or custody of property, fortune or specific assets. The offence of article 390 can also be committed by a public official, if the entrusted property is not public.

In the case of misappropriation and infidelity in the discharge of public service, protected legal value, besides property, is also the righteous discharge of public service in favour of the public interest. Hence sentences can be significantly aggravated and reach life imprisonment, if the object of the crime crosses the threshold of €150,000, as stipulated by article 1 of Law 1608/1950.

As regards mens rea, intent is required, in the sense of knowledge and will of the perpetrator to inflict the damaged that he has caused.

Mitigated form of exploitation of public property, without the element of damage though, is typified in article 257 GPC. Protected legal value here is only the righteous discharge of public service and there is not a counterpart crime that can be committed by a person who has not the capacity of a public official.

## 52. The provisions mentioned above read as follows:

### Article 256 of the GPC Infidelity in the discharge of public service

A public official, who during the determination, collection or management of taxes, custom duties, fees or other taxation or of an any kind of revenues, knowingly reduces, to the benefit of himself or of a third party, the public, municipal or parochial fortune or the fortune of a legal entity of the public law, with the management of which he is entrusted, is punishable:

- a) With imprisonment of at least six months.
- b) With imprisonment of at least two years, if the reduction is of especially significant value.
- c) With incarceration from five to ten years if the perpetrator employed particular deception and the reduction is of especially significant value, exceeding in total 30.000 €, or
- d) the object of the offence is of total value exceeding 120.000 €.

### Article 390 of the GPC Infidelity

Whoever knowingly harms the fortune of another, the custody of administration (total or partial or for a distinct action only) of which he has by virtue of law or contract, is punishable with imprisonment of at least three months. If the financial damage exceeds the amount of 30.000 €, the perpetrator is punishable with incarceration of up to ten years.

### Article 257 of the GPC Exploitation of entrusted assets

A public official who with no intention of appropriation or infidelity lend at interest or in any other way uses for his own benefit or allots to an other to use money or assets that are entrusted to him because of his service, shall be punished with a pecuniary sentence or imprisonment of up to one year.

### Article 258 of the GPC Embezzlement in the discharge of public service

A public official, who illegally appropriates money or other movables which he receives or possesses because of his capacity, even if he was not competent to do so, is punishable:

- a) With imprisonment of at least six months.
- b) With imprisonment of at least two years, if the object of the offence is of especially significant value.
- c) With incarceration from five to ten years if the perpetrator employed particular deception and the object of the offence is of especially significant value, exceeding in total 30.000 €, or
- d) the object of the offence is of total value exceeding 120.000 €.

### Article 1 of Law 1608/1950

To the perpetrator of the offences provided for in articles 216, 218, 235, 236, 237, 242, (256), 258, 372, 375 and 386 of the GPC, when committed against the State, against legal entities of public law or against any other legal entity of those enumerated in article 263A of GPC and the benefit that the perpetrator achieved or pursued, or the damage caused or in any way jeopardised to the State or to the aforementioned legal entities exceeds the amount

of 150.000 €, incarceration of five to twenty years shall be imposed, and if particularly aggravating circumstances concur, especially if the perpetrator continued the commission of the offence for a long time or the object thereof is of especially significant value, life imprisonment shall be imposed.

To the perpetrator of the offence provided by article 256 of GPC, the above apply only when the offence is committed against the State, against entities of local self-government or against legal entities of public law.

53. Greece did not provide any statistics but provided the following cases of implementation: In **Supreme Court Case N. 2/2009** (plenary sitting), the defendants, as members of the board of the company “Land Registry SA”, which had been founded by the Greek State in order to materialize the Greek land registry - a project co-funded by the European Union : i) approved budget overruns for several projects and for a total sum exceeding 100.000.000 €, ii) voted for the assignment of supplementary contracts to a company owned by a relative, which did not have the size, nor the stuff to execute the assigned projects. Their actions were deemed to constitute the offence of infidelity in the public sector, of art. 256 GPC, as the perpetrators acted under their capacity of public officials and the property affected was this of the State.
54. In **Case N. 52/2013**, the Appellate Court of Corfu ruled that the offence of article 256 GPC is established only when the affected property belongs to the State or to public law entities. Damage to the property of other legal entities, such as private law companies, even when they have been founded by the State or by a municipal entity which is also the main or the exclusive shareholder, does not constitute an element of the offence of article 256 GPC, but of this described in article 390 GPC. The two defendants, the Prefect of Corfu and ex officio president of the board of the company “... S.A.”, and the CEO of the same company, were indicted for having maliciously disposed funds dedicated to the construction of the Lyric Theatre for the compensation of tenants, although such expenses were not provided for in the budget of the project.
55. In **Case N. 111/2013**, the Appellate Court of Piraeus indicted the defendants (the mayor of Piraeus and ex officio president of the private law entity “Municipal development enterprise of Piraeus S.A.” and the members of the board) for the offence of article 390 GPC, because they had assigned - and funded, through this municipal enterprise - minor scale municipal works directly to constructors, circumventing the tender procedure stipulated by the law.
56. In **Supreme Court Case n. 824/2013** the defendant, acting as commander of a police station, was found guilty, among others, of embezzlement in the execution of service (art. 258 GPC) because he misappropriated revenue stamps of the Police Relief Fund. The accused was sentenced to 5 years’ incarceration for the act of embezzlement and 7 years in total.
57. In **Supreme Court Case N. 497/2013** the defendant, employee of the Social Insurance Institution (IKA), was found guilty, among others, of embezzlement in the execution of service (art. 258 GPC) because she counterfeited receipts and misappropriated pensions paid by the Institution. The accused was sentenced to a total of 10 years’ incarceration.

**(b) Observations on the implementation of the article**

58. During the country visit, Greek authorities clarified that the offence in article 256 of the Criminal Code is not limited to matters related to the management of taxation, custom duties, fees or other taxation/revenues, but is applicable more generally to embezzlement cases. Moreover, Article 257 of the Criminal Code covers acts of misappropriation. The offence of fraud is also available.

59. The authorities further explained that although, as stated above, the misappropriation of immovable property is not covered by the offence of embezzlement (article 258 of the Criminal Code), since there is no possibility for such assets to be physically extracted from the reach of their owner, cases where the proprietor of immovable property is defrauded in order to convey his rights to another person, or where a holder of managerial power (or a person delegated such power) knowingly disposes of such rights to the detriment of the proprietor, would be fully covered, as they constitute - under the Greek Penal Law - instances of fraud or infidelity, respectively. Because of their nature as crimes of harm, charges of attempt are also possible.
60. Greece's legislation covers embezzlement (article 375 CC); however, the "embezzlement" of immovable property is covered under related offences, including the broad infidelity offence (articles 256 and 390 CC). Moreover, articles 257 and 258 CC criminalize the exploitation of entrusted assets and embezzlement committed by public officials.

## **Article 18 Trading in influence**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

61. Greece provided the following applicable measures on the implementation of the article under review:

Trading in influence is covered in Article 237A of the Criminal Code, as introduced by Law 4254/2014. The relevant offence was described to date, in a non-uniform manner, in the provisions of Articles 11 to 12 of Law 5227/1931 'on intermediaries', as well as Article 6 of Law 3560/2007 and Article 5 of Law 3213/2003. It was considered necessary, for reasons having to do with upholding tradition and the link with existing case-law on Law 5227/1931, to retain the word 'intermediaries' [μεσάζοντες] in the title of the new article.

The criminalisation of trading in influence attempts to reach the close environment of officials or the political parties to which they belong, and prevent behaviours of persons found near such power, who attempt to take advantage of their acquaintances by contributing to the creation of a climate of corruption. In other words, it aims at combating 'backstage corruption', that is

corruption which does not directly involve persons of authority but undermines the confidence of citizens in the soundness of public administration and creates unfair transaction conditions.

The new Article 237A of the Criminal Code criminalises a three-person (in the sense that it requires three persons to emerge) and bilateral (meaning that it takes place between two of those persons) corruption relationship, in which someone who has real or supposed influence on an official offers such influence for a consideration to someone who requests it, in order that the competent bearer of a certain function is unduly influenced in exercising such function. Whether it is possible to exert the influence, whether the influence has been actually exerted, or whether or not it can lead to the intended result is immaterial.

The “undueness” of the influence is at the base of the punitive function of such provision and is the primary element of the offence, since it does not seek to prevent in general the provision of support to views or interests for a consideration, but the promising or requesting of remuneration for promoting them by interfering with the way in which the official's will is shaped based on criteria that are beyond the scope of the public service such official performs. The 'seller' of influence, who could also be an official, is extraneous to the official action he/she claims to be able or undertakes to influence.

Contrary to the widening of the circle of actions of the official that fall under the criminal offence of bribery (in order to also include in them actions not related to the narrow circle of the duties entrusted to the official, but which he/she cannot commit on the occasion of performing his/her duties or by taking advantage of his/her office), in the case of the offence of trading in influence, the forbidden behaviour is focused only on actions or inactions that are the responsibility of the official, as such a widening is not included among the obligations undertaken by Greece under the Conventions of the UN and the Council of Europe. On the contrary, under the Convention of the Council of Europe the offence refers to influencing an official during decision-making, which requires the existence of responsibility for making such decisions.

62. The provision in question reads as follows:

“Article 237A[\*]  
Trading in influence - Intermediaries

1. Whosoever requests or receives, directly or through a third party, an advantage of any nature, for himself/herself or a third party, or accepts the promise to be provided with such an advantage in return for any undue influence which he/she, falsely or truly, claims or confirms that he/she can exert on any of the persons listed in Articles 159, 235(1) and 237(1), for the latter to proceed to an action or omission related to the performance of their duties, shall be punished by at least one year imprisonment and a fine of EUR 5,000 to 50,000.

2. The same penalties shall also apply to punish any person who offers, promises or gives, directly or through a third party, an advantage of any nature, for himself/herself or for a third party, to a person who, falsely or truly, claims or confirms that he/she can exert undue influence on any of the persons listed in Articles 159, 235(1), and 237(1) for the latter to proceed to an action or omission related to the performance of their duties.”

[\*] As amended by Law No 4254 of the 7th April 2014 and modified by Law No 4258 of the 14th April 2014.

63. Greece did not provide statistics.

**(b) Observations on the implementation of the article and good practice**

64. During the country visit, Greece specified that trading in influence was established as an offence in Greece in 1931 and that it has been widely applied in practice. Greece provided the below mentioned cases.
65. Case 1: Supreme Court Judgment 1130/2011: The accused lawyer claimed before a number of foreign clients of her law practice, in some cases truly and in other cases falsely, that thanks to her capacity and her general connections and standing, she could exert undue influence to police officers, so that they would certify that they were of Greek ethnicity and issue identity cards to that effect, in breach of their official duties, and requested and received various sums of money, some of which she transmitted to a public official, while others apparently she kept for herself. Based on this she was irrevocably convicted, among others, for trading in influence and was sentenced to 14 months imprisonment.
66. Case 2: Supreme Court Judgment 333/2009: The accused claimed before the owner of a store that thanks to their standing they could exert undue influence on tax officials to ensure that they would reassess and reduce a fine they had imposed on the owner for tax transgressions. The owner was convinced and paid them 54.200 Euros, 17.600 of which were supposedly the reward of the accused as well as the officials who would offer the favourable treatment. In reality no influence was exerted. The accused were irrevocably convicted for trading in influence in concurrence with fraud to 10 months imprisonment each.
67. The reviewers note with satisfaction the notion of undue influence which goes beyond the wording of the UNCAC provision. Greece's legislation is in accordance with the article under review.

## **Article 19 Abuse of Functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

68. Greece provided the following applicable measures on the implementation of the article under review:

Article 259 of the Criminal Code criminalizes any intentional breach of duty to the service committed with the further intention to provide illicit benefit to someone or to cause harm to the state or to another person. It is, obviously, a provision that does not actually describe a specific conduct of the perpetrator, nor a specific outcome as element of the crime, but it depends to other provisions of the (administrative) law for the definition of what, in each and every case, is the "duty to the service" and whether the ensuing benefit or harm is illicit, in the sense that it is not allowed or tolerated by the law. The benefit can be of any nature, including intangible and non-pecuniary.



The only element of the crime that is specifically defined, is this of “double intent”: the perpetrator must be aware both that he is breaching his duty, as well as that the outcome of his action is against the law. This offence is meant to cover cases that do not fall under other, more concrete provisions. The subsidiarity clause helps to avoid problems of concurrence.

Article 259 of the GPC Breach of duty

A public official who intentionally transgresses his duty to his service in order to provide illicit benefit to himself or to another person or to harm the state or a third party, is punishable with imprisonment of up to two years, if his act is not punishable according to another provision of the criminal law.

69. Greece did not provide any statistics but the following cases of implementation:

In **Supreme Court Case N. 296/2013** the defendants, members of the Municipal Council, were found guilty under art. 259 of the GPC, for authorizing a permit regarding the operation of a restaurant in the ground floor of an apartment building, although the majority of the apartment owners had not given their consent, as stipulated by the law. The accused were sentenced to 5 months imprisonment each.

In **Supreme Court Case N. 397/2013** the defendants, the Prefect and members of the recruitment committee, were found guilty under art. 259 of the GPC, for favouring certain candidates during the evaluation processes, to the detriment of others. The accused were sentenced to 5 months imprisonment each.

**(b) Observations on the implementation of the article**

70. It was clarified during the discussions in the country visit that the offence in article 259 of the Criminal Code also includes acts of omission. Greece’s legislation is in accordance with the provision under review and Greece has provided examples of implementation.

**Article 20 Illicit Enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

**(a) Summary of information relevant to reviewing the implementation of the article**

71. Greece provided the following applicable measures on the implementation of the article under review:

An offence with some similarities to the one contained in Article 20 of the Convention (establishing, under the heading “illegal enrichment”, the criminal liability of “any person obligated to file an assets declaration who, taking advantage of his/her capacity acquires or procures to a third party an illicit financial benefit”) was found until very recently in Article 4 of Law 3213/2003. Although this offence existed (in various versions) in the Greek legislation relevant to the filing of assets declarations since 1964, it remained obscure, had never been applied in practice and was viewed as running against fundamental constitutional principles (nullum crimen sine lege certa). Therefore, during the recent legislative overhaul of the anti-

corruption legislation, that culminated in Law 4254/2014, it was decided to abolish it.

At the same time, Article 20 of the Convention was considered, and it was decided that its goals are sufficiently served by the provisions of the aforementioned Law 3213/2003 that establish a system of asset declaration obligations for public officials and include an offence of “failing to submit or submitting a false asset declaration”. Indeed, the goal of preventing and suppressing corruption in the public sector is closely related to transparency as to the possession of assets by public officials. Asset transparency also acts as a negative incentive in the context of preventive measures against corruption, by increasing the risks or chances of persons who cannot justify a substantial increase in their assets (invisible resources) to incur unwanted legal consequences (criminal and disciplinary sanctions).

Law 3213/2003, as recently amended, specifies the categories of persons obliged to submit an exhaustive annual declaration of all their assets, incomes and revenues. This list contains wide categories of public officials, including the Prime Minister, ministers and all members of the government, current and former members of the Parliament, judges and prosecutors, law enforcement authorities’ officials and many others. All those persons must submit their annual declaration by 30th June of each year and within a period of three years after their retirement or resignation. The offence of “failing to submit or submitting a false asset declaration”, which is widely applied in practice and has proven useful in overcoming the practical difficulties sometimes associated with establishing the commission of bribery offences, reads as follows:

Law 3213/2003 “Article 6  
Non-submission or submission of a false declaration

1. A person obligated to make an asset declaration that omits to submit such a declaration or submits an inaccurate or incomplete declaration shall be punished with imprisonment of at least 2 years and a fine of 10.000 to 500.000 euros.
2. The perpetrator of the above acts shall be punished with incarceration of up to 10 years and a fine of 20.000 to 1.000.000 Euros, if the total worth of the concealed assets belonging to him/her and the other persons in respect of which he/she is obliged to submit a declaration exceeds the sum of 300.000 Euros, independently of whether the concealment is attempted through the non-submission of a declaration or the submission of an inaccurate or incomplete declaration.
3. If the acts of paragraph 1 were committed by negligence, the applicable penalty is a fine of 10.000 to 100.000 Euros. However, the judicial council, by freely assessing all circumstances, may find that these acts may remain unpunished.
4. A third party who to his/her knowledge takes part in the submission of an inaccurate declaration and especially in the omission of declaring financial assets, shall be punished with imprisonment of at least 6 months and a fine.  
(...)”

“Article 9 (...)

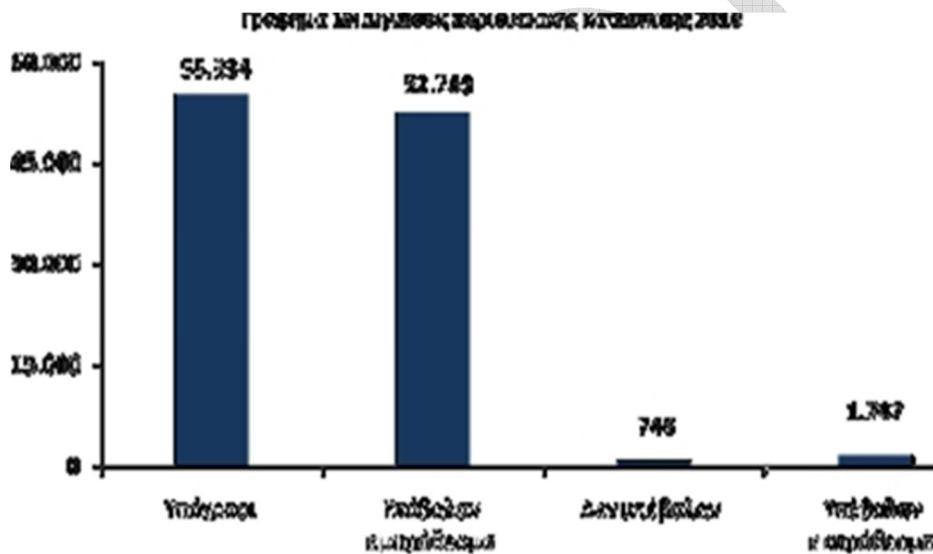
2. The perpetrator of the offences under Articles (...), 6 par. 2 (...) shall also be punished with deprivation of political rights for 1 to 5 years, if the penalty is imprisonment, and for 2 to 10 years, if the penalty is incarceration. The removal of the perpetrator from the public, municipal or communal office to which he/she was elected, or the public, municipal or communal position which he/she occupies, due to the deprivation of his/her political rights, occurs automatically as soon as the conviction becomes irrevocable, and cannot be excluded by applying Article 64 of the Penal Code.
3. (...)
- b) Assets that were not declared in the case of one of the offences of pars 1 and 2 of Article 6 (...) are confiscated unless the perpetrator proves their legal provenance.  
(...)
- d) Where the financial assets under confiscation, according to the above provisions, no longer exist or have not been found or cannot be seized, or belong to a third party not liable for confiscation, assets of a value equal to that of the said assets as at the time of the court sentence shall be confiscated, as determined by the court. The

court may also impose a pecuniary penalty up to the value of the said assets if it considers that there are no additional assets to be confiscated or the existing assets fall short of the value of the assets under confiscation. (...)"

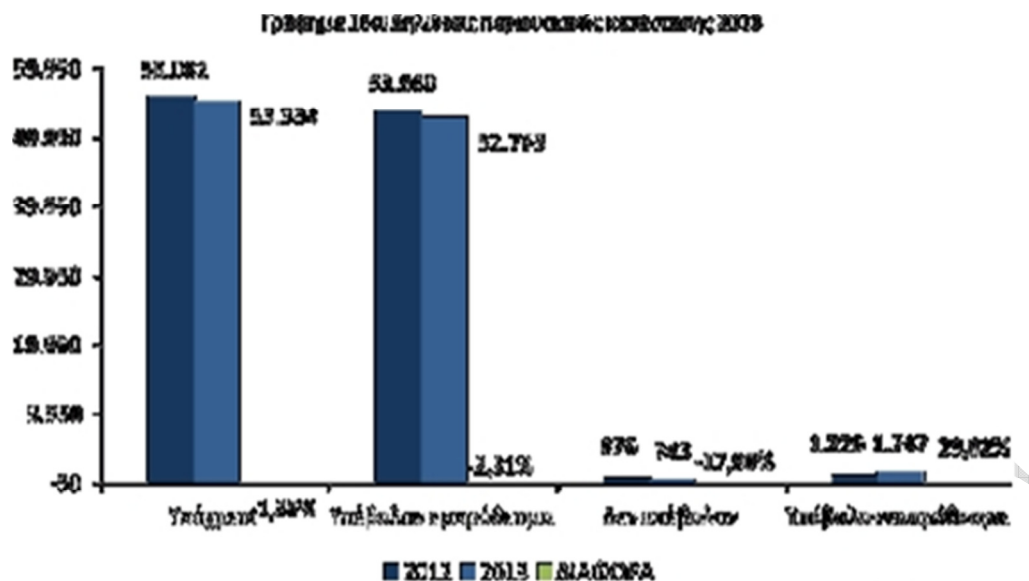
Pursuant to Law 3213/2003, the inspection and control of assets declarations is principally allocated to the third Unit of the Greek AML Authority, as well as to various other authorities depending on the affiliation of the obligated person.

72. Greece provided the following cases of implementation and statistics:

The Internal Affairs Agency of the Hellenic Police is responsible for receiving and checking asset declarations filed by police staff, border guards and special guards serving with the Hellenic Police. The declaration is filed every year of service with the Hellenic Police and one (1) year after loss of their capacity for any reason. 54,591 persons were obliged to file such declarations, of whom 54,591 (98.66%) filed them on time. 1,747 persons (1.34%) made delayed filings, while 81 persons (0.15%) were notified to file additional information whose entry is pending. The declarations were initially checked for legality and were then entered and archived by special police staff, always in line with the provisions on the protection of personal data. The legal procedure is observed for those who did not file such declaration, i.e. the competent prosecutor is notified. Moreover, in cases where the Agency conducted preliminary inquiries, preliminary investigations or police investigations, the declared assets were also checked in detail and, when inaccurate or deficient information was filed, the competent prosecutor was notified.



81 persons were notified to file additional information in relation to their asset declaration for the current year. A total of 283 prosecutions were announced to the competent Courts of Appeal and Magistrate Courts of the country for the period from 1 January 2013 to 31 December 2013.



**(b) Observations on the implementation of the article**

- 73. The reviewers note that Greece has not made illicit enrichment a criminal offence. However, its legislation criminalizes the non-declaration, false declaration, any omission and negligence in the declaration by any official or person with respect to the obligation to declare assets, incomes and revenues.
- 74. Furthermore, during the country visit, Greece stressed the fact that the Law 3213/2003 was amended very recently by Law 4281/2014, with the changes which came into force on 1 January 2015. The categories of persons obligated to file asset declarations have been significantly expanded.
- 75. Greek authorities explained that they have closely considered but rejected the criminalization of illicit enrichment.

**Article 21 Bribery in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

**(a) Summary of information relevant to reviewing the implementation of the article**

76. Greece provided the following applicable measures on the implementation of the article under review:

Bribery in the private sector is covered in Article 237B of the Criminal Code, as introduced by Law 4254/2014. This new provision replaces the previously applicable provision of Article 5 of Law 3560/2007 and also incorporated into the Criminal Code the arrangements by means of which Greece had fulfilled the obligation it undertook pursuant to Article 7 of the Council of Europe Criminal Law Convention to establish bribery as criminal offence in the private sector.

In terms of the persons who are subject to such provision, it concerns such persons as do not fall in the scope of Articles 13 and 263A of the Criminal Code, namely those who do not have the capacity of an official. The criminalisation of the behaviour described seeks to serve three purposes: (a) to protect the trust and confidence in private relationships; b) to ensure respect for fair competition; and (c) to maintain criminal protection in sectors which until recently were subject to state benefits, but which are gradually transferred to the management of private enterprises through privatisation.

The amendments introduced in terms of terminology seek on the one hand to harmonise such provision with the new wording of Articles 235, 236 and 237 of the Criminal Code, and on the other hand to correspond more faithfully to the choices of international legislative instruments. Hence, (a) The 'term business activity' has a broad sense to include any activity carried out for profit, especially trading in goods and providing services, (b) The wording 'works or provides services, in any capacity' also aims to include every possible working relationship, which encompasses the element of duty, in the sense of the obligation of loyalty or relationship of trust, which does not include only employees but also partners and associates under a service provision contract, or even lawyers, (c) In relation to the previous wording of the provision, the term private sector 'bodies' has been deleted. Such term could be considered to require a certain business size or to exclude some forms of businesses (e.g. personal businesses).

The provision is introduced in Chapter 12 of the Criminal Code, namely that on official criminal offences, which primarily concerns the protection of the legal interests of the public service. Although the inclusion of the provision in this Chapter cannot be considered entirely satisfactory from a systematic point of view, the similarity of the criminalized behaviour makes this criminal offence related to other bribery offences, despite the heterogeneity of the protected objects. Moreover, the need for the 'visibility' of this provision by those who implement criminal law must also be stated as a self-standing, serious practical reason for the inclusion of the offence in the Criminal Code.

77. The provision in question reads as follows:

“Article 237B[\*]

Venality and bribery in the private sector

1. By imprisonment of at least one year shall be punished whosoever in the conduct of a business activity, promises, offers or gives, directly or indirectly, an undue advantage of any nature to a person who works or provides services in any capacity in the private sector, for himself/herself or for a third party, for an action or omission in breach of his/her duties, as established under the law, the employment contract, the internal regulations, the orders or instructions of his/her superiors or resulting from the nature of his/her position or service.

2. The same penalty shall also apply to punish any person who works or provides services in any capacity in the private sector, and in the conduct of a business activity requests or receives, directly or indirectly, an undue

advantage of any nature for himself/herself or for any other person, or accepts a promise of such an undue advantage for an action or omission in breach of the aforementioned duties.”

[\*] As amended by Law No 4254 of the 7th April 2014 and modified by Law No 4258 of the 14th April 2014.

78. Greece did not provide any cases of implementation or statistics

**(b) Observations on the implementation of the article**

79. Greece provided the below cited case:

First Degree Court of Athens Decision 471/2011: In 2008, students at a private school of Athens acting together with their fathers offered a teacher under contract for the school as Director-Coordinator of the International Baccalaureate programme, in the conduct of his business activity, undue advantages which ranged from 10.000 to 60.000 Euros per course, in order for the recipient of the bribes to provide them in advance the subjects of the exams, in breach of his duties as stipulated in the exams regulations and his contract of service, as well as the general principles governing his position and his function as a teacher. The defendants were indicted for commission of bribery in the private sector.

80. Greece’s legislation is in accordance with the provision under review and a case example of implementation was provided. The observations made under article 15 above are also referred to in the context of the implementation of the present article.

**Article 22 Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

**(a) Summary of information relevant to reviewing the implementation of the article**

81. Greece cited article 375 of the Criminal Code on Embezzlement.

Article 375 of the GPC Embezzlement

1. Whoever illegally appropriates foreign (totally or partially) moveable asset that has in any way come to his possession, shall be punished with imprisonment of up to two years, and if the object of the appropriation is of especially significant value, with imprisonment of at least one year. If the total value exceeds 120.000 €, the perpetrator is punishable with incarceration of up to ten years.

2. If the deed pertains to an object of especially significant value that has been entrusted to the perpetrator because of necessity or under his capacity as an agent, procurator or guardian of the plaintiff, as a keeper or as manager of foreign property, the perpetrator is punishable with incarceration of up to ten years. If the total value of the object of the deed described in the last passage exceeds 120.000 €, this constitutes an aggravating factor.

3. Assimilated to foreign asset is a) the consideration that the perpetrator received for an asset that he had been entrusted to sell, b) the movable asset that he acquired with the money or with the other asset that he had been entrusted, respectively, to purchase or barter.

82. Greece did not provide any statistics but the following cases of implementation:

In **Supreme Court Case N. 56/2013** the defendant, president of the board and legal representative of the company "... S.A.", was found guilty under art. 375 of the Criminal Code, because he collected but misappropriated rents deposited by tenants.

In **Supreme Court Case N. 342/2013** the defendant, who was an insurance agent, was found guilty under art. 375 of the GPC, because she had collected but withheld and misappropriated insurance premiums that she owed to attribute to the insurance company. The accused was sentenced to 8 months imprisonment.

**(b) Observations on the implementation of the article**

83. Although the misappropriation of immovable property is not covered by the Greek embezzlement offence per se (article 375 Penal Code), cases where someone is defrauded in order to convey his rights on immovable property to another person, or where a private person entrusted with any form of administration of immovable property knowingly disposes of the relevant rights to the detriment of the proprietor, are fully covered, as the actions in questions would constitute – depending on the circumstances of the case – instances falling under the general fraud offence or the infidelity offence of article 390 PC, respectively. The latter reads as follows:

“Article 390 of the GPC Infidelity

Whoever knowingly harms the fortune of another, the custody of administration (total or partial or for a distinct action only) of which he has by virtue of law or contract, is punishable with imprisonment of at least three months. If the financial damage exceeds the amount of 30.000 €, the perpetrator is punishable with incarceration of up to ten years.”

84. The observations made under article 17 above are referred to also in the context of the present article.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 1 (a) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

**(a) Summary of information relevant to reviewing the implementation of the article**

85. Greece cited the following domestic law on the implementation of the provision under review:

LAW 3691/2008 (Official Government Gazette A/166)

Prevention and suppression of money laundering and terrorist financing and other provisions

Article 2 Subject matter

2. The following conduct shall be regarded as money laundering, i.e. legalisation of proceeds from the criminal activities listed in Article 3:

a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person involved in the commission of such activity to evade the legal consequences of his action;

86. Greece did not provide any cases of implementation nor statistics but has indicated that the majority of investigations encounter more than one kind of activity regarded as money laundering, as listed in UNCAC article 23.

**(b) Observations on the implementation of the article**

87. The Greek authorities further elaborated on applicable sanctions for money laundering. They cited the below provisions of Article 45 of Law 3691/2008.

**Article 45 Criminal sanctions**

1. a) Persons who have committed money laundering are punished with incarceration of up to 10 years and a pecuniary penalty of €20,000 to €1,000,000.

b) The perpetrator of the offence referred to in (a) above is punished with incarceration (i.e. a term from 5 to 20 years) and a pecuniary penalty of €30,000 to €1,500,000 if he acted as an employee of an obliged legal entity or the predicate offence is included in the offences referred to in Article 3(c), (d) and (e) above, even if a term of imprisonment (i.e. up to 5 years) is envisaged for these offences.

c) The perpetrator of the offence referred to in (a) above are punished with incarceration of at least 10 years and a pecuniary penalty of €50,000 to €2,000,000 if he engages in these activities professionally or out of habit or he is a recidivist or has acted on behalf of, for the benefit of, or as a member of a criminal or terrorist organisation or group.

d) An employee of an obliged legal entity or any other person obliged to report suspicious transactions shall be punished with a term of imprisonment up to 2 years if he intentionally fails to report to the competent authorities suspicious or unusual transactions or activities or provides false or misleading data, in breach of the relevant legal, administrative or regulatory provisions and rules, provided that his act is not punishable with heavier criminal sanctions.

e) Criminal responsibility for the predicate offence shall not exclude the punishment of offenders (the principal and his accomplices) for the offences referred to in items (a), (b) and (c) of this paragraph, if the circumstances of the ML acts are different from those of the predicate offence.

f) If the envisaged penalty for the predicate offence is a term of imprisonment up to 5 years, the offender shall be punished for the ML offence with a term of imprisonment of at least 1 year (up to 5 years) and a pecuniary penalty of €10,000 to €500,000. The same sanction shall apply to any ML perpetrator who is not an accomplice to the predicate offence if he is a blood relative of the perpetrator of the predicate offence or a relative by marriage up to second degree, or a spouse, adoptive parent or adopted child thereof.

g) If the perpetrator of the predicate offence was convicted for this offence, then the criminal sanction imposed on him or a third person of those referred to in the second sentence of item (f) for committing ML of the illicit proceeds generated by the same predicate offence, may not exceed the penalty imposed for the commission of the predicate offence.

h) The provisions of items f and g do not apply to the circumstances of item c' above and to the predicate offences referred to in item b of this article.

i) If the envisaged sanction for the predicate offence is a term of imprisonment up to 5 years and the illegal proceeds do not exceed €15,000, the penalty for money laundering shall be a term of imprisonment of up to 2 years. If the circumstances referred to in item (c) apply to the perpetrator of the predicate offence or to a third person, the penalty for money laundering shall be a term of imprisonment of at least 2 years (up to 5 years) and a pecuniary penalty from €30,000 to €500,000.



2. Criminal prosecution and conviction of the perpetrator of the predicate offence is not a precondition for prosecuting and convicting someone for money laundering.
3. When the respondent's criminal liability is rejected by the Court, or he is acquitted because the act is no longer prosecutable or because the person who suffered damage has obtained satisfaction for the predicate offence (provided that under the law satisfaction may bring about this result), criminal liability shall also be eliminated or the offender shall be acquitted of the relevant ML acts. This provision does not apply where criminal liability has been eliminated due to prescription.
4. Where this article provides for cumulative custodial sentences and pecuniary penalties, Article 83(e) of the Criminal Code shall not apply.
5. The felonies provided for by Article 2 shall be tried by the Three-Judge Court of Appeal for Felonies<sup>4</sup>.

88. Greece is found to be generally in compliance with this UNCAC provision. In reference to article 45(1)(g) of Law 3691/2008, which provides that the punishment for money laundering “may not exceed the penalty imposed for the commission of the predicate offence”, it is noted that this principle does not apply to bribery offences or where the perpetrator exercises such activities professionally, is a recidivist, or is part of a criminal organization (article 45.1.h). The reviewers recommend that the penalty for money laundering be established independent of the sanctions for the predicate offence in respect of all offences under the Convention.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 1 (a) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

89. Greece cited the following domestic law:

LAW 3691/2008

Article 2 Subject matter

2.The following conduct shall be regarded as money laundering, i.e. legalisation of proceeds from the criminal activities listed in Article 3:

b) the concealment or disguise of the truth, with any manner or means, as it concerns the disposition, movement, use or the place where the property was acquired or is at present, or the ownership of the property or rights with respect to it, knowing that such property is derived from criminal activity or from an act of participation in such activity;

90. Greece provided the following cases of implementation indicating that the majority of investigations encounter more than one kind of activity regarded as money laundering, as listed in UNCAC article 23.

#### Case 1

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<sup>4</sup> As noted under UNCAC article 15 felonies are serious criminal offences punishable by a term of incarceration of at least 5 years.

The owners of a number of power companies - suppliers, acting as trustees who had the power to represent the Greek State, were collecting monies totally amounting to 254,470,244.86 euro, which they should refund to the Greek State; however, they did not. On the contrary, they misappropriated the same and incorporated them into their personal properties. The said persons had set up and participated in a criminal group, deliberately intending to utilize (greek and international) credit institutions for the placement and movement of proceeds originating from criminal activities, they attempted to confer some semblance of legality to the said proceeds which came from the criminal acts committed by the accused parties (misappropriation of funds and smuggling) against the Greek State, having formed a suitable infrastructure (incorporation and use of numerous offshore companies in many countries around the world, conclusion of a lot of sham contracts to justify thereby bank transactions with particularly high amounts of money, sham transfers, buyouts of companies etc) having the intention to repeatedly commit their acts for the purpose of gaining income. The said persons have been referred to trial, charged with: a) misappropriation of funds by a trustee against the State, jointly and severally committed repeatedly, under aggravating circumstances (specific conditions of criminal activity, particularly high-valued subject) wherefrom the benefit attained by the offender or the damage suffered by or threatened for the State exceeds the amount of €150,000, b) smuggling, from which the duties, taxes and other charges deprived by the State, exceed the amount of 150,000 euro, jointly and continuously committed and c) money laundering, through the establishment of a group of at least two members, for the commission of one or more acts among those mentioned in point (d) of Law 3691/2008, professionally committed, on account for the benefit of and within the context of a criminal group.

In the frame of this case, the amount of €170,000,000 has been frozen in Greek and international banks in favor of the Greek State.

#### Case 2

A former Minister, acting in violation of his duties, requested and received a promise of benefits (money), for the purpose of acting in the context of his duties, specifically for assigning the procurement and the repair of submarines and the procurement of arm systems, benefits which he eventually received before and after contract conclusion, exceeding the amount of €150,000. He was a member of an organization which intended to commit laundering of money coming from criminal activity, consisting of the crime of continuous passive bribery against the Greek State, gaining the said benefit and respectively damaging the Greek State. In the context of such organization and for the purpose of attaining its objectives, among others, he acted jointly with his other co-defendants and set up a complex network of domestic and offshore companies through which they realized numerous acts of money laundering by concealing, converting, possessing, obtaining or managing parts of such property, being well aware that it originated from the above illegal act of passive bribery. They also committed a number of money laundering acts, by making a lot of movements and transactions with many credit institutions, for the transfer of such property from abroad into Greece, intending to alienate the traces of the funds from their origin and to prevent their tracking from the controlling authorities in Greece whereto the said property was ultimately transferred. To achieve their said target, they realized a number of transactions, using many bank accounts kept with different banks in and out of Greece and several intermediaries alleged beneficiaries, natural and legal persons, through which the bribes were moved in and out Greece, were invested, were used for the acquisition of real estate by the above and other persons or circulated within credit institutions towards obscurity.

#### Case 3

With the mediation of his co-defendant judge, a judge requested and received money, as a gift he was not entitled to receive being a court official, for the purpose of deciding in favor of the briber on a case which was pending before the said judge, so that the briber would not be imposed with detention but have him released under restrictive conditions. Aiming at concealing the true origin of the property (money) which came from criminal activity consisting of the act of passive bribery by a court official, the judge used the financial system and, through the mediation of a stock broker company, he made partial deposits therewith, of the sums that originated from his above criminal activity, attempting in that way to confer some semblance of legality to the said proceeds and conceal his illegal activity under the stock exchange transactions, the further sale of shares and the allocation of the related price to the purchase of a house.

**(b) Observations on the implementation of the article**

91. Greece's legislation is in accordance with the provision under review and the corresponding sanctions have been provided in the preceding paragraph.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 1 (b) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

**(a) Summary of information relevant to reviewing the implementation of the article**

92. Greece cited the following domestic law:

LAW 3691/2008

Article 2 Subject matter

2. The following conduct shall be regarded as money laundering, i.e. legalisation of proceeds from the criminal activities listed in Article 3:

c) the acquisition, possession, administration or use of property, knowing, at the time of receipt or administration, that such property was derived from criminal activity or from an act of participation in such activity;

93. Greece indicated that the majority of investigations encounter more than one kind of activity regarded as money laundering, as listed in Article 23.

**(b) Observations on the implementation of the article**

94. Greece's legislation is in accordance with the provision under review and the corresponding sanctions have been provided in in the preceding paragraph.

**Article 23 Laundering of proceeds of crime**

## **Subparagraph 1 (b) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

95. Greece cited the following provisions of its domestic law:

LAW 3691/2008

Article 2 Subject matter

2. The following conduct shall be regarded as money laundering, i.e. legalisation of proceeds from the criminal activities listed in Article 3:

e) the setting up of organisation or group comprising two persons at least, for committing one or more of the acts defined above under a to d and the participation in such organisation or group.

GREEK PENAL CODE

CHAPTER THREE

Attempt and participation

I. Attempt

Article 42-Meaning of attempt and penalty thereof

1. Any person who, having decided to commit a felony or misdemeanour, performs an act that contains at least commencement of execution, shall be punished, where the felony or misdemeanour has not been completed, with a reduced penalty (article 83).

2. If the court finds that the reduced penalty of the previous paragraph is not sufficient to avert the commission of new criminal offences by the perpetrator, it may impose the same penalty provided for by the law for the complete act, barring the death penalty.

3. The court may find that the attempt of a misdemeanour is not punishable, if the law provides for a penalty of imprisonment no higher than 3 months.

Article 43-Inadequate attempt

1. Any person who attempted to commit a felony or misdemeanour by means or against an object of such nature as to make the commission of these offences absolutely impossible, shall be punished with the penalty provided for in article 83 reduced by half.

2. Any person who attempted such an act due to foolishness is not punishable.

Article 44-Voluntarily Desisting

1. The attempt is not punishable when the perpetrator started performing an act towards the commission of the felony or misdemeanour, but did not complete it voluntarily and not because of external obstacles.

2. If the perpetrator, after completion of his/her act, subsequently prevented voluntarily the result that could have arisen from this act and which would have been necessary for the commission of the felony or misdemeanour, the court imposes the penalty provided for in article 83 reduced by half. However, the court, assessing freely all circumstances, may find the attempt not punishable.

II. Participation  
Article 45-Co-principals

If two or more persons jointly committed a criminal offence, each one of them shall be punished as a principal.

Article 46-Instigator and Direct Accessory

1. Shall also be punished as a principal:

a) Anyone who intentionally brings about to another the decision to commit the wrongful act committed by him.  
b) Anyone who intentionally provided direct assistance to the perpetrator during the commission of this act and in the performance of the main act.

2. Any person who intentionally brought about to another the decision to commit an offence, with the sole purpose of apprehending the other while attempting to commit the offence or while committing a punishable preparatory act thereof, and with the intent of impeding the other from completing the offence, shall be punished with the penalty of the principal reduced by half.

Article 47-Simple Accessory

1. Any person who, other than the case of para 1 (b) of the preceding article, intentionally provided to another any kind of assistance before or during the commission of the wrongful act by the other, shall be punished as an accessory with a reduced penalty (article 83).

2. The provision of para 2 of article 42 is applicable accordingly herein.

3. Insofar as petty violations are concerned, accessories are punishable only in cases specifically provided for by law.

Article 48-General provision

The criminal liability of accomplices in accordance with articles 46 and 47 is independent of the liability of the person who committed the act.

Article 49-Special qualities or relations

1. Wherever the law, for an act to be punishable, requires the existence of special qualities or relations, if these attach only to the perpetrator, then the accomplices according to article 46 (1) may be punished with a reduced penalty (article 83); if, however, these attach only to the accomplices according to articles 46 (1) and 47, the latter are punishable as principles and the perpetrator as an accessory.

2. Special qualities, relations or other circumstances which increase, reduce or exclude the punishment are taken into account only with regard to the accomplice whom they concern.

96. Greece did not provide any cases of implementation or statistics but indicated that the majority of investigations encounter more than one kind of activity regarded as money laundering, as listed in Article 23.

**(b) Observations on the implementation of the article**

97. The corresponding sanctions to this offence have been provided in in the preceding paragraph.

98. Greece's legislation corresponds to the provision under review. Even though Greece clarified that Article 2 par. 2e) of Law 3691/2008 (cited above) covers acts of participation in the framework of an organization or group for purposes of the money laundering offence, the general provisions of the Criminal Code on participation and attempt (arts. 42-49) also apply to cover participatory acts beyond acts committed by an organized group.

**Article 23 Laundering of proceeds of crime**

## Subparagraphs 2 (a) and (b)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

### (a) Summary of information relevant to reviewing the implementation of the article

99. Greece cited the following domestic laws on the implementation of the provision under review:

LAW 3691/2008 Article 3  
Criminal activities - Predicate offences

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

- a) participation in an organized criminal group (Article 187 of the Penal Code);
- b) terrorist activities and terrorist financing (Article 187A of the Penal Code);
- c) passive bribery (Article 235 of the Penal Code);
- d) active bribery (Article 236 of the Penal Code);
- e) bribery of political officials and judges (Articles 159, 157A and 237 of the Penal Code);
- f) trafficking in human beings (Article 323A of the Penal Code);
- g) computer fraud (Article 386A of the Penal Code);
- h) sexual exploitation (Article 351 of the Penal Code);
- i) the offences provided for in Articles 20, 21, 22 and 23 of Law 3459/2006 re: “Codified Law on narcotic drugs” (Government Gazette 103 A);
- j) the offences provided for in Articles 15 and 17 of Law 2168/1993 re: “Weapons, ammunition, explosives etc.” (Government Gazette 147 A);
- ja) the offences provided for in Articles 53, 54, 55, 61 and 63 of Law 3028/2002 re: “Protection of antiquities and cultural heritage in general” (Government Gazette 153 A);
- jb) the offences provided for in Article 8, paragraphs 1 and 3, of Legislative Decree 181/1974 re: “Protection from ionised radiation” (Government Gazette 347 A);
- jc) the offences provided for in Article 87, paragraphs 5, 6, 7, and 8, and Article 88 of Law 3386/2005 re: “Entry, residence and social integration of non-citizens on Greek territory” (Government Gazette 212 A);
- jd) the offences provided for in the fourth and sixth Articles of Law 2803/2000 re: “Protection of the financial interests of the European Communities” (Government Gazette 48 A);
- (...)
- jh) the offences provided for in Articles 29 and 30 of Law 3340/2005 re: “Protection of the capital market from actions by persons holding privileged information and from actions of market manipulation” (Government Gazette 112 A);
- ji) The offences:
  - a) of tax evasion under Article 17, Article 18 with the exception of case a) of paragraph 1 and Article 19 with the exception of the case of the first subparagraph of paragraph 1 of Law 2523/1997 (A 179) as applicable,
  - b) of smuggling, under Articles 155, 156 and 157 of Law 2960/2001 (A 265), as applicable, and
  - c) of the non-payment of debts to the State under Article 25 of Law 1882/1990 (A 43), as applicable, with the exception of case a) of paragraph 1, and the non-payment of debts arising from penalties or fines imposed by courts or administrative or other authorities.
- k) the offences provided for in Article 28 par. 3(a) of Law 1650/1986 (Protection of the environment),
- ka) any other offence punishable by deprivation of liberty for a minimum of more than six months and having generated any type of economic benefit.

100. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

101. Greece's legislation is partially in accordance with this provision. Most of the UNCAC offences qualify as predicate offences, as they all fall under article 3(ka) of Law 3691/2008: ka) "any other offence punishable by deprivation of liberty for a minimum of more than six months and having generated any type of economic benefit." The exceptions appear to be infidelity in the private sector (article 390 CC), abuse of functions (259 CC), and embezzlement in the private sector (375 CC). The reviewers recommend Greece to ensure that all UNCAC offences qualify as predicate offences in respect of Article 3 of Law 3691/2008.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (c)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

**(a) Summary of information relevant to reviewing the implementation of the article**

102. Greece provided the following applicable measures on the implementation of the provision under review:

LAW 3691/2008

Article 2 Subject matter

3. Money laundering shall be regarded as such even when the activities which generated the property to be laundered were carried out in the territory of another country, provided that they would be a predicate offence if committed in Greece and are punishable according to the law of such other country.

103. Greece indicated that there are no available data on this issue.

**(b) Observations on the implementation of the article**

104. Greece's legislation is in accordance with the provision under review. No cases of implementation could be located, due to the general problem of collecting and separating data.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (d)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

**(a) Summary of information relevant to reviewing the implementation of the article**

105. Greece furnished the relevant legislation to the United Nations on 22 April 2015.

**(b) Observations on the implementation of the article**

106. Greece sent to the UNODC Secretariat in the course of the review copies of the relevant laws. Greece is therefore in compliance with this provision.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (e)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

107. Greece cited article 45, paragraph 1 (e) of the Anti-Money Laundering Law 3691/2008 which reads as follows:

Criminal responsibility for the predicate offence shall not exclude the punishment of offenders (the principal and his accomplices) for the offences referred to in items (a), (b) and (c) of this paragraph, if the circumstances of the Money Laundering acts are different from those of the predicate offence.

108. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

109. The Greek legislation provides for self-laundering. Greece's legislation is therefore in accordance with the provision under review.

**Article 24 Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when*



*the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

110. Greece indicated that, apart from the money laundering offences contained in Law 3691/2008, Article 394 of the Criminal Code provides for the following:

“Article 394

Receiving and transferring the Proceeds of an Offence [fencing]

1. Whosoever intentionally conceals, purchases, receives as pledge or otherwise acquires for himself/herself an object, which has resulted from an offence, or transfers to another person the possession of such thing, or participates in such transfer, or ensures in any way its possession by another person, shall be punished by imprisonment, regardless of the fact that the offender, from whom the thing is derived, may or may not be punishable under the law.

2. If the object of the act provided for in the previous paragraph is of low value, the offender shall be punished by imprisonment for not more than six months and criminal prosecution may be initiated only upon a complaint.

3. Proceeds of an offence include an object’s monetary value as well as other objects procured by the proceeds.

4. If the offender commits such acts by profession or habitually, or acted for gain, or if the object is of high value, he shall be punished by imprisonment of at least six months. Article 72 with respect to a workhouse shall apply to this case.”

111. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

112. Regarding the legislation addressing the continued retention of property, Greek authorities explained that the conduct in question is essentially covered by Article 2 par. 2(c) read in conjunction with Article 45 of Law 3691/2008 (both provisions as cited above). Additionally, Greece stressed that article 394 of the Penal Code, as cited above, is also applicable.

113. As far as the application of Article 394 of the Penal Code is concerned, Greece provided the following example:

Supreme Court judgment 384/2012: The two accused received and retained in their possession a set of bank cheques which were the product of another offence, before falsifying the signature of the victim and passing them on to another accused who attempted to exchange it for cash. The accused in accused did this while knowing that the cheques were the result of an offence. They were found guilty for the offence of Article 394 Penal Code, as well as for forgery, and were convicted irrevocably to 12 months imprisonment each.

114. While Greece's legislation explicitly addresses the concealment of criminal proceeds, the reviewers were of the view that the continued retention of property, as foreseen in article 24 of UNCAC, could also be encompassed by the element of "otherwise acquir[ing]" such proceeds (art. 394 CC).

## **Article 25 Obstruction of Justice**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

115. Greece provided the following applicable measure on the implementation of the article under review:

Greek criminal law does not dispose a single provision encompassing all the obstructive actions described in article 25 of the Convention. Instead, it typifies perjury, false unsworn testimony and deception to perjury in arts. 224, 225 and 226 of the GPC. All possible manners to induce a false testimony which do not directly fall under these provisions, shall be treated as forms of instigation in one of those offences. According to article 228 par. 2 of the GPC, the attempt to persuade someone to commit the offence of perjury is punishable even if the witness, expert or interpreter did not accept to commit the offence.

The use of threats of violence against a witness is not punishable as a distinct crime, but under the general provisions of articles 330 (illegal violence) and 333 GPC (threat).

Article 167 criminalizes the attempt to coerce a public official to action or omission relevant to his duties, or to operate in a certain manner. This provision covers justices, as well as law enforcement officers.

Article 187 par. 4 typifies an aggravated form of obstructing persecution or sanctioning of embezzlement, with the use of violence or intimidation against judges, witnesses, etc., when the offence has been committed by a criminal organization.

116. The provisions mentioned above read as follows:

Article 224 of the GPC Perjury

1. Whoever as litigant in a civil trial knowingly takes an untrue oath, shall be punished with imprisonment of at

least one year.

2. With the same sentence shall be punished whoever, while giving a sworn testimony as a witness before an authority competent to contact sworn investigation or while referring to oath he has already taken, knowingly testifies untruthfully or denies or conceals the truth.

3. Assimilated to oath are the attestation of clergymen to their priesthood, the attestation the law allows instead of an oath to the followers of religions that to not allow oath, as well as any other attestation that replenishes oath according to the provisions of the law of criminal procedure.

#### Article 225 of the GPC False unsworn testimony

1. With imprisonment of at least one year shall be punished: a) whoever, while questioned as litigant or as witness by an authority competent to contact such an interrogation knowingly testifies untruthfully or denies or conceals the truth, b) whoever declares that he is ready to take before a court a false oath, which albeit he did not take, because the other party excepted the oath as taken.

2. With imprisonment of at least one year or with a pecuniary sentence shall be punished whoever, in any other case, while questioned by an authority or by its proxy of assignee or while referring thereto, knowingly reports untruthfully or denies or conceals the truth. With the same sentence shall be punished whoever appears as witness before an authority and persistently denies to give his testimony or to take the pertinent oath.

#### Article 226 of the GPC Perjury of an expert or an interpreter

1. Whoever as an expert or an interpreter knowingly reports untruthfully under oath or denies or conceals the truth, shall be punished with imprisonment of at least two years.

2. The provision of article 67 (debarment) applies to this case accordingly.

3. If the untruthful opinion of the expert or the false translation of the interpreter were given without an oath, imprisonment of at least two years shall be imposed.

#### Article 228 of the GPC Deception to Perjury

1. Whoever intentionally deludes somebody in order to take a false oath, as described in article 224, shall be punished with imprisonment of up to two years, if his act is not more severely punished according to the provisions regarding incitement.

2. Whoever attempts in any way to persuade someone to commit the offence of articles 224 and 226 par.1, shall be punished with imprisonment of up to three years.

#### Article 167 of the GPC Resistance

1. Whoever uses violence or threat of violence in order to force an authority or a public official to proceed to an action pertaining to their duties or to refrain from a legitimate action, as well as whoever uses violence against a public official or against a person that has been recruited or against an other official that has come to support him in the duration of his legitimate action, shall be punished with imprisonment of at least one year.

2. If the actions provided for in the previous paragraph were committed by an individual who bears arms or objects capable to inflict physical injury or has his facial features covered or altered or were committed jointly by more than one persons, as well as if the person, against whom the act has been committed, underwent serious physical danger, imprisonment of at least two years shall be imposed, if the act is not more severely punished by another provision.

#### Article 330 of the GPC Illegal violence

Whoever with the use of physical violence or threat thereof or of other illegal action or omission coerces another to action, omission or tolerance to which the plaintiff has not obligation, shall be punished with imprisonment of up to two years, regardless whether the harm threatened is directed against the recipient of the threat or against a member of his family.

#### Article 333 of the GPC Threat

Whoever causes to another fear or worry by threatening him with violence or with other illegal action or omission shall be punished with imprisonment of up to one year or with pecuniary sentence.

For prosecution a complaint is required.

#### Article 187 of the GPC

##### Criminal organization

1. With incarceration from five to ten years shall be punished whoever forms or joins as a member a group structured and with constant action, from three or more individuals (organization) and pursues the commission of more than one felonious acts of those provided for in articles ... 375 (embezzlement) ... .

4. Whoever with threat or use of violence against judicial functionaries, jurors, investigators or clerks of the court, witnesses, experts and interpreters, or with bribery thereof, forestalls the revelation or prosecution or sanctioning of the offence of accession or formation of a criminal organization of par.1, shall be punished with incarceration from five to ten years and with pecuniary sentence from 100.000 € to 500.000 €. Whoever in the aforementioned cases forestalls the revelation or prosecution or sanctioning not only of the offence of accession or formation of a criminal organization of par.1, but also of another offence from those listed in par. 1, shall be punished with incarceration from five to twenty years and with pecuniary sentence from 100.000 € to 1.000.000 €.

117. Greece did not provide statistics.

**(b) Observations on the implementation of the article**

118. During the country visit, it was explained that Art. 228 (2) of the Criminal Code is applicable where a person bribes or coerces, through the use of force, threats or intimidation, a person in order to induce false testimony and the act [false testimony] does not materialize. Provisions on inciting bribery are used if the testimony takes place. It was also noted that obstruction of justice cases are rare in Greece.

119. Greece provided the following cases of implementation:

120. Case 1: In Supreme Court case 44/2013 the defendant, a civil engineer overseeing a construction, was found guilty of the offense described in art. 167 GCP, because he has pushed back the police officer who was attempting to perform a control, following complaints for unauthorized works. The accused was sentenced to 1 year imprisonment.

121. Case 2: In Supreme Court case 1549/2013 the defendant, a landscaper offering his expertise in a trial, was found guilty of the offense described in art. 226 GCP, because he had concealed the existence of the road, with the intent to favor a litigant in a land dispute.

122. Case 3: In Supreme Court case 285/2013 the defendant was found guilty of perjury for falsely describing, in a civil trial and under oath, the circumstances of a car accident, with the intention to lighten the position of the liable party, a taxi driver responsible for the injury of his passenger. The accused was sentenced to 7 months imprisonment.

123. Greece's legislation is in accordance with the provision under review and the corresponding sanctions have been provided in the preceding paragraph.

**Article 26 Liability of legal persons**

**Paragraphs 1 and 2**

*1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

*2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

**(a) Summary of information relevant to reviewing the implementation of the article**

124. Greece has provided the following applicable measures on the implementation of the provision under review:

The introduction of criminal sanctions against legal entities would be in conflict with fundamental principles of Greek law. Under Greek law criminal responsibility is based on the principle of individual culpability, which dictates that only a person may be held responsible for an act that he/she committed and be criminally punished (*nullum crimen nulla poena sine culpa*). Article 7 par. 1 of the Constitution defines crime as a person's act constituting a criminal offence by virtue of a statute prior to its perpetration, while Article 2 par.1 of the Constitution establishes protection of human dignity as a fundamental principle governing all State activities. Criminal punishment without an individual's act, for which criminal culpability may be attributed to him/her, would violate both the above Articles of the Constitution.

Indeed, legal entities as such cannot act and they cannot have a guilty mind in respect of an act. Punishment of a legal entity would mean a shift of criminal responsibility from individual persons to a kind of collective organizational liability which would run contrary to the above principles. The legal entity's inability to act would not justify criminal sanctions against the legal entity for acts committed by its officers or employees. Equally, introduction of criminal sanctions against individuals based solely on their capacity within the legal entity and not on their own culpable acts would not be compatible with the Constitution.

It is noteworthy that the Criminal Code defines in Article 14 a crime as an act which can be attributed to the specific culpability (*culpa*) of the perpetrator. The perpetrator must be capable of being the bearer of *culpa*. An attempt to transfer this genuinely moral element of criminal responsibility into the area of legal entities would undermine the very basis of the system of criminal sanctions.

Non-introduction of criminal sanctions does not mean, however, that corrupt activities involving legal entities cannot be sanctioned efficiently. Administrative sanctions (e.g. fines, confiscation of property, withdrawal of permits etc.), a wide array of which are provided for in Greek legislation, can be applied with effectiveness, while not infringing the above fundamental principles. Indeed, Article 26 UNCAC allows States parties to opt for administrative (instead of criminal) sanctions in respect to legal entities. It is against this background that Greece has abstained from introducing criminal sanctions while strengthening its system of administrative sanctions to combat corrupt practices.

The main provision applicable is Article 51 of 3691/2008 Act (the AML-Law), as recently amended by 4254/2014 Act.

Law 3691/2008 "Prevention and suppression of money laundering and terrorist financing and other provisions", as amended.

Article 3

Criminal activities - Predicate offences

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

(...)

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

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

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

(...)

k) any other offence punishable by deprivation of liberty for a minimum of more than six months and having generated any type of economic benefit.

#### Article 51 Liability of legal entities

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

a. Regarding obligated legal persons, the following sanctions are imposed by a decision of the competent authority referred to in Article 6 of the present Act,:

i) An administrative fine of fifty thousand (50.000) up to five million (5.000.000) euros;

ii) final or provisional - for a period from one month up to two years - withdrawal or suspension of the permit for the operation of the legal person or prohibition from carrying out its business; iii) prohibition from carrying out specific business activities or from the establishment of branches or capital increase, for the same period of time;

iv) final or provisional exclusion from public grants, aids, subsidies, awarding of contracts for public works or services, procurement, advertising and tenders of the public sector or of the legal persons belonging to the public sector;

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

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

b. Regarding non-obligated legal persons the following sanctions shall be imposed by a joint decision issued by the Minister of Justice, Transparency and Human Rights and the competent Minister in each case:

i) An administrative fine of twenty thousand (20.000) up to two million (2.000.000) euros; ii) the sanctions listed in subparagraph a) items ii) iii) and iv) above.

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

- to supervise the proper and legitimate operation of the legal person and to impose sanctions; - to grant the required permit for the operation of the legal person;

- to keep a registry, in which the legal person is registered; - to fund and grant subsidies or provide financial aid.

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

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

a. In the case referred to in paragraph 1 subparagraph a) above:

- An administrative fine of ten thousand (10.000) up to one million (1.000.000) euros;

- the sanctions listed in subparagraph a) items ii) iii) and iv) above, for a period up to six months.

b. In the case referred to in paragraph 1 subparagraph b) above:

- An administrative fine of five thousand (5.000) up to five hundred (500.000) euros;

- the sanctions listed in subparagraph a) items ii) iii) and iv) above, for a period up to six months.

3. For the cumulative or alternative imposition of the sanctions listed in the previous paragraphs and the determination of such sanctions, the following shall inter alia be taken into account: the gravity of the offence, the degree of culpability, the financial condition of the legal person, the amount of illegal profits or any likely acquired benefit and any recidivism of the legal person. No sanction is imposed without prior summoning of the legal representatives of the legal person to provide explanations. The summons is served on the interested party at least ten (10) days prior to the date of the hearing. In any other respect, the provisions of paragraphs 1 and 2 of Article 6 of 2690/1999 Act (Code of Administrative Procedure) shall apply.

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

5. The prosecuting authorities shall immediately inform the competent authority or, if this is a non-obligated legal person, the Minister of Justice, Transparency and Human Rights, of criminal proceedings in cases involving a legal person within the meaning of paragraphs 1 and 2, as well as about the relevant court judgments issued. By joint decision the Minister of Finance and the Minister of Justice, Transparency and Human Rights

shall lay down the procedure for imposing sanctions, the competent services for collection, and all necessary details for the implementation of this Article.

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

Apart from the above basic legislation, there are a number of provisions in the public procurement laws (such as Arts 31 and 82 of Law 3669/2008, Art. 16 par. 1 and 40 of Law 3316/2005 and Art. 39 of P.D. 118/2008, providing for the exclusion of legal persons involved in corrupt practices from taking part in procurement procedures.

125. Greece provided the following cases of implementation, indicating that since the relevant legislation is relatively recent, there have been few examples of implementation:

- The most well-known case concerns the administrative proceedings started against Siemens, based on the previously applicable Article 10 of Law 3560/2007, which was substituted by the above Article 51 of Law 3691/2008. These proceedings ended with a settlement between Siemens and the Hellenic Republic, which was ratified in April 2012 by the Hellenic Parliament and obliges Siemens to spend approximately 270 million Euro for the benefit of the Greek market. More specifically, Siemens agreed to waive claims of €80 million that concern implemented projects and the delivery of equipment to the Greek State; to dispense up to the amount of 90 million Euro for transparency initiatives and anti-corruption programs, as well as for academic and research programs that aim at enhancing Greece's competitiveness; and to spend over €100 million, in order to enhance its activities in Greece and preserve a significant number of jobs in the local market.
- In 2013 the Financial and Economic Crimes Unit (SDOE) was notified by the Prosecution Authority about the prosecution of two persons that were acting as the legal representatives of two S.A companies and were accused for bribery offences. Both of the Companies were in the food industry. The CEO of the food company “X” asked and received from the President and CEO of company “Z” successive illegal payments amounting to a total of almost 90.000 Euros in order to ensure that company “X” would supply exclusively low quality fruits for jam production from company “Z”. Subsequently, the competent regional Director of S.D.O.E. imposed to company “Z” the administrative fine of 90.000 Euros, that was up to the limit of the total amount of the illegal payments.

**(b) Observations on the implementation of the article**

126. In addition to the administrative liability of legal persons, Greece has established civil liability in the general provisions of the Civil Code and provisions allowing annulment of contracts. There have been no reported cases where legal persons have been civilly liable, although such cases can be brought before the civil court or in criminal court together with a criminal case.

127. Of concern is the involvement of the Minister of Justice, Transparency and Human Rights in the determination of administrative sanctions, as provided for in Art. 51(5) of the Law 3691/2008. Although Greece explained this is not applied in practice and there is no discretion by the Minister, which is in any event subject to judicial review and any deviation (e.g. a settlement) must be justified by decision of Parliament, the reviewers recommend that this be removed.

128. It is recommended that Greece address the administrative liability of legal persons for all UNCAC offences, in light of the limitations in the definition of “criminal activities” in Law 3691/2008.

129. With respect to administrative settlements, it was provided during the country visit that the largest such settlement was the Siemens case, which was approved by decision of Parliament and published as a law. The case involved both a fine and an obligation by Siemens to take certain remedial measures (training, job creation in Greece). It was explained by the Greek authorities that corporate settlements are rare in Greece and subject to approval by the Legal Council of the State (Law 3086/2002).

## **Article 26 Liability of legal persons**

### **Paragraph 3**

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

130. Greece referred to its answer to the previous provision article 26 paras. 1 and 2.

131. Greece did not provide statistics.

#### **(b) Observations on the implementation of the article**

132. While the independent liability of legal persons from that of natural persons is addressed in Art. 51(4) of the Law 3691/2008, it was explained by representatives of SDOE and the Public Prosecutor against Crimes of Corruption (PPACC) that in practice the administrative proceedings against corporations commence once the notification under Art. 51(5) of the aforesaid law is made, i.e. when the Minister of Justice is informed by the public prosecutor of criminal proceedings against the natural person/s involved. This interpretation is further borne out by a Joint Decision of the Ministers of Finance and Justice (11130/2730/4-11-2010), which states that administrative proceedings against legal persons under these laws shall only begin after criminal charges are brought against the natural person. Moreover, there is no case law demonstrating that proceedings against legal persons could commence without also prosecuting the individual perpetrators.

133. As mentioned above, it is recommended that Art. 51(5) be revisited and that Greece ensure that the law and its interpretation and application in practice does not allow for the liability of legal persons to be contingent on the criminal liability of natural persons involved. Moreover, Greece should ensure that proceedings against legal persons can be instituted in the absence of criminal charges against the natural persons.

## **Article 26 Liability of legal persons**

### **Paragraph 4**



4. *Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

134. Greece referred to its answer to the previous provision article 26 paras. 1 and 2.

135. Greece did not provide statistics.

**(b) Observations on the implementation of the article**

136. Greece's legislation is in accordance with the provision under review.

**Article 27 Participation and attempt**

1. *Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

2. *Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

3. *Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

137. Greece cited the following applicable measures regarding participation and attempt:

GREEK PENAL CODE  
Article 12-Special penal laws

The provisions of the general part of the Penal Code are also applied to offences stipulated in special laws, if such laws do not state otherwise by express provision.

CHAPTER THREE

Attempt and participation

I. Attempt

Article 42-Meaning of attempt and penalty thereof

1. Any person who, having decided to commit a felony or misdemeanour, performs an act that contains at least commencement of execution, shall be punished, where the felony or misdemeanour has not been completed, with a reduced penalty (article 83).

2. If the court finds that the reduced penalty of the previous paragraph is not sufficient to avert the commission

of new criminal offences by the perpetrator, it may impose the same penalty provided for by the law for the complete act, barring the death penalty.

3. The court may find that the attempt of a misdemeanour is not punishable, if the law provides for a penalty of imprisonment no higher than 3 months.

#### Article 43-Inadequate attempt

1. Any person who attempted to commit a felony or misdemeanour by means or against an object of such nature as to make the commission of these offences absolutely impossible, shall be punished with the penalty provided for in article 83 reduced by half.

2. Any person who attempted such an act due to foolishness is not punishable.

#### Article 44-Voluntarily Desisting

1. The attempt is not punishable when the perpetrator started performing an act towards the commission of the felony or misdemeanour, but did not complete it voluntarily and not because of external obstacles.

2. If the perpetrator, after completion of his/her act, subsequently prevented voluntarily the result that could have arisen from this act and which would have been necessary for the commission of the felony or misdemeanour, the court imposes the penalty provided for in article 83 reduced by half. However, the court, assessing freely all circumstances, may find the attempt not punishable.

## II. Participation

#### Article 45-Co-principals

If two or more persons jointly committed a criminal offence, each one of them shall be punished as a principal.

#### Article 46-Instigator and Direct Accessory

1. Shall also be punished as a principal:

a) Anyone who intentionally brings about to another the decision to commit the wrongful act committed by him.  
b) Anyone who intentionally provided direct assistance to the perpetrator during the commission of this act and in the performance of the main act.

2. Any person who intentionally brought about to another the decision to commit an offence, with the sole purpose of apprehending the other while attempting to commit the offence or while committing a punishable preparatory act thereof, and with the intent of impeding the other from completing the offence, shall be punished with the penalty of the principal reduced by half.

#### Article 47-Simple Accessory

1. Any person who, other than the case of para 1 (b) of the preceding article, intentionally provided to another any kind of assistance before or during the commission of the wrongful act by the other, shall be punished as an accessory with a reduced penalty (article 83).

2. The provision of para 2 of article 42 is applicable accordingly herein.

3. Insofar as petty violations are concerned, accessories are punishable only in cases specifically provided for by law.

#### Article 48-General provision

The criminal liability of accomplices in accordance with articles 46 and 47 is independent of the liability of the person who committed the act.

#### Article 49-Special qualities or relations

1. Wherever the law, for an act to be punishable, requires the existence of special qualities or relations, if these attach only to the perpetrator, then the accomplices according to article 46 (1) may be punished with a reduced penalty (article 83); if, however, these attach only to the accomplices according to articles 46 (1) and 47, the latter are punishable as principles and the perpetrator as an accessory.

2. Special qualities, relations or other circumstances which increase, reduce or exclude the punishment are taken into account only with regard to the accomplice whom they concern.

138. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

139. The following cases of implementation were provided by Greece.

In reference to article 46 of the Criminal Code:

140. Case 1: In **Supreme Court case N. 277/2014**, two of the defendants were deemed to be direct accessories to the offence of passive bribery committed by the third co-defendant, an officer of the urban planning agency who requested a bribe of 75.000 € in order to overlook building permit irregularities, because they actively supported his demand towards the plaintiff and urged him to comply.

141. Case 2: In **Supreme Court case N. 277/2014**, one of the defendants was deemed to be instigator to the offence of breach of duty, committed by the second co-defendant - a doctor who, as head of a committee overseeing the function of private practices, untruly verified that the instigators establishment of renal dialysis was in accordance with all legal standards - because he approached her and urged her to do so in order for his practice to start receiving patients.

In reference to article 42 of the Criminal Code:

142. Case 3: In Supreme Court case N. 1104/2013, the defendants, civil servants in the Department of Noise of the Ministry of Environment, Power and Climate Change with the competence to measure noise pollution and impose fines, were found guilty of passive bribery and attempted extortion, because they requested 2.500 € from the owner of a restaurant in order to overlook certain irregularities, threatening her that if she didn't comply they would perform a control and impose fines exceeding 50.000 €. Their extortion attempt was inconclusive though, since the restaurant owner did not succumb to their threats and denounced them to the police.

143. Greece's legislation is in accordance with the article under review and the corresponding sanctions have been provided in the preceding paragraph. Greece has also criminalized acts of preparation for offences.

**Article 29 Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

**(a) Summary of information relevant to reviewing the implementation of the article**

144. Greece cited the following domestic laws on the implementation of the provision under review:

## PENAL CODE, CHAPTER SEVEN: REASONS EXTINGUISHING CRIMINAL LIABILITY

### I. Prescription

#### Article 111 Time limit of prescription of crimes

1. Criminal liability is extinguished through prescription.
2. Felonies prescribe: (a) In twenty years, if the law provides for the death penalty or the term of incarceration for life; (b) In fifteen years, in any other case.
3. Misdemeanours prescribe in five years.
4. Petty violations prescribe in two years.
5. The above time limits are calculated on the basis of the calendar year.
6. If the law provides for the imposition of one out of more penalties, the above time limits are calculated according to the heavier penalty among them.

#### Article 112 Beginning of the time limit for the prescription of crimes

The time limit for prescription begins on the day when the punishable act was committed, unless otherwise provided.

#### Article 113 Suspension of prescription

1. The time limit of prescription is suspended for as long as prosecution may not commence or continue according to a provision of law.
  2. Moreover, the time limit of prescription is suspended for the duration of the main procedure and until the decision on conviction becomes irrevocable.
  3. The suspension provided by the previous paragraphs may not last longer than five years for felonies, three years for misdemeanours and one year for petty violations. The time limitation on suspension is not applied whenever the postponement or suspension of prosecution was made by virtue of article 30 para. 2 and 59 of the Code of Penal Procedure.
  4. If a complaint by the victim is necessary for the commencement of prosecution, the lack thereof does not suspend prescription.
  5. The suspension of prosecution of pending cases, in relation to which the time limit of prescription is reached by application of the present and the previous two articles, may be ordered by the competent public prosecutor of the court of misdemeanours, following a concurring opinion of the public prosecutor of the court of appeals, by closing the file of the case.
- (...)

### CODE OF CRIMINAL PROCEDURE

#### PROCEDURES AGAINST ABSENTEES AND PERSONS EVADING JUSTICE

(...)

#### Article 432 Suspension of trial

1. If someone indicted to be tried before the competent court for a felony, is of unknown residence and does not appear or is not arrested within a month of the indicting decision being served according to article 156, the procedure is suspended by a decision of the public prosecutor of the court of appeal, until the accused is arrested or until he/she appears. (...) The provisions of article 113 of the Penal Code regarding the suspension of the time limit of prescription of criminal liability also apply here.
- (...)

145. Greece did not provide any cases of implementation or statistics.

### **(b) Observations on the implementation of the article**

146. The Greek legal system bases the statute of limitations on the seriousness of the offence (felonies, minor offences, misdemeanors). The Greek legislation does not establish specific provisions related to corruption offences.

147. Greek authorities explained that the prescription period for misdemeanors is almost always extended to 8 years in accordance with Article 113 par. 2-3 of the Criminal Code (cited above)

or longer, depending on the circumstances of the case. In the same way, the prescription period for felonies may be extended to 20 years. Greece stressed that these time limits have proven to be more than adequate in corruption cases.

148. In reviewing the legislative framework, the reviewers recommend Greece to remove the special statute of limitations protecting ministers whereby, after two legislative sessions, a minister can no longer be prosecuted. In this context, reference is made to the observations under article 30(2).

149. The reviewers also encourage Greece to take measures to address delays in the administration of justice.

150. The reviewers also note that no statistics on criminal cases that are statute-barred have been provided.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 1**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

151. Greece provided the following applicable measures on the implementation of the provision under review:

Greece has a comparatively severe sanctions regime with heavy penalties against offences established in accordance with the Convention. These penalties include incarceration which can reach up to 20 years or even life in extreme cases, as well as pecuniary penalties of up to 150.000 Euros.

As to the way courts apply the available sanctions, while there are no specific provisions concerning corruption crimes, general rules are applicable, which ensure that the court takes into account the gravity of the offence committed and the perpetrator's personality. Article 79 PC provides specifically that the court, while estimating the gravity of the crime committed and while sentencing has to take into account both above factors. Namely, the gravity of the crime is measured according to a) The harm or the danger caused by the criminal act, b) The nature of the infraction in addition to the circumstances (time, place, duration, means used etc.) of perpetration and c) The grade of the perpetrator's dolus or negligence. Besides the perpetrator's personality is measured according to a) His motives and scopes, b) His character and his behaviour after the crime, c) His behaviour before the crime and his previous life in general, d) His regret or willingness to restore any (material, moral or other) harm or damage he caused.

All of the above provisions are applied as a general and fundamental principle of the Greek criminal system, whenever a defendant is brought before justice facing criminal charges. All courts or jurisdictional authorities must search and determine thoroughly and concretely each defendant's personality, his motives and his personal and criminal background. Under the light of

those estimations, the court determines the appropriate punishment, so that the convicted would be prevented from committing new crimes in the future.

For the sanctions foreseen for each individual offence prescribed in the Convention, please see the replies under Articles 15-25 above. Where only “imprisonment” is mentioned, please consider that this can reach up to 5 years, unless otherwise provided. Where only “incarceration” is mentioned, please consider that this ranges from 5 to 20 years, unless otherwise provided.

With regard to some offences, including active and passive bribery of domestic public officials, infidelity against the State and embezzlement, Article 1 of Law 1608/1950 applies, which provides for even more aggravated penalties:

“Article 1 of Law 1608/1950

To the perpetrator of the offences provided for in articles 216, 218, 235, 236, 237, 242, (256), 258, 372, 375 and 386 of the Penal Code, when committed against the State, against legal entities of public law or against any other legal entity of those enumerated in article 263A of Penal Code and the benefit that the perpetrator achieved or pursued, or the damage caused or in any way jeopardised to the State or to the aforementioned legal entities exceeds the amount of 150.000 €, incarceration between five and twenty years shall be imposed, and if particularly aggravating circumstances concur, especially if the perpetrator continued the commission of the offence for a long time or the object thereof is of especially significant value, life imprisonment shall be imposed.

To the perpetrator of the offence provided by article 256 of Penal Code, the above apply only when the offence is committed against the State, against entities of local self-government or against legal entities of public law.”

As regards money laundering, Law 3691/2008 as amended by Law 3875/2010, Law 3932/2011 and Law 3994/2011, provides for the following penalties:

“Article 45 Criminal sanctions

1. a) Persons who have committed money laundering shall be punished with incarceration of up to 10 years and a pecuniary penalty of EUR 20.000 to 1.000.000.

b) The perpetrator of the offence referred to in (a) above shall be punished with incarceration (i.e. a term from 5 to 20 years) and a pecuniary penalty of EUR 30.000 to 1.500.000 if he acted as an employee of an obliged legal entity or the predicate offence is included in the offences referred to in Article 3(c), (d) and (e) above, even if a term of imprisonment of less than 5 years is envisaged for these offences.

c) The perpetrator of the offence referred to in (a) above shall be punished with incarceration of at least 10 years and a pecuniary penalty of EUR 50.000 to 2.000.000 if he engages in these activities professionally or out of habit or he is a recidivist or has acted on behalf of, for the benefit of, or as a member of a criminal or terrorist organization or group.

d) An employee of an obliged legal entity or any other person obliged to report suspicious transactions shall be punished with a term of imprisonment up to 2 years if he intentionally fails to report to the competent authorities suspicious or unusual transactions or activities or provides false or misleading data, in breach of the relevant legal, administrative or regulatory provisions and rules, provided that his act is not punishable with heavier criminal sanctions.

e) Criminal responsibility for the predicate offence shall not exclude the punishment of offenders (the principal and his accomplices) for the offences referred to in items (a), (b) and (c) of this paragraph, if the circumstances of the ML acts are different from those of the predicate offence.

f) If the envisaged penalty for the predicate offence is a-term of imprisonment up to 5 years, offender shall be punished for the ML offence with a term of imprisonment of at least 1 year (up to 5 years) and a pecuniary penalty of EUR 10.000 to 500.000.

The same sanction shall apply to any ML perpetrator who is not an accomplice to the predicate offence if he is a lineal relative of the perpetrator of the predicate offence by blood or affinity, or a collateral relative of up to second degree, or a spouse, adoptive parent or adopted child thereof.

g) If the perpetrator of the predicate offence was convicted for this offence, imposed on him or a third person of those referred to in the second sentence of item (f) for committing ML of the illicit proceeds generated by the same predicate offence, may not exceed the penalty imposed for the commission of the predicate offence.

h) The provisions of items f" and g" shall not apply to the circumstances of item c" above and to the predicate offences referred to in case b" of this article.

i) If the envisaged sanction for the predicate offence is a term of imprisonment up to 5 years and the illegal gains do not exceed €15,000, the penalty for money laundering shall be a term of imprisonment of up to 2 years. If the circumstances referred to in item (c) apply to the perpetrator of the predicate offence or to a third person, the penalty for money laundering shall be a term of imprisonment of at least 2 years and a pecuniary penalty from EUR 30.000 to 500.000.

2. Criminal prosecution and conviction of the perpetrator of the predicate offence shall not be a precondition for prosecuting and convicting someone for money laundering.

3. When the respondent's criminal liability is rejected by the Court, he is acquitted because the act is no longer prosecutable or because the person who suffered damage has obtained satisfaction for the predicate offence (provided that under the law satisfaction may bring about this result), criminal liability shall also be eliminated or the offender shall be acquitted of the relevant ML acts. This provision shall not apply where criminal liability has been eliminated due to prescription.

4. Where this article provides for cumulative custodial sentences and pecuniary penalties, Article 83(e) of the Criminal Code shall not apply.

(...)"

152. Greece did not provide any cases of implementation or statistics but indicated the following information regarding criminal and non-criminal sanctions:

In addition to imprisonment, two sets of other measures are applicable to bribery offenses:

The Criminal Court may impose one of the following sanctions:

- Confiscation of the advantages and of the assets acquired with (Article 238 par. 1 PC);
- Deprivation of civil rights for a specific period of time (Articles 61, 62 and 63 PC);
- Disqualification from exercising certain functions for between one and five years, which applies to professions requiring a special license (such as those of doctor or pharmacist), in cases where the offender is also condemned to a deprivation of civil rights for at least three months (Article 67 PC).

**(b) Observations on the implementation of the article**

153. Greece's legislation is largely in accordance with the provision under review. However, the reviewers expressed some concern, as also noted by the OECD examiners, at the provision allowing discretionary conversion of 1-3 year sentences to a fine (Art. 99 CC). It is recommended that Greece take measures to remove this provision.

154. The observations under article 23 in respect of penalties for money laundering are also referred to.

## Article 30 Prosecution, adjudication and sanctions

### Paragraph 2

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

#### (a) Summary of information relevant to reviewing the implementation of the article

155. Greece provided the following applicable measures on the implementation of the provision under review:

As a rule, in the internal legal framework no restrictions are stimulated hampering the investigation and prosecution of offences incriminated by UNCAC.

First, according to Article 4 par. 1 of the Constitution all citizens are equal before the law. The judicial authorities, and especially prosecutors, together with law enforcement authorities can freely and without any obstacles run investigations after having received any kind of information about bribery or other sorts of corruption.

Special immunities are generally granted only in favour of members of the Government, the Parliament and the President of the Republic:

1. Regarding members of the Parliament, according to the Constitution, as a rule, it is the Plenary of the Parliament, as a body, that will decide whether to give its authorization for one of its members to be prosecuted and tried for any kind of crime, including crimes of corruption (Article 62 of the Constitution). Judicial authorities can freely and unconditionally exercise their duties until the end of the preliminary investigation. At that point, the case has to be transmitted to the President of the Parliament, via the Prosecutor of the Supreme Court. The President of the Parliament is responsible to set up an internal committee in charge of the case. This committee prepares a rapport on the case about the strength and the credibility of the evidence gathered. The Plenary of the Parliament is the responsible body to decide, within a 3-month term, whether there is strong enough evidence and, if this is the case, to give its consent so that the member concerned to face criminal charges and, at a later stage, a public hearing or not. If the Plenary considers that the alleged accusations against one of its members are not strong enough, it shall not give its authorization. So, the procedure stops at that point. All the above provisions must be respected during the period, that the perpetrator is actively member of the Parliament. After the perpetrator has stopped being a member of the Parliament, all the above procedures are not in appliance anymore. Moreover, exception from all the above procedure is provided as soon as a member of the Parliament faces charges of a criminal act, including corruption, having been committed within the previous 48 max. hours.

2. About the Prime Minister and the members of the government, a special law 3162/2003 (in appliance of the Article 86 par. 2 of the Constitution) provides about a special regime regarding the procedures of their prosecution and trial. Judicial authorities can freely and unconditionally



exercise their duties until their investigation finds that a member of the government (former or actual) is implicated. At that point, the case has to be immediately transmitted to the President of the Parliament, via the Prosecutor of the Supreme Court. The Plenary of the Parliament is responsible to consider the alleged accusations in parallel with the strength and the credibility of the evidence collected. If the majority considers it to be strong and liable enough, it gives its authorisation for the creation of a Special Parliamentary (Investigative) Committee, responsible to further investigate the case. Its members are members of the parliament. This committee has all the powers given, by the internal criminal procedural law, to an instructor judge (f.i. examine witnesses; request all relevant necessary documents etc.), being thus able to exercise all its legal powers. After the conclusions of its works, the Special Committee presents before the Plenary its conclusions and suggestions. The Plenary is the responsible body to decide whether the alleged accusations are solid enough; if this is the case, the Plenary gives the green light to prosecute the perpetrator. Moreover, if the plenary votes in favour of the prosecution, the member of the government is going to be tried by a special Court established and composed according to Article 86 of the Constitution. If not, the negative vote of the Plenary terminates, at that point, all relevant procedures. The most controversial issue regarding the application of the above Law remains that all the above judicial and administrative procedures have to take place during the mandate of the Parliament that has occurred immediately after the parliamentary period, when the alleged offence is presumed to have occurred.

It is always possible for a former member of the government to face charges for money laundering, according to the relative articles of Law 3691/2008, which have been recently introduced. In other words, even if the perpetrator cannot face criminal charges for the main offence anymore, for all possible grounds (f.i. because the Parliament has refused to give its authorization), it is still possible for the judicial authorities, if the crime has not succumbed to prescription, to prosecute him for money laundering.

3. With respect to the President of the Republic, Article 49 of the Constitution provides that he/she is not liable for any acts committed in the course of exercising his/her duties, with the exception of high treason and intentional breach of the Constitution.

156. Greece did not provide any statistics but the following case of implementation:

Very recently, a former member of the government (an ex-minister together with some of his relatives and his closest co-operators) has faced criminal charges for money laundering, following the commitment of corruption crimes. Those crimes were committed, when the above minister was serving as Minister of Defence. Although those persons were never brought before justice for their corruption crimes, they have been convicted to several years' imprisonment for money laundering.

**(b) Observations on the implementation of the article**

157. The reviewers recommend that Greece address the scope of immunities and parliamentary privileges, and measures for lifting them, in line with article 30(2) of the UNCAC. In particular, the reviewers urge the swift adoption of the constitutional amendment to article 86 of the Constitution, which establishes the immunity of the Prime Minister and members of Government.

158. Also of concern, as confirmed during the country visit, are provisions in the Omnibus law addressing, inter alia, the immunity of employees in State-owned companies, staff involved in privatization of assets, and others.

159. It was noted that the lifting of parliamentary immunity is extremely rare: of 89 felony cases against ministers sent by prosecutors to Parliament between June 2012 and May 2014, immunities were lifted only once. See also the observations under UNCAC art. 29.

160. As for cases, Greece referred to the above case regarding a conviction for money laundering.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 3**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

161. Greece has provided the following applicable measures on the implementation of the provision under review:

Greece applies the principle of legality. Prosecution is mandatory in principle, there is, however some limited discretion of the public prosecutor to decide against raising criminal charges, provided that the case appears unfounded and there is no adequate factual basis to proceed with. Such discretion is very unlikely to be exercised in corruption cases, which are considered among the ones most hazardous for the public interest. Furthermore, public prosecutors enjoy full independence from the executive power. Most notably, a recent amendment of Article 30(2) of the Code of Criminal Procedure incorporated into the Code a provision (previously found in Article 2(4) of Law 2656/1998), which cancelled the right of the Minister of Justice to postpone or suspend the prosecution of foreign public officials for bribery in the conduct of international business transactions.

162. Greece did not provide any cases of implementation or statistics but indicated that all of the above provisions are applied as a general and fundamental principle of the Greek criminal system, whenever a defendant is brought before justice facing criminal charges. All courts or jurisdictional authorities must search and determine thoroughly and concretely each defendant's personality, his motives and his personal and criminal background. Under the light of those estimations, the court determines the appropriate punishment, so that the convicted would be prevented from committing new crimes in the future.

#### **(b) Observations on the implementation of the article**

163. The Greek authorities explained that there are no obstacles in the application of the provision in question. Greece's legislation is in accordance with the provision under review.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 4**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

164. Greece provided the following information on the implementation of the provision under review:

There are no special provisions regarding defendants accused of corruption crimes. As a result, general rules are in appliance. Articles 282-304 of the Code of Criminal Procedure stipulate that the defendant could be imprisoned in view of his future trial, if a) he is accused of having committed a felony, b) the investigating judge together with the prosecutor consider him being dangerous either to escape, in order to avoid being tried, or to commit more similar or other crimes, in case he remains out of prison, until the time of his trial. Those two general criteria are examined at the stage, when the defendant is called before the investigating judge in order to defend himself. The ones who are going to decide about his release or detention awaiting trial are the investigating judge and the prosecutor. On the other hand, if those two persons consider the defendant does not fulfill the above criteria, they could release him or impose him to some restrictive measures (f.i. to pay a bail, not to flee outside the country, to appear before the police authorities once or twice per month etc.)

In addition Article 497 of the Code of Criminal Procedure stipulates that if the court, which found the defendant guilty, imposes a punishment of imprisonment up to three years, if the defendant appeals against this judgment, his appeal suspends the execution of the penalty imposed. If the penalty, on the other hand, exceeds the above limit, it is the court which is going to decide whether the defendant's appeal will suspend or not the execution of the punishment imposed; if this the case the court will also decide under what conditions the execution of the punishment is being suspended.

165. Greece did not provide any cases of implementation or statistics but indicated that as a rule, in serious corruption cases, the defendants are deprived of their personal liberty in view of their trial, because they are considered to be dangerous, either to escape from the country, or to commit similar crimes.

#### **(b) Observations on the implementation of the article**

166. Greece's legislation is in accordance with the provision under review.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 5**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

167. Greece provided the following applicable measures on the implementation of the provision under review:

The gravity of the offences concerned is already taken into account at the stage where the Court determines the applicable penalties, since the timing of granting conditional release is directly dependent on the nature and severity of the penalty imposed. Articles 105-110A of the Penal Code establish the procedures regarding the conditional release or release on parole of persons convicted. As a general rule, the criteria examined for a convicted to be conditionally released are: a) his/her behaviour during detention and b) the serving of the legally required minimum limits. These limits fluctuate depending on the penalty imposed (2/5 of served time, if the penalty is imprisonment of up to 5 years, 3/5 of served time if the penalty is incarceration of up to 20 years, etc.).

168. Greece did not provide any cases of implementation or statistics but indicated that, as described above, convicted persons are conditionally released or released on parole on the basis of their behavior during the period of their detention and the serving of the required minimum limits, which depend on the length of the sentence imposed.

**(b) Observations on the implementation of the article**

169. Greek authorities explained that the 20-year period of imprisonment was mentioned because it is the maximum period of incarceration provided for by the law in case of a felony other than life imprisonment. If several offences are committed concurrently, the maximum penalty imposed may reach 25 years. In all cases convicted persons must serve 3/5 of their sentence before they are eligible for parole. If the penalty is life imprisonment, then the convict must serve at least 20 years. There are special provisions for older and severely sick convicts, for mothers with babies, as well as for prisoners working in prison. Greece added that these are standard provisions applied on a daily basis within the Greek criminal justice system.

170. Greece's legislation is in accordance with the provision under review.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 6**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

171. Greece provided the following applicable measures on the implementation of the provision under review:

As a rule, all Public Prosecutor' Offices across the country are obliged to notify immediately all competent authorities of the prosecutions made against persons, who are civil servants either at the time the offense was committed, or at the time the perpetrator was prosecuted. The prosecution made against civil servants entails significant consequences regarding the civil servants' functional and personal status.

Furthermore, according to Article 103 of Law 3528/2007 ("Code of Civil Servants") a civil servant is being automatically suspended of his duties a) if he is deprived of his personal freedom following the verdict of a first or second instance judicial authority or during a still ongoing criminal procedure, b) if he is irrevocably indicted for some categories of crimes, including forgery, embezzlement, breach of trust, fraud, bribery, extortion, theft etc., or c) if he is disciplinarily charged of the commission of one of the above disciplinary offences.

Article 107 of Law 3584/2007 ("Code of Civil Servants of the primary and secondary municipal authorities") provides exactly the same about the civil servants of the primary and secondary level municipal or local authorities.

Similar provisions are in appliance regarding the law enforcement authorities' personnel (police or coast guard officers, firemen etc.)

Article 57 of Law 1756/1988 ("Code on the Justice organization and the official status of Judges and Prosecutors") provides that a judge or a prosecutor:

- a) Is being automatically suspended of his duties as soon as he is deprived of his personal freedom following the verdict of a first or second instance judicial authority or during a still ongoing criminal procedure, even if, later, was conditionally released from prison;
- b) Could be suspended of his duties if charges have been brought against him of having committed different categories of crimes, including many of them, which could be linked with corruption (fraud, forgery, extortion, bribery, venality, theft, embezzlement, disloyal malpractice, infidelity etc.); the suspension is ordered by force of a Presidential Decree, following a relative opinion from the Court of Cassation.

In all the above mentioned cases, (all kinds of) civil servants, judges or prosecutors who are later acquitted of the alleged accusations, by force of irrevocable judgments, they are being automatically accepted back to their previous positions, without prejudice to their rights to have a complete and retroactive restoration of their personal status as civil servants.

172. Greece indicated that the above provisions are applied at all cases, when a civil servant faces one of the legally prescribed criminal charges; the civil servant is immediately removed from the exercise of his duties. This suspension remains in force until he is irrevocably acquitted. During this suspension, the accused is not considered as a civil servant, but as a private. After his being irrevocably convicted by the courts, his suspension becomes definitive; he is permanently removed and deprived of his duties and, at the same time, becomes liable for all (material and/or immaterial) damage caused to the state and/or to separate individuals through his/her criminal acts. Oppositely, if the accused civil servant is acquitted, he/she is accepted back to his/her previous position; the state authorities are required to grant him a full and

retroactive restoration to all material and personal losses or damage he suffered during the period of his suspension.

**(b) Observations on the implementation of the article**

173. The Greek legal system contemplates the suspension and removal from duty of public officials accused of offences. The reassignment to another position is not provided, however. Greek authorities explained that the suspension from duty of public officials accused of an offence established in accordance with the Convention *is* provided for in Greek law and constitutes standard practice. In this context the authorities further explained that suspension should be seen as a measure much more drastic and effective than the simple transfer of the person in question. Greece also stressed that dismissal of convicted officials is also foreseen under Greek law.

174. The reviewers recommend that Greece consider adopting measures to provide for the reassignment of public officials accused of corruption-related offences.

175. Based on the discussion during the country visit, it is further recommended that Greece adopt measures to enhance the efficiency of removal and suspension of public officials accused of corruption-related offences.

**Article 30 Prosecution, adjudication and sanctions**

**Subparagraph 7 (a)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office; and*

**(a) Summary of information relevant to reviewing the implementation of the article**

176. Greece indicated that as already mentioned in the given answer regarding article 30 par. 1 UNCAC, the court is forced to impose or can impose to the author the penalty of deprivation of civil rights for a specific period of time (Articles 59, 60, 61, 62 and 63 PC). Namely: a) if the defendant is convicted to a life sentence, his civil rights are durably deprived, b) if he is convicted to an imprisonment sentence between 5 and 20 years, his civil rights are deprived for a period between 2 to 10 years and c) if he is convicted to an imprisonment sentence between 1 and 5 years, his civil rights could be deprived for a period between 1 to 5 years, if the court considers that the crime, for which the defendant has been convicted, was committed by means showing the author's lack of morale.

177. According to Article 63 PC, the deprivation of civil rights means that the convicted person, among others a) cannot hold any kind of public position, including to the municipal authorities and the armed forces, b) cannot be an attorney or a juror and c) is deprived of his rights to elect or be elected.

178. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

179. Greece's legislation is in accordance with the provision under review.

**Article 30 Prosecution, adjudication and sanctions**

**Subparagraph 7 (b)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(b) Holding office in an enterprise owned in whole or in part by the State.*

**(a) Summary of information relevant to reviewing the implementation of the article**

180. Greece indicated that it has partly implemented this provision of the Convention. It was explained that in general, in most enterprises owned exclusively or mainly by the State, but managed according to the rules applied in private enterprises, the company's internal recruiting regulations require a clear criminal record, as a preliminary condition for an employee to be hired and/or continue to be employed.

181. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

182. The reviewers recommend Greece to consider adopting measures to ensure the full implementation of this provision.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 8**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

**(a) Summary of information relevant to reviewing the implementation of the article**

183. Greece provided the following applicable measures on the implementation of the provision under review:

As already mentioned, disciplinary procedures exist and function separately from the criminal ones. As a rule, both procedures run in parallel and independently from each other. Law 3528/2007 ("Code of Civil Servants") is entitled to provide all relevant procedures dealing with

the disciplinary process against a civil servant, who faces a charge of having committed a disciplinary offence. Law 3584/2007 (“Code of Civil Servants of the primary and secondary municipal authorities”) is the second legislative tool dealing with the disciplinary process against a civil servant of the municipal or local authorities, who faces a charge of having committed a disciplinary offence.

Besides, in the Greek legal order, the notion of the “disciplinary offence” covers a much wider range than the criminal act. As a “disciplinary offence” is meant not only every act or behavior, which is criminalized, according either to the Penal Code, or any other criminal law, but also many other acts characterized as minor or just “disciplinary” offences. Namely, all criminal acts are, at the same time, disciplinary offences as well, but all disciplinary offences are not necessarily criminal acts too.

Finally, penal and disciplinary procedures are two completely separate and distinguished procedures that co-exist and run in parallel to each other inside the internal legal system. They function under different rules, judging persons and procedures and completely independently from each other.

184. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article and good practice**

185. The reviewers note with satisfaction that the Greek legislation provides for disciplinary offences that encompass a wider range of conduct than criminal acts. Greece’s legislation is in accordance with the provision under review.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 10**

*10. States Parties shall endeavor to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

186. Greece indicated that Articles 81 and 82 of Law 2776/1999 (“Penitentiary Code”) and Presidential Decree 300/2003 provide all relevant rules dealing with this subject. The State, through its existing organs and mechanisms, is in charge of the proper reintegration into society of all persons having been convicted for all sorts of crimes, including the ones established in accordance with the UNCAC. A state-controlled (through the Ministry of Justice) legal person named “Return” (“*Epanodos*”) has been established in order to facilitate the professional training of the released persons, their social reintegration and economic support.

187. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

188. Greece’s legislation is in accordance with the provision under review. No statistics on implementation were provided.



## **Article 31 Freezing, seizure and confiscation**

### **Subparagraph 1 (a)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

189. Greece cited the following domestic laws on the implementation of the provision under review:

#### LAW 3691/2008 Article 46 Confiscation of assets

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

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

#### PENAL CODE Article 76 Confiscation

1. Objects that are proceeds from a felony or misdemeanour that is covered by intent, as well as the price of the proceeds, anything acquired through such proceeds and additionally objects that were of use or were destined to be used in the performance of such act may be confiscated if they belong to the principal or to anyone of the accomplices. As far as other punishable acts are concerned, this measure may be taken only when the law specifically provides so.

2. If danger for the public order results from such objects, the imposition of confiscation is mandatory for the bearer, even without prior conviction of any person for the act committed. Confiscation is also executed against the heirs, if the decision was made irrevocable while the person against whom confiscation was announced was still alive. If, prior to the confiscation, conviction of any person did not take place or prosecution was not possible, confiscation is ordered either by the court that adjudicated on the case or by the court of misdemeanours following a proposal by the public prosecutor.

3. In all cases of confiscation, the court decides whether the objects that were confiscated should be destroyed or not.

#### PENAL CODE Article 238 Sequestration of gifts

1. In cases covered by articles 235 – 237B, the decision orders the sequestration of gifts that were offered and of any other assets given, as well as those acquired directly or indirectly by them. If such proceeds have been intermingled with property acquired from legitimate sources, such property shall be liable to confiscation up to the assessed value of the intermingled proceeds. Income or other benefits derived from such proceeds, from

property by which such proceeds have been acquired or from property with which such proceeds have been intermingled shall also be liable to forfeiture to the same extent as proceeds of crime.

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

190. Greece provided the following case of implementation indicating that the majority of investigations encounter more than one type of assets in accordance with article 31 of the Convention:

A former Minister of National Defence, acting in violation of his duties, requested and received a promise of benefits (money), for the purpose of acting in the context of his duties, specifically for assigning the procurement and the repair of submarines and the procurement of arm systems, benefits which he eventually received before and after contract conclusion, exceeding the amount of €150,000. He was a member of an organization which intended to commit laundering of money coming from criminal activity, consisting of the crime of continuous passive bribery against the Greek State, gaining the said benefit and respectively damaging the Greek State. In the context of such organization and for the purpose of attaining its objectives, among others, he acted jointly with his other co-defendants and set up a complex network of domestic and offshore companies through which they realized numerous acts of money laundering by concealing, converting, possessing, obtaining or managing parts of such property, being well aware that it originated from the above illegal act of passive bribery. They also committed a number of money laundering acts, by making a lot of movements and transactions with many credit institutions, for the transfer of such property from abroad into Greece, intending to alienate the traces of the funds from their origin and to prevent their tracking from the controlling authorities in Greece where to the said property was ultimately transferred. To achieve their said target, they realized a number of transactions, using many bank accounts kept with different banks in and out of Greece and several intermediaries alleged beneficiaries, natural and legal persons, through which the bribes were moved in and out Greece, were invested, were used for the acquisition of real estate by the above and other persons or circulated within credit institutions towards obscurity.

The above former Minister was convicted (along with 16 more defendants) to 20 years in prison for money laundering committed repeatedly, and is currently serving his sentence in the Korydallos Judicial Prison. The court held that the former Minister committed the crime of bribery, demanding promises for benefits throughout the term of his office (1997-2001) at the Greek Ministry of Defence, both for the submarines and the TOR M1 anti-missile systems, with amounts exceeding EUR 55.000.000, which, at least for a decade, were paid to him gradually, until 2007, through bank transfers, offshore companies and intermediaries, including a Cypriot, former Minister of Foreign Affairs, together with his son.

In the context of this case, movable and immovable property amounting to 20.000.000 euros has been confiscated, at first instance, on the judgment of the Court, in favour of the Greek State.

**(b) Observations on the implementation of the article**

191. The reviewers note that not all UNCAC offences qualify for purposes of confiscation under the framework of the special provisions contained in Law 3691/2008, article 46, and article 238 CC. It was explained that offences that do not fall therein, including other UNCAC offences, are covered by the general provision of article 76 CC to qualify for confiscation. However, it is

noted that article 76 is limited to the confiscation of property belonging to the principal or an accomplice in the offence. It is therefore recommended that Greece ensure that all offences under the Convention are included among offences subject to the measures covered by the article under review, regardless of the ownership of the property involved.

192. Furthermore, it is noted that the scope of covered property varies across the Criminal Code (objects of crime and gifts), the Anti-Money Laundering Law (means) and Law 3296 (“assets, property or means”). The reviewers encourage Greece to harmonize the relevant definitions of property in the framework of confiscation and to ensure that all property referred to in UNCAC art. 31 is covered.

193. Value based confiscation is addressed in the Criminal Code (article 76 on confiscation) and the Anti-Money Laundering Law.

## **Article 31 Freezing, seizure and confiscation**

### **Subparagraph 1 (b)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

194. Greece cited the following measures on the implementation of the provision under review:

Law 3691/2008, Article 46: Confiscation of assets  
PENAL CODE, Article 76: Confiscation

195. Greece indicated that the majority of investigations encounter more than one type of assets in accordance with article 31 of the Convention.

#### **(b) Observations on the implementation of the article**

196. The reviewers note that no statistics have been provided.

197. The same recommendations made in the previous paragraph also apply here.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

198. Greece provided the following applicable measures on the implementation of the provision under review:

As regards the identification and tracking of assets, in 2010, by virtue of Article 88 of Law 3842/2010, the Greek Asset Recovery Office (ARO), Department D' for "Recovery of Assets and funds derived from criminal activities", has been established, as a part of the Third Directorate of Special Cases of the Central Service of the Financial and Economic Crime Unit (S.D.O.E.). Department D' (Asset Recovery Office) is the designated National Office for the Recovery of Capital and Assets according to Article 1 of EU Council Decision 2007/845/JHA and as contact point with the corresponding departments of the EU Member States via the CARIN (CAMDEN ASSETS RECOVERY INTER - AGENCY NETWORK). Department D' works with the corresponding departments of the Member States of the European Union to detect, and trace together with the Greek authorities, proceeds and other assets deriving from cross border criminal activities and which may be the subject of legal assistance for freezing, seizure or confiscation in criminal cases and in implementation of Decision 2007/845/JHA as well as (a) Council Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of assets, (b) Council Framework Decision 2003/577/JHA, (c) Council Framework Decision 2005/212/JHA, (d) Council Framework Decision 2006/783/JHA and (e) Council Framework Decision 2006/960/JHA.

At the time of review, the department was staffed by 3 tax officers and a Head Officer.

As regards the seizure and freezing of assets, the following provisions apply:

**LAW 3296/2004 Article 30**

SDOE staff and officials have the right to seize assets or property or means used in criminal activities in order to safeguard the public interest or in cases of financial crime and large-scale tax evasion and smuggling, freeze bank accounts and assets, by written order of the service director, with the obligation to inform of the action within 24 hours the competent Prosecutor.

**LAW 3691/2008, Article 48**

**Freezing and prohibition of sale of assets**

1. During a regular investigation for the offences referred to in Article 2, the investigating judge may, with the consent of the public prosecutor, freeze any accounts, securities or financial products kept at a credit or financial institution, as well as any safe deposit boxes of the accused, including those owned jointly with any other person, provided that there are well-founded suspicions that these accounts, securities, financial products or safe deposit boxes contain money or things derived from the commission of the offences referred to in Article 2. The same applies when a predicate offence is investigated and there are well-founded suspicions that the accounts, securities, financial products or safe deposit boxes contain money or things derived from the commission of the above offence or are subject to confiscation according to Article 46 above. In case of a preliminary examination or investigation, freezing of accounts, securities, financial products or safe deposit boxes may be ordered by the judicial council. The order of the investigating judge or the decree of the judicial council has the power of a seizure report and is issued without prior summoning of the accused or third person. It is not necessary that the order mentions any specific account, security, financial product or safe deposit box and shall be served upon the accused and the compliance officer of the credit or financial institution referred to in Article 44, paragraph 1 above or to the manager of the branch where the investigating judge or the public prosecutor is based. In case of jointly owned accounts, securities, financial products or safe deposit boxes, it shall also be served upon the third person.

2. The freezing referred to in the preceding paragraph applies from the time of service of the order of the investigating judge or the decree of the judicial council upon the credit or financial institution. From this time, the safe deposit box may not be opened and any withdrawal of money from an account or any sale of securities or financial products shall be null and void against the State. Any management officer or employee of the credit

or financial institution who intentionally violates the provisions of this paragraph shall be punished with a term of imprisonment up to 2 years and a pecuniary penalty.

3. If the conditions of paragraph 1 of this article are met, the investigating judge or the judicial council may prohibit the sale of a specific real estate of the accused. The order of the investigating judge or the decree of the judicial council shall have the power of a seizure report, shall be issued without prior summoning of the accused and served upon the accused and the competent registrar, who shall make a note in the appropriate books the same day and file the document served upon him. A decision of the Minister of Justice specifies the details for the implementation of this provision. Any juridical act, mortgage, attachment or other act registered by the mortgage registry after the registration of the above note shall be null and void against the State.

4. The accused, the person suspected of committing the offences referred to in Articles 2 and 3 and the third person shall have the right to demand the revocation of the investigating judge's order or of the judicial council's indictment, by an application addressed to the competent judicial council and filed with the investigating judge or the public prosecutor within 20 days from service of the order or indictment. The investigating judge may not be a member of the judicial council. The submission of the application and the relevant time limit shall not suspend the enforcement of the order or indictment. The order or indictment may be revoked if new evidence surfaces.

5. Where the FIU conducts an investigation, in emergencies, the President of the Authority may order the freezing of accounts, securities, financial products or safe deposit boxes, or the prohibition of sale or transfer of any asset, subject to the conditions of paras.1-3 of this article. The data concerning such freezing and the case file shall be transmitted to the competent Public Prosecutor. This shall not prevent the continuation of the investigation by the Authority. Any person affected by such freezing shall have the rights provided for in para. 4 of this article.

6. The provisions of this article shall apply by way of analogy, in addition to credit and financial institutions, also to the other obliged persons referred to in Article 5.

LAW 4022/2011 Article 2

6. The investigating judge may, with the consent of the public prosecutor, freeze any accounts, securities or financial products kept at a credit or financial institution, as well as any safe deposit boxes of the accused, including those owned jointly with any other person, provided that there are well-founded suspicions that these accounts, securities, financial products or safe deposit boxes contain money or things derived from the commission of the investigated offence. With the same provision accounts and amounts necessary to cover general living expenses of the defendant and his family, expenses for legal support and basic expenses for maintaining the above frozen elements may be excluded from freezing. The order of the investigating judge has the power of a seizure report and shall be served upon the accused and the compliance officer of the credit or financial institution. In case of jointly owned accounts, securities, financial products or safe deposit boxes, it shall also be served upon the third person. The freezing applies from the time of service of the order of the investigating judge upon the credit or financial institution. From this time, the safe deposit box may not be opened and any withdrawal of money from an account or any sale of securities or financial products shall be null and void against the State. The accused and the third person shall have the right to demand the revocation of the investigating judge's order by an application addressed to the judicial council and filed to the investigating judge or the public prosecutor within 10 days from service of the order. The investigating judge may not be a member of the above judicial council. The submission of the application and the relevant time limit shall not suspend the enforcement of the order. The order may be revoked if new evidence surfaces.

199. Greece provided the following statistics and cases of implementation:

On behalf of the FIU, the following are the statistical data for 2013:

Predicate Offence	Amount of money/Value of property Frozen		
	2011	2012	2013
Tax evasion		97.931.473 €	73.010.830,00 €
Any other offence punishable by deprivation of liberty for a minimum of		125.240.587 €	124.395.382,00 €

more than six months and having generated any type of economic benefit			
Computer fraud			1.535.000,00 €
Codified Law on narcotic drugs			1.161.569,00 €
Protection of the financial interests of the European Communities		5.282.721 €	33.500,00 €
Passive Bribery		957.750 €	
Participation in an organized criminal group		8.788.139 €	
Group trafficking in human beings		72.288 €	
<b>Total</b>	<b>223.982.146 €</b>	<b>238.272.958 €</b>	<b>200.136.281,00 €</b>

**(b) Observations on the implementation of the article**

200. Regarding the application of the present provision, Greece provided the following examples of cases, taking into account that the majority of investigations encounter more than one type of assets in accordance with article 31 of the Convention.

201. Case 1: The spouse of a foreign (central Asia) Political Exposed Person (PEP) opened a bank account in a Greek bank. As there were indications that the PEP was involved in a bribery case in his homeland the bank filed an STR to the FIU. The Greek FIU cross-checked the subjects in the PEP commercial database (World-Check), where it was found that indeed the subject was a PEP as he had worked for many years in various high ranked public posts. Moreover, in the PEP commercial database it was referenced that he had been charged for bribery, extortion, embezzlement, money laundering and other offences. Through the Egmont Secure Web system, the FIU contacted the foreign FIU in central Asia in order to acquire further information for the persons under investigation. There was also an order by the President of the FIU to lift banking, capital market and tax secrecy. The total illicit assets the accused gained from criminal activities exceeded the amount of €240.000.000. The spouse of the PEP accepted illicit assets, knowing at the time of receipt that such property derived from criminal activities and realized numerous transactions in credit institutions in order to transfer the property abroad, conceal the illegal origin and prevent the tracing of illicit proceeds. The spouse was also found to be the beneficial owner of companies, which owned immovable property in Greece. After the completion of the investigation a freezing order was issued by the President of the FIU for the amount of €355.000 traced in a bank account of a Greek credit institution, two real estate properties and a safe deposit box. The case was sent to the public prosecutor for money laundering with the predicate offence of setting up and participating in a criminal organization and for corruption

202. Case 2: The owners of a number of power companies - suppliers, acting as trustees who had the power to represent the Greek State, were collecting monies totally amounting to 254,470,244.86 euro, which they should refund to the Greek State; however, they did not. On the contrary, they appear to have misappropriated the same and incorporated them into their personal properties. The said persons had allegedly set up and participated in a criminal group, deliberately intending to utilize (Greek and international) credit institutions for the placement

and movement of proceeds originating from criminal activities, they attempted to confer some semblance of legality to the said proceeds which came from the criminal acts committed by the accused parties (misappropriation of funds and smuggling) against the Greek State, having formed a suitable infrastructure (incorporation and use of numerous offshore companies in many countries around the world, conclusion of a lot of sham contracts to justify thereby bank transactions with particularly high amounts of money, sham transfers, buyouts of companies etc.) having the intention to repeatedly commit their acts for the purpose of gaining income. The said persons have been referred to trial, charged with: a) misappropriation of funds by a trustee against the State, jointly and severally committed repeatedly, under aggravating circumstances (specific conditions of criminal activity, particularly high-valued subject) wherefrom the benefit attained by the offender or the damage suffered by or threatened for the State exceeds the amount of €150,000, b) smuggling, from which the duties, taxes and other charges deprived by the State, exceed the amount of 150,000 euro, jointly and continuously committed and c) money laundering, through the establishment of a group of at least two members, for the commission of one or more acts among those mentioned in point (d) of Law 3691/2008, professionally committed, on account for the benefit of and within the context of a criminal group. In the framework of this case, the amount of €170,000,000 has been frozen in Greek and international banks in favor of the Greek State.

203. Case 3: Company A, an international industrial company, joined with Company B in a consortium, to take an order to supply submarines to Greece, a fact which took place on 15/2/2000. On 31/5/2002, an additional contract was concluded between the consortium and the Greek State. The value of both contracts amounted to approximately 2,06 billion euros. To secure these two orders, bribery payments were apparently made, in agreement with the managers of Company A, to the critical decision makers in Greece. In this context, Company A allegedly made, during the years 2000 to 2007, illegal payments of at least 60.000.000 euros. To conceal the methods for the payment of this illegal money, intermediaries and companies intervened, which have transferred part of the money to the decision makers. In the context of this case, movable and immovable property, amounting to 10.000.000 euros, has been seized in favor of the Greek State, while three persons have been held as pre-trial detainees.
204. Case 4: The Financial and Economic Crime (SDOE) investigated the behavior of a doctor working in a public hospital, who apparently received undue benefits for performing his duties. The investigation, which included opening the person's bank accounts, found out that there was a 3.000.000 Euro difference in the assets that were legally declared by the doctor in question. After this he was charged with money laundering, passive bribery and abuse of duty. During the investigation, SDOE froze a number of bank accounts with 718.962 €, 42.010 \$, and 29.782 £ in total, as well as 3 immovable properties of a significant value.
205. Greece's legislation is in accordance with the provision under review.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 3**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

206. Greece cited the following domestic laws on the implementation of the provision under review:

Code of Criminal Procedure Article 266  
Physical custody of confiscated assets

1. Confiscated assets shall be surrendered for physical custody to the court clerk, unless their physical custody by the clerk is not possible, in which case the investigating official shall order for their physical custody into another area and shall appoint a competent and trustworthy custodian. Money or other valuables shall be deposited with the Deposit and Loan Fund according to the provisions applicable to its operations.

2. The delivery report shall make reference to the custodian's obligation to secure the assets and to surrender the same whenever requested by the court authority. The investigating officer may impose the payment of a bond by the custodian, to be deposited to the clerk of the first instance court or the court of the peace in his place of residence.

3. When five years elapse from the confiscation of the assets mentioned in para. 1 with no irrevocable judgment being rendered for their fate, they shall be destroyed if they are useless, valueless or worthless. Their destruction shall be decided when it is ascertained that they have no evidentiary effect by a committee comprising: a) a public prosecutor or deputy public prosecutor of the first instance court, appointed with his substitute by the competent directing public prosecutor and b) a clerk of the competent first instance court and a clerk of the public prosecutor's office, appointed with their substitutes by the president and the public prosecutor of the first instance court respectively.

Filthy or hazardous items are destroyed even when five years from their confiscation has not elapsed. Arms and ammunition are surrendered to the competent military office upon a written notice of the public prosecutor. A related delivery protocol is prepared.

207. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

208. Greece made a reference to the new Law 4312/2014 regarding the deposits and loans fund and provided the following example regarding the administration of seized assets. In the context of the preliminary and interrogatory investigation of a series of corruption cases in the armaments sector, it was made possible to credit to a bank account opened by the Minister of Finance, upon recommendation of the Public Prosecution for Crimes of Corruption, in favour of the Greek State, by the persons accused in these cases for the offences, inter alia, of corruption and money laundering, the amount of approximately EUR 40.000.000, which was made available, directly from the competent services of the Greek State, for educational and health programmes for the benefit of the Greek citizens.

209. The reviewers note the different mechanisms which exist to administer frozen, seized and confiscated assets. They encourage Greece to continue to take measures to strengthen the administration of frozen, seized and confiscated assets.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 4**



*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

210. Greece cited the following domestic laws on the implementation of the provision under review:

LAW 3691/2008, Article 46: Confiscation of assets  
PENAL CODE Article 238 Sequestration of gifts  
LAW 3213/2003, Article 9, par. 3. a.: General criminal provisions.

LAW 3213/2003 Article 9

3. d. If the assets that are to be confiscated under the above provisions are no longer in existence, have not been found, may not possibly be confiscated or belong to a third party against whom no confiscation can be imposed, then some property assets of the offender shall be confiscated, having an equal value with the former at the time of the convicting judgment, as the same is specified by the court. The court may also impose a monetary fine up to the value of the assets, if the court finds that there are no more assets that could be confiscated, or that the existing assets have a lesser value than the ones that are subject to confiscation.

**(b) Observations on the implementation of the article**

211. Greece previously provided cases of implementation which refer to transformed and converted assets.

212. Greece's legislation is in accordance with the provision under review, bearing in mind the recommendation made under paragraph 1 of article 31.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 5**

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

213. Greece referred to the following domestic laws on the implementation of the provision under review:

LAW 3691/2008, Article 46: Confiscation of assets,  
LAW 3213/2003, Article 9, par. 3. a.: General criminal provisions  
PENAL CODE, Article 238: Sequestration of gifts

214. Greece did not provide any statistics but the following case of implementation designating access to State aid by presenting a sham own participation (Sham Share Capital Increase).

Company A' submitted an application for its subjection to a development program totally

amounting to 8.000.000€ with a state aid contribution of 50%. Under the state aid terms, Company A' should proceed with a Share Capital Increase at least equal to its own participation, i.e. 4.000.000€. An officer of Company A' deposited approx. 1.000.000€ to the Company's bank account. Within a few minutes, the said amount was partly or totally 'deposited' and withdrawn through offsetting entries by company officers to make it look as if all the amount that was required for the Share Capital Increase was deposited to the Company's bank account. At the end of the day, the account balance was approximately zero. The General Meeting decided for the Share Capital Increase and the Board of Directors of Company A' certified the existence of the required capital, on the basis of the slips for the said deposits. On the basis of the new increased Share Capital of Company A' the state aid application was approved. Upon the certification of project completion, the Bank of Greece received a payment order. The Bank of Greece made the payment by depositing the amount to the Company A's bank account. The state aid amount was withdrawn in installments and was channeled to the personal accounts of the Company's Directors and their relatives and to an account of its affiliated Company B'. The officers of Company A' used manipulations and managed to show that they made a (real) deposit of the amount of its own participation, aiming at gaining access to the amount of the state aid. In this way, a damage was caused for the State, at least equal to the amount of the state aid. By making offsetting deposits - withdrawals to/from a bank account within a very short period of time (on the same day) they placed money to personal bank accounts and to accounts of intermediate natural and legal persons (layering). Finally, a part of the criminal proceeds were integrated into property legally possessed by the offenders (integration). It has not become feasible to confiscate the criminal proceeds as such. Confiscation of equally valued assets has been ordered (real property).

**(b) Observations on the implementation of the article**

215. Greece's legislation is in accordance with the provision under review, bearing in mind the recommendation made under paragraph 1 of article 31.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 6**

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

**(a) Summary of information relevant to reviewing the implementation of the article**

216. Greece cited the following domestic laws on the implementation of the provision under review:

Law 3691/2008, Article 46: Confiscation of assets,  
PENAL CODE, Article 238: Sequestration of gifts  
Law 3213/2003, Article 9, par. 3. a.: General criminal provisions.

217. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

218. Greece's legislation is in accordance with the provision under review, bearing in mind the recommendation made under paragraph 1 of article 31.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 7**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

219. Greece cited the following domestic laws on the implementation of the provision under review:

LAW 4022/2011 Article 1

5. The investigating judge and the Public Prosecutor for Corruption crimes have access to all information or evidence that involves or is useful for their tasks and they are not subject to the restrictions of legislation applicable to tax, banking, stock exchange and any other secrecy. They also have access to all the personal records kept and processed by Public Authorities or Organizations. Similarly, they may justifiably order the lifting of tax, banking and stock exchange secrecy. Such order must make reference to the person who is related with the case under investigation and include the exact time period for which the lifting shall apply, which may not be longer than one month. When it is deemed that the lifting must last longer, the said officials have to introduce the matter before the Court Council, otherwise the validity of the said order shall cease ex officio upon the elapse of the monthly period.

LAW 3691/2008 Article 50

Access of the judicial authorities to records and data

In case of a preliminary judicial examination, investigation or trial for the offences referred to in Articles 2 and 3, the public prosecutor, the investigating judge and the court have access to the books and records that the obliged persons are required to keep according to the legislation in force and may attach to the case file only extracts from these books or records containing the entries that concern the investigated person. The accuracy of the extracts shall be certified by the legal representative of the obliged legal entity or by the obliged natural person. The public prosecutor, the investigating judge and the court shall have the right to examine these books and records in order to verify the accuracy of the entries in the extracts or the existence of other entries that concern the aforementioned person. This person may only control the existence of the entries allegedly concerning him.

Article 7B of Law 3691/2008 (as inserted by Law 3932/2011)

Powers of the Units of the (AML) Authority

1. The Units of the Authority shall have access to any records of public authorities or organisations that process data, including Tiresias S.A.

2. During their audits and investigations, the Units may request cooperation and information from natural persons, judicial or investigating authorities, public services, legal persons in public or private law and organisations of any nature. The Units shall acknowledge, in writing or by secure electronic means, receipt of information sent to it and provide the sender of such information with any further input, without prejudice to the confidentiality of investigations or the performance of their own tasks. The Units may also carry out special field reviews, in cases that they consider to be serious, at any public service, organisation and enterprise, if necessary in co-operation with the competent authorities.

3. The Units may request the obligated persons to provide all information required for the performance of their duties, including grouped information about certain categories of transactions or activities of domestic or foreign natural or legal persons or entities. Moreover, they may conduct field reviews in the premises of obligated persons, as appropriate, without prejudice to Articles 9(1), 9A and 19(1) of the Constitution, and shall inform the competent authorities of any failure of obligated persons to comply with their obligations hereunder or where cooperation with them is not satisfactory.
4. During such investigations and audits, no provision requiring banking, capital market, tax or professional secrecy shall be applicable vis-à-vis the Units, without prejudice to the provisions of Articles 212, 261 and 262 of the Code of Criminal Procedure.
5. The Units may cooperate and exchange information with the bodies referred to in Article 40 and keep statistics according to Article 38.

#### Code of Criminal Procedure Article 260

##### Confiscation performed in banks and other institutions

1. The persons listed in article 251 may personally confiscate bonds from banks or other public or private institutions, which are deposited in quantities in a current account, and any other deposited thing or document even when they are deposited in safety boxes, notwithstanding the fact that they may not belong to the defendant or that they are not registered under his name, provided that they are related to the crime.
2. Such persons may research the correspondence and all acts of the bank or institution in order to locate the things that must be confiscated or to verify other circumstances that are useful in determining the truth. In the event of refusal, they perform research and confiscation of useful documents and things.

#### Article 261 Obligation to deliver documents

Civil servants in general, to whom a public service has been assigned even temporarily, and all other persons listed in article 212 are under obligation, if ordered by the person carrying out the investigation, to deliver to the judicial authority the documents, even the originals, as well as any other object that is in their possession because of their service, office or profession, unless they declare in writing, even without reasons, that they refer to a diplomatic or military secret related to state security or a secret relating to their office or profession.

#### Article 262 Confiscation of documents

1. If the person carrying out the confiscation believes that the declaration made in accordance with article 261, referring to a state secret from those listed therein, is not true, he seals the document or secures it in any other way without acquiring knowledge of the contents thereof, and reports to the public prosecutor of the court of appeals who informs the Minister of Justice accordingly; the Minister has the right to either allow confiscation or not, under the reservation of penal and any other liability in the event that the declaration proves to be untrue.
2. Research and confiscation of any document deposited at the Ministry of Foreign Affairs is allowed only upon permission by the ministers of Foreign affairs and Justice, who provide it if, according to their judgement, national interests are not damaged.
3. If the bearer declares that [the documents] refer to a secret of the office or profession of persons listed in article 212 and the person carrying out the confiscation believes that such declaration is not true, the latter seals the document or secures it in any other way, without acquiring knowledge of its contents and requests the board of directors of the relevant association (bar association, medical or pharmaceutical association) or from the relevant metropolitan to assess whether this document contains a professional secret or a confession. In cases when a negative answer is given to this request, the document is confiscated, under the reservation of penal or and other liability in the event that the declaration proves to be untrue.

220. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

221. Regarding statistics, Greece reported that the Financial and Economic Crime Unit (SDOE) has reported that in the year 2014 only, it has ordered the lifting of bank secrecy in **6.625** cases.

222. Greece's legislation is in accordance with the provision under review.

## Article 31 Freezing, seizure and confiscation

### Paragraph 8

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

#### (a) Summary of information relevant to reviewing the implementation of the article

223. Greece cited the following domestic law on the implementation of the provision under review:

LAW 3213/2003 Article 9

General penal provisions

3. b. Any assets that have not been declared in the case of a crime listed in para. 1 and 2 of article 6 (Non submission / Submission of an inaccurate Statement), as long as no application of para. 5 of article 2 has preceded, shall be confiscated under the convicting judgment, unless the offender can prove their legal origin. (amendment by Law 4251/2014)

224. Greece did not provide any cases of implementation or statistics.

#### (b) Observations on the implementation of the article

225. This is an optional provision. Greece's legislation has incorporated relevant provisions on confiscation in the framework of its law on asset declarations in respect of undeclared assets.

## Article 31 Freezing, seizure and confiscation

### Paragraph 9

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

#### (a) Summary of information relevant to reviewing the implementation of the article

226. Greece cited the following domestic law on the implementation of the provision under review:

LAW 3691/2008

Article 46 Confiscation of assets

4. The provisions of Article 310(2) and the last sentence of Article 373 of the Code of Criminal

Procedure shall also apply by way of analogy where confiscation has been ordered against the assets of a third person who was not tried or summoned to the trial.

Article 47 Compensation of the State

2. If the assets referred to in paragraph 1 have been transferred to a third person, the convicted person shall be liable to compensation equal to the value of the assets as at the time of the hearing of the State's action. The above claim may also be raised against a third person who acquired assets without consideration, provided that at the time of acquisition such person was a spouse or lineal relative by blood or a brother/ sister or adopted child

of the convicted person, as well as against any third person who acquired assets after the institution of criminal proceedings against the convicted person for the above crime, provided that at the time of acquisition he was aware of the initiating of criminal proceedings against the convicted person. The third person and the convicted person shall be severally liable.

227. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

228. Greece's legislation is in accordance with the provision under review.

**Article 32 Protection of witnesses, experts and victims**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

229. Greece provided the following applicable measures on the implementation of the article under review:

A comprehensive system for the protection of witnesses, experts and victims was first introduced into the domestic legal order by article 9 of Law 2928/2001 on measures against terrorism.

Subsequent amendments put under the protective scope of this article persons involved in human trafficking, migrant smuggling and eventually (by Law 4254/2014) persons involved in corruption offences. Provision is made for essential witnesses to such offences, persons who collaborate with the authorities and whistleblowers as well as members of their families. The prescribed measures range from extrajudicial protection, starting with police protection in order to ensure that such persons remain physically unharmed, to relocation within and out of the country, with special mention being made to the possibility of transferring a public servant to another unit; to anonymity during both the preliminary inquiry and the court phase of judicial proceedings although, in order to ensure the proper balance of interests, a person may not be condemned only on the basis of an anonymous testimony. The protective regime is granted by ministerial decision upon a proposal by the Public Prosecutor, who needs to specify the measures requested.

The special protective regime is only accorded with the consent of the person concerned and the specific measures taken must not limit his/her personal freedom unduly and beyond what is strictly necessary under the circumstances of the case. They may be removed when the protected person so requests in writing or when s/he does not cooperate with the authorities so as to render them effective.

Law 2928/2001, as amended

Article 9

Protection of witnesses

1. During the criminal procedure for the crimes of formation and participation to a criminal organization as set out in paragraph 1 of article 187 of the Criminal Code and relevant offences, measures may be taken for effectively protecting from potential retaliation or intimidation essential witnesses, persons assisting in the revelation of criminal acts as per article 187A of the Criminal Code and their families.
2. Protective measures are guarding with appropriately trained police personnel, testimony through the use of electronic means of audio and video or only audio transmission, suppression in official transcripts of the name, place of birth, residence and work, profession and age, which are ordered by a reasoned decision of the competent prosecutor, the change of identity data, the transfer of residence to other countries, as well as the transfer or reassignment or relegation for an indefinite period of civil servants, with a possibility of revocal, which are decided notwithstanding other provisions by the competent Ministers after a proposal by the competent prosecutor of the Court of First Instance. The ministerial decision may provide for the non-publication in the Government Gazette as well as other ways to ensure the secrecy of such act. Protective measures are taken with the agreement of the witness, do not limit his/her personal liberty beyond what is necessary for his/her safety and are interrupted if the witness demands this in writing or is uncooperative for their success.
3. The competent institution and the procedure of materializing the protection measures included in the previous paragraph are determined by decision of the Ministers of Finance; Justice, Transparency and Human Rights; Work and Social Security; Health and Social Solidarity; Education, Continuous Learning and Religions; and Citizen Protection.
4. During the course of the proceedings at court, the witness whose identity data were not revealed is called upon with the name that is cited in his/her deposition. If the public prosecutor or one of the parties asks for the revelation of his/her real name, the court issues a reasoned judgment on whether to proceed or not with the revelation. The revelation can also be ordered by the court on its own authority. In any case the court may order what is stipulated in article 354 of the Code of Criminal Procedure.
5. If the identity data of the witness have not been revealed, his/her testimony alone does not suffice for the conviction of the accused.
6. During the criminal process for the offences of trading in human beings according to articles 323, 323A, 323B and 351 of the Criminal Code, as well as for the offences of illegal transport of immigrants according to articles 87 par. 5 and 6 and 88 of Law 3386/2005 (GG 212 A), measures can be taken, according to the provisions of pars 2-4, for the effective protection against possible revenge or intimidation of the victim of such acts, as this victim has been designated according to the provisions of article 1 par. 1(x-xi) of Law 3386/2005, of the relatives of the victim or of substantial witnesses, even if any of the above-mentioned acts had not been committed in the framework of organized crime under the provisions of article 187 par. 1 Criminal Code.
7. In cases involving offences under Articles 159, 159A and 235 to 237A of the Criminal Code, even if not committed in the context of a criminal organization, public interest witnesses under Article 45B of the Code of

Criminal Procedure, private individuals under Article 253B of the Code of Criminal Procedure and any other person who contributes substantially to revealing such offences and, if necessary, persons related to those persons, may receive the protection referred to in paragraphs 1 to 5 from possible acts of intimidation or retaliation.

230. Greece did not provide statistics but explained that statistics remain a challenge for the administration of justice in Greece. Relevant data may be found in the annual reports of the Hellenic Police.

**(b) Observations on the implementation of the article**

231. With regard to Art. 32 par. 2a), the provision of a new residence is possible as a protection measure according to par. 2 of Article 9 of Law 2928/2001, which is construed to provide for this possibility, including the provision of a new residence in a different country.

232. With regard to Art. 32 par. 2b), par. 2 of Article 9 of Law 2928/2001 explicitly provides for the possibility of the use of communication techniques.

233. With regard to Art. 32 par. 4, victims who are witnesses also fall under the protective provisions of Article 9 of Law 2928/2001.

234. With regard to Art. 32 par. 5, Greece stressed that victims have full rights of participation in the criminal proceedings as civil parties.

235. Greece further provided the relevant paragraph of Law 4254/2014 addressing the wider protection of witnesses in corruption cases, which reads as follows:

Subpar. 15.17

2. In Article 9 of Law 2928/2001 (Government Gazette A' 141) the following paragraph 7 is added: "In cases involving offences under Articles 159, 159A and 235 to 237A of the Criminal Code, even if not committed in the context of a criminal organization, public interest witnesses under Article 45B of the Code of Criminal Procedure, private individuals under Article 253B of the Code of Criminal Procedure and any other person who contributes substantially to revealing such offences and, if necessary, persons related to those persons, may receive the protection referred to in paragraphs 1 to 5 from possible acts of intimidation or retaliation."

236. As to the average cost for applying the protection measures, Greece added that this has been calculated to about 750-1000 Euros per person per month, depending on the circumstances of the case and the nature of the measures taken. The above sum normally covers the costs of relocation, housing and basic living expenses, medical coverage, possible educational needs, communication expenses, help to initiate professional occupation etc. Greece further specified that it is impossible to calculate the total costs of protection, since this depends on the number of persons involved in each case, the duration of the measures etc.

237. Greece also added that protection involving the relocation of persons within the national territory has been provided to at least 20 individuals. Greece also highlighted that it has considered entering into agreements with other States for the relocation of persons abroad and has prepared the necessary legislative framework which is under consultation. In the meantime, Greece stressed that there is the possibility to provide such protection on an operational level



through informal arrangements with partner States and that there have been cases where assistance of this kind was provided on a short-term basis.

238. Greece also provided the following case example concerning the protection of witnesses involved in corruption investigations:

239. A businesswoman who traded in precious metals business (gold, silver, etc.), turned to the Internal Affairs department of the Greek police after being blackmailed by a public officer who was demanding money from her. More specifically, the Financial and Economic Crimes Unit (SDOE), had audited her company and proceeded to seize 16 kg of scrap gold, worth about 300,000 euros, on the grounds that they lacked legal documents. A senior executive of SDOE (Head of the competent Control Department), expressed through the businesswoman's lawyer the requirement to pay him 400,000 euros in order to close the audit favourably for her business, return to the businesswoman the confiscated quantity of scrap gold and also ensure the non-execution of future controls against the company. A total of five (5) persons were arrested, against whom criminal proceedings for felony charges were initiated. After the arrest of the perpetrators, the businesswoman applied to the Internal Affairs Department, to be included in a witness protection programme, because she felt concerned for the physical safety of herself and other members of her family and she feared for the security of her home and company facilities. The Internal Affairs Department submitted a positive recommendation to the supervising Prosecutor of the Athens Court of Appeal, who ordered the application of the necessary measures to protect the witness-businesswoman. Following that, the Internal Affairs Department, submitted the order to the Security Division of the Greek Police Headquarters and then the relevant Witness Protection Department undertook all necessary measures to protect the businesswoman.

240. The reviewers note that Greece has measures in place addressing the protection of witnesses, experts and informants in corruption cases. However, the legislation does not seem to cover the protection of witnesses and experts for all UNCAC offences. Specifically, paragraph 7 of Article 9 of Law 2928/2001 is limited to offences of bribery (159, 159A and 235 to 237A CC). It is therefore recommended that Greece strengthen applicable witness protection measures, as well as awareness raising of the new legislation and available protections.

### **Article 33 Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

241. Greece provided the following information on the implementation of the article under review and cited the following domestic laws:

Although the obligation of the State to provide for whistleblowers protection remains an option under UNCAC, Greece has long been working on ensuring effective coverage in all relevant cases. A comprehensive set of provisions specific to corruption has been included in the recent

Law 4254/2014. Not all of them are novel as the Greek legal system already had measures to protect such persons. However, they were scattered among numerous pieces of legislation and were usually ignored both by those who apply the law and by the citizens concerned. Law 4254/2014 has streamlined and codified such provisions; it has furthermore inserted them in the Code of Criminal Procedure and the Civil Service Code respectively, thus ensuring that they are highly visible and easily accessible by both the persons concerned and the prosecuting authorities.

By adding Article 45B to the Code of Criminal Procedure Greece is fulfilling its international obligations and in particular those arising from Article 33 UNCAC (ratified by Law 3666/2008), Article 22 of the Council of Europe Criminal Law Convention on Corruption (ratified by Law 3560/2007) and in recommendations addressed to Greece on the subject by the competent international organizations and in particular the Organization for Economic Cooperation and Development (OECD) as part of the Third Assessment of the application of the OECD Convention on Combating Bribery in International Business Transactions. This is not the only obligation of the Hellenic Republic, which is actively participating in the international community's common attempt to combat corruption. That obligation is supplemented by a host of non-legal binding measures that Greece has committed itself to comply with. They include Chapter 9 of the World Bank's Integrity Compliance Guidelines (2010), Chapter 6 of the OECD Guidelines for multinational enterprises (2008), the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance (2010) and Resolution 1729 (2010) of the Parliamentary Assembly of the Council of Europe. Nor does Greece ignore initiatives by civil society, such as the ICC (International Chamber of Commerce) Rules of Conduct and Recommendations to Combat Extortion and Bribery (2005), the World Economic Forum Principles for Countering Bribery (2005) and the Transparency International Business Principles for Countering Bribery (2003).

Article 45B offers protection against unjustified prosecution of persons who, without involving themselves in the commission of corruption criminal offences, contribute substantially to the discovery of such criminal offences by providing information to the competent prosecuting authorities ('whistleblowers'). It includes significant incentives for persons, who know or conclude on the basis of specific facts that corruption criminal offences are committed, to contribute to their discovery and the prosecution of the offenders. Such persons may be accorded the status of 'whistleblower' by the Public Prosecutor or the Corruption Crimes Prosecutor and enjoy special protection for as long as they have such status.

Permanent abstinence from prosecution against such persons may be possible in case a (defensive) complaint has been filed against them for perjury, false accusations and/or slander. In balancing the conflicting interests of such persons and those persons implicated who may consider that information rendered by the whistleblower may prejudice their honour and reputation, such a decision is always discretionary, granted only in the public interest and, once issued, revocable.

The protection accorded by the new article 45B of the Code of Criminal Procedure is available to all persons involved a criminal case. However, in addition and in general for any person who helps to reveal acts of corruption in the public sector, it was deemed necessary to also ensure the administrative protection of civil servants so that they are not subjected to prejudicial treatment during the time necessary for the judicial investigation of the case. Such protection is entirely relevant to the fundamental obligation of confidentiality of civil servants, because it essentially defines the boundary of the obligation of confidentiality, which must always be exercised in the public interest. Consequently, amendments were made to the Civil Service Code (Law

3528/2007) so as to ensure that no disciplinary or any other internal procedure may be undertaken against an official, who is accorded the status of public interest witness; if any such procedure were to undertaken against officials who made a substantial contribution to the revelation and prosecution of acts of corruption, then the burden of proof is reversed. In addition, the anonymity of any such official is protected during each stage of the ensuing investigation.

Code of Criminal Procedure Article 45B

Abstinance from the prosecution of whistle-blowers

1. In cases involving the criminal offences under Articles 159, 159A, 235, 236, 237 and 237A of the Criminal Code any person who, without being involved in any way in such acts and without aiming at his/her own benefit, contributes substantially, by means of the information he/she provides to the prosecuting authorities, to their uncovering and prosecution, may be characterised as a whistle-blower by act of the competent Public Prosecutor or the Corruption Crimes Prosecutor after an approval of the Deputy Public Prosecutor of the Supreme Court that supervises and coordinates the work of Corruption Crimes Prosecutors. The act of the Prosecutor under the previous paragraph can be revoked in the same manner and at any stage of the criminal proceedings, if the Prosecutor considers that the reasons that led him/her to issue such act do not exist.

2. Where a complaint has been lodged for the criminal offences of perjury, false accusation or slander or violation of official secrecy under the Criminal Code, or acts under Article 22(4) or (8) of Law 2472/1997 in a case relating to the criminal offences referred to in the preceding paragraph, the public prosecutor competent for prosecution shall, before any other action is taken, inform the Deputy Public Prosecutor of the Supreme Court supervising and coordinating the work of the Corruption Crimes Prosecutors.

3. If the competent Deputy Public Prosecutor of the Supreme Court supervising and coordinating the work of Corruption Crimes Prosecutors considers that the prosecution of the criminal offences of perjury, false accusation or slander violation of official secrecy or the crimes under Article 22 (4) or (8) of Law 2472/1997 in respect of which he/she has, in accordance with the preceding paragraph, been informed that an indictment or complaint has been lodged, is not necessary to protect the public interest, he/she may instruct the public prosecutor competent for prosecution to permanently abstain from the prosecution of such acts.'

Law 4254/2014 Article 1 subpar. 15.17 (6)

Amendments to Law 3528/2007 (Civil Service Code)

6. (a) In Article 26 of Law 3258/2007 a new par. 4 is added as follows:

"4. An official who has been designated as a whistle-blower under Article 45B of the Code of Criminal Procedure shall not be omitted from the promotion procedure nor be subject to any disciplinary procedure or be punished, fired or suffer any other adverse discrimination in any way, directly or indirectly, in particular in their career development, movement or placement, during the time needed for the judicial investigation of the case."

(b). In Article 110 of Law 3528/2007 the following paragraph 6 is added:

"6. If in cases relating to offences under Articles 159, 159A, 235, 236, 237 and 237A of the Criminal Code disciplinary action is brought against an official who, by providing information to the prosecuting authorities, contributed substantially to revealing the offences and their prosecution, the disciplinary body must demonstrate that the proceedings brought against the official were not due to his/her substantial contribution."

(c) In Article 125 of Law 3258/2007 the following paragraph 4 is added:

"4. During preliminary investigation of cases involving offences under Articles 159, 159A, 235, 236, 237 and 237A of the Criminal Code, there shall be full protection of the anonymity of officials who, without being involved in any way in committing the above acts or seeking personal gain, make a substantial contribution to revealing and prosecuting the offences, through the information they provide, even if they have not been designated as public interest witnesses under Article 45B of the Code of Criminal Procedure. After the end of the preliminary investigation, the anonymity of the official is protected if he/she falls under the regime of par. 7 of Article 9 of Law 2928/2001."

242. Greece did not provide any cases of implementation or statistics, explaining that the new comprehensive whistleblowing regime, including the new concept of a 'public interest witness', has just come into force and consequently no case-law has been developed as yet. Since the new provisions have scarcely entered into force, statistical data are not yet available.

**(b) Observations on the implementation of the article**

243. Following the country visit, Greece provided above the relevant paragraph of Law 4254/2014 addressing the wider protection of whistleblowers in corruption cases.
244. Greece further gave the full definition of a public interest whistle-blower according to article 45B of the Code of Criminal Procedure, cited above, which covers “any person who, without being involved in any way in (corruption) acts and without aiming at his/her own benefit, contributes substantially, by means of the information he/she provides to the prosecuting authorities, to their uncovering and prosecution”.
245. The concept of ‘public interest whistle-blower’ in Art. 45B CCP is limited to offences of bribery (159, 159A and 235 to 237A of the Criminal Code), while Law 4254/2014 amending the Civil Service Code is limited to public officials. While noting that the Greek legislation addresses to some extent the protection of whistleblowers, Greece is encouraged, as previously stated above for the protection of victims and experts, to continue its efforts to strengthen whistleblower protections, including especially in the private sector, as well as awareness raising of new legislation and available protections.

#### **Article 34 Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

246. Greece cited the following domestic law on the implementation of the article under review:

Law 2957/2001 (FEK A', 260/12.11.2001)

Ratification of the Civil Law Convention on Corruption of the Council of Europe Article fourth

Annulment of legal act

1. Any person who makes a declaration of intent undermined by an act of corruption, in the sense of the present Law, shall be entitled to the right of annulment of the legal act according to the provisions of Articles 154 to 157 of the Civil Code. If the declaration (of intent) is addressed to a third party, who has not participated in the act of corruption, the annulment may be sought only if the addressee of the declaration or any other person directly acquiring rights from it knew or should have known of the act of corruption.
2. The person who has the right of annulment of the legal act due to an act of corruption shall also be entitled, in addition to the annulment of the legal act, to seek restoration of any other damage, according to the provisions of Article second of the present Law or to accept the legal act as valid and seek only restoration of damage.

#### **Related provisions of other treaties**

Article 8 of the Civil Law Convention on Corruption of the Council of Europe Validity of contracts

1. Each Party shall provide in its internal law for any contract or clause of a contract providing for corruption to be null and void.
2. Each Party shall provide in its internal law for the possibility of all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages.

247. Greece did not provide any cases of implementation or statistics but indicated that prior to the conclusion of the UN Convention against Corruption, Greece had already enacted Law No 2957/2001 (publication date and date of coming into force: 12.11.2001) in order to ratify the “Civil Law Convention on Corruption of the Council of Europe”. The ratified Civil Law Convention on Corruption comprises Article 8 (par. 2) (see below), which asks the Contracting Parties to provide in their internal laws for the right of a person, whose consent for the conclusion of a contract has been affected by an act of corruption, to apply to the court for the contract to be declared void. In order to meet the above requirement, the Greek Legislator has introduced the above cited Article fourth of Law No 2957/2001, which satisfies also the measures indicated in Article 34 of the UN Convention. Article fourth has not been implemented so far by the Greek Courts. However, Greek legal theory has already dealt with the issue of the annulment of a contract due to an act of corruption (see Article of Sotirios Ioakeimides, The corruption as ground for annulment of legal acts, published in Chronicles of Private Law 2012, p. 19-29, in Greek as well as Handbook of Apostolos Georgiades, General Principles of Civil Law, 4th edition 2012, in Greek).

**(b) Observations on the implementation of the article**

248. The Greek authorities explained that the Single Public Procurement Authority was created in 2011 by Law 4013/2011. Its purpose is to implement a national and European public procurement law on a uniform, nationwide basis. The various ministries that conduct public procurement in Greece are required to apply the policies and procedures set by the Authority. The Authority regularly provides guidance to other government procuring authorities. An electronic procurement system was also introduced and some of its aspects (e.g. announcements, tender documents, submissions and document) are operational for contracts over EUR 60.000 and are expected to be extended to all public contracts by October 2015.

249. Regarding anti-corruption clauses in Greek public procurement contracts, Greece provided some provisions of the most recent Law 4271/2014 relating to conflicts of interest, integrity clauses in public contracts and exclusion of bidders convicted of corruption (Refer to annex VII).

250. The reviewers note that a national debarment register or blacklist does not exist, but that Greece uses penal records to track convictions and in practice bidders have been excluded from public works (Siemens Case). The reviewers encourage Greece to consider establishing a blacklisting registry.

**Article 35 Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

251. Greece cited the following domestic laws on the implementation of the article under review:

Law 2957/2001 (FEK A', 260/12.11.2001)

Ratification of the Civil Law Convention on Corruption of the Council of Europe

#### Article second Compensation

Any person who has caused damage to another as a result of committing or authorising an act of corruption in the sense of Article 2 of the Convention, ratified by this Law, or as a result of failing to take reasonable steps to prevent it, shall be liable for restoration of damage and for satisfaction of mental distress damage in accordance with the provisions related to torts.

#### Article third

Responsibility of the State and the public law legal entities

1. With regard to acts of corruption, in the sense of the present Law, of public officials, in the exercise of the duties assigned to them, the Administration is liable for damages, except if the act or the omission has infringed a provision, existing exclusively in favour of common interest. The culpable person is severally liable along with the Administration.

2. If an action for miscarriage of justice against a judge, with regard to an act of corruption, has been upheld, the Administration and the culpable person are severally liable for the restoration of damage.

3. The provisions of the first paragraph apply also to the liability of the municipalities, the villages or the other public law legal entities due to acts of corruption of officials being in their service.

#### Related provisions of other treaties

Article 3 of the Civil Law Convention on Corruption of the Council of Europe Compensation for damage

1. Each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage.

2. Such compensation may cover material damage, loss of profits and non-pecuniary loss.

Article 5 of the Civil Law Convention on Corruption of the Council of Europe State responsibility

Each Party shall provide in its internal law for appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State or, in the case of a non-state Party, from that Party's appropriate authorities.

252. Greece did not provide any statistics but cited the following domestic laws and case example of implementation:

Law No 2957/2001, which came into force on 12.11.2001, includes the above cited Articles second and third, which incorporate into Greek Law, accordingly, the provisions of the below cited Articles 3 and 5 of the Civil Law Convention on Corruption of the Council of Europe, ratified by virtue of Law No 2957/2001. Articles second and third of Law No 2957/2001 fall also within the scope of Article 35 of the UNCAC.

#### **(b) Observations on the implementation of the article**

253. Greece's legislation is in accordance with the provision under review.

#### **Article 36 Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal*

*system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

**(a) Summary of information relevant to reviewing the implementation of the article**

254. Greece provided the following applicable measures on the implementation of the provision under review:

There are several law enforcement authorities and bodies in Greece specialized in combating corruption and providing guarantees for efficiency and independence. The most important among them are the following:

**The Public Prosecutor against Corruption (Law 4022/2011 art. 2 as it has been modified by Laws 4139/2013 art. 76 and 4205/2013 art. 8)**

The office of the Public Prosecutor against Corruption Crimes is a newly established Authority and has the specific and full time task to supervise and coordinate preliminary investigations on corruption cases. As it is provided by law, not only prosecution but also interrogation of the following cases has been appointed to special Prosecutors and Judges. Specifically, the Public Prosecutor against Corruption Crimes handles the preliminary hearing and the prosecution and the Judges of Law 4022/2011 handle the judicial investigation of the following cases:

- a) Felonies belonging to the competence of the Court of Appeal acting as a first instance court, which are outside the scope of paragraph 1 of Article 86 of the Constitution and are committed by ministers or deputy ministers or by members of the Greek parliament during their service, even if the perpetrators have ceased to have this position,
- b) Felonies belonging to the competence of the Court of Appeal acting as a first instance court, which are committed by general and specific secretaries of ministries, governors, deputy governors or presidents or managing directors or executive directors of public entities, public enterprises, public institutions and private entities where the administration is directly or indirectly appointed by the State, or by officials according to articles 13a and 263A of the Greek Penal Code, provided that the above mentioned perpetrators commit these felonies during the exercise of their duties or having benefited from their status.
- c) Felonies belonging to the competence of the Court of Appeal acting as a first instance court, which are of great social interest or large public interest, provided that the characterization of the case as such is done by a relevant act of the Prosecutor of the Supreme Court.

There are two such Public Prosecutors against Corruption Crimes at the Courts of Appeal of Athens and Thessaloniki respectively. Each one has been assigned with assistant Prosecutors against Corruption Crimes, but they may also assign to any other public prosecutor of Athens and Thessaloniki respectively to carry out a preliminary investigation on a corruption case (usually of minor importance).

The office of the Public Prosecutor against Corruption Crimes started its operation in June 2013. In 2013-2014 **524 cases** were imported, of which **200 cases** are pending at the preliminary investigation stage.

### **The Financial and Economic Crime Prosecutor (Article 17A of Law 2523/1997)**

The Economic Crime Prosecutor, is also a newly established authority, aimed at investigating and prosecuting cases involving financial damage of the Greek State (Law 3943/2011). The Economic Crime Prosecutor handles mostly tax criminal offences (Law 2523/1997) and is entitled to investigate, prosecute and review any economic crime case either alone or with the cooperation and co-ordination of any other investigating authority (police, special task forces, investigating judges, prosecutors).

### **The Financial and Economic Crime Unit (SDOE) (Article 2 of Presidential decree 85/2005, Article 30 of Law 3296/2004):**

The Financial and Economic Crime Unit (SDOE), is an independent, mixed (interrogative-auditory) service of the Ministry of Finance, headed by an Executive Secretary. The Operation of S.D.O.E is defined by Law 3296/2004 (Article 30) and Presidential Decree 85/2005, as supplemented and amended by Article 88 of Law 3842/2010. The mission of the Financial and Economic Crime Unit (SDOE) is very broad and includes the research, identification and combat of economic offences of particular significance, such as corruption, money laundering frauds, violations related to provisions, grants, illegal stocks trading and other financial transactions, as well as economic frauds against the interests of the Hellenic state and the E.U. regardless of the place of execution of the crime.

More specifically, SDOE's mission consists of the following:

- a) Research, identification and combating of economic offences of particular significance, such as money laundering frauds, violations related to provisions, grants, illegal stocks trading and other financial transactions, as well as economic frauds against the interests of the Hellenic state and the EU, regardless of the place of execution of the crime.
- b) Monitoring the implementation of tax legislation and performing tax audits, especially for withholding taxes focusing on V.A.T. and imposed taxes.
- c) Monitoring the implementation of customs legislation and regulations and performing custom controls, focusing on excise imposed on smoke, fuel, alcohol etc.
- d) Prevention, disclosure and combat of illegal transactions, frauds and criminal activities also when conducted using electronic means, internet and other new technologies (e-crime).
- e) Prevention, bringing to prosecution and combat of other offences, such as drugs, trafficking, weapons and explosives, psychotropic substances, toxic and hazardous substances (radioactive and nuclear materials, toxic wastes etc.), antiquities and objects of great cultural value.
- f) Performing on the spot controls for combatting tax fraud and smuggling.
- g) Surveillance of coastal and marine areas and protection, in collaboration with other competent Authorities, of the coastline and beaches as well as exchangeable and public property, owned by the Ministry of Finance, from arbitrary violations and construction thereon.

SDOE staff and officials have authority to access every information or data concerning or related with the execution of their duties. Also SDOE officials have an autonomous (without any further permission or order) right to lift bank and tax secrets, only being compelled to respect the confidentiality provisions (Presidential Decree 85/2005, Article 2 paragraph 3).

SDOE staff and officials have the right to seize assets or property or means used in criminal activities in order to safeguard the public interest or in cases of financial crime and large-scale tax evasion and smuggling, freeze bank accounts and assets, by written order of the service director, with the obligation to inform of the action within 24 hours the competent Prosecutor



(Article 30 of Law 3296/04).

Furthermore, S.D.O.E. as law enforcement authority proceeds to arrests and interrogations of persons and searches of transportation, goods, persons, stores, warehouses, houses and other areas, as well as to conduction of special interrogating actions.

The Financial and Economic Crime Prosecutor supervises, guides and coordinates S.D.O.E's investigators during the execution of their special investigatory tasks.

S.D.O.E's personnel has substantial expertise in combating economic crime and receives continues training (see attached table).

### S.D.O.E. Seminars 2009-2013

Year	Title	Sessions	Number of Participants
<b>2009</b>	Controls of cashiers machines	3	75
	Non-official trade and Counterfeiting	1	25
	Combat of carrousel fraud on Intra-community VAT	1	25
	<b>Total</b>	<b>5</b>	<b>125</b>
<b>2010</b>	ELENXIS applications (CMT & BI DISCOVER) to carry out and manage controls (pilot) 1	3	75
	Financial controls techniques	1	25
	Non-official trade and Counterfeiting	1	25
	<b>Total</b>	<b>5</b>	<b>125</b>
<b>2011</b>	C.I.S. ELENXIS audits management	10	250
	C.I.S. ELENXIS conducting audits	26	650
	C.I.S. ELENXIS customs investigations management (pilot)	1	25
	C.I.S. ELENXIS customs investigations	13	325
	C.I.S. ELENXIS tax controls	2	50
	C.I.S. ELENXIS information management	3	75
	C.I.S. ELENXIS application on human and natural resources	6	150
	<b>Total</b>	<b>61</b>	<b>1525</b>
<b>2012</b>	C.I.S. ELENXIS audits management	7	92
	C.I.S. ELENXIS conducting tax audits	20	287
	C.I.S. ELENXIS conducting customs investigations	7	100
	C.I.S. ELENXIS training on the job on conducting audits	1	19
	C.I.S. ELENXIS information management	2	28
	C.I.S. ELENXIS application on human and natural resources	4	52
	Management Training for Managers in the Money Laundering	1	10
	Awareness Money Laundering	3	30
<b>Total</b>	<b>45</b>	<b>618</b>	
<b>2013</b>	C.I.S. ELENXIS audits management	2	29
	C.I.S. ELENXIS conducting tax audits	8	132
	C.I.S. ELENXIS conducting customs investigations	2	35
	C.I.S. ELENXIS training on the job on conducting audits	1	20
	C.I.S. ELENXIS training on the job on audit Management	6	139
	C.I.S. ELENXIS techniques for determining Income by	4	64
	Management Training for Managers in the Money Laundering	1	15

Awareness Money Laundering	3	40
Internet Search Techniques	1	10
Intelligence Training	1	10
Methods and techniques of Financial Investigation on Money	2	25
Methods and techniques of Contraband of Goods Investigations	1	10
International operations: Techniques for revealing methods of	1	10
Asset Recovery	1	10
Strategic Analysis on Anti Money Laundering	1	4
Net income calculation to identify money launderers/ tax	1	10
Credit card fraud	1	10
AML Masterclass	1	5
TFGR level III - Financial Investigations	2	6
Training of auditors for the assessment and collection of State	4	116
<b>Total</b>	<b>44</b>	<b>700</b>

### SDOE PERSONNEL DISTRIBUTION

- By Personnel Education

University Degree	364
Technological Degree	165
High School Degree	201
Basic Education	14
Total	744

- By Personnel Position

Investigators *	572
Administration Officers	172
Total	744

\* a) 200 of SDOE personnel are certified forensic accountants.

Greece explained that the certification procedure was conducted by the Ministry of Finance and included interviews of the applicants on specialized issues such as advanced accounting, company auditing and tax legislation. Those who passed successfully the certification procedure went through a specialized training program that focused on company auditing.

b) 17 of SDOE personnel are information technology experts. The new Organization of SDOE includes 31 working positions for specialized IT personnel, therefore it is foreseen the Service will be staffed with an additional number of 14 IT experts.

Greece also specified that the Presidential Decree 111/2004 on the organizational arrangement of the Ministry of Finance also includes a Chapter on the Financial and Economic Crime Unit (SDOE). It addresses the competence of SDOE on corruption and money-laundering offences. (Annex IX).

### **The Greek Financial Police (Article 1 of Law 9/21-2-2011, 24 N. 4249/24-3-2014)**

By virtue of article 24 L. 4249/2014 and article 1 of Presidential Decree 9/21-2-2011 a new force

under the title Financial Police Division (DOA) has been established. DOA is supervised and controlled by the Chief of the Hellenic Police, is based in Athens, exercises its authorization nationwide, except the areas that are subject to the Coastal guard Corps jurisdiction in accordance with the special provisions in force. Its mission is the prevention and suppression of financial crimes especially those committed against the interests of public sector and national economy or have the characteristics of organized crime.

It is structured in four departments: 1) The department of Public property protection, 2) The department of economy's protection, 3) The department of tax police action and 4) That of Social and Insurance protection. The first department of the above, that is the department of Public property protection, is competent for the investigation and prosecution of financial crimes committed by natural or legal persons that cause damage or threat to the interests of Greek State or the wider public sector especially applying to: aa) The abuse of public property in any way, bb) abuse, trespass of exchangeable and public real estate, lands of forestry character, state installations and other real estate, cc) the non-transparent, illegal or other than the provided procedures management of communal sources and state financing and subsidies, dd) the intended destruction or wear of movable or immovable public property, means, material and installations of local government organizations and public enterprises and organizations, foundations, legal entities, subsidized by the State or European Union if the threatened or damage incurred is considerably high or the accumulative results of the action have seriously upset the social and economic life of the country, and etc) any illegal action threatening or seriously damaging the public interest and the national economy in general.

The Financial Police Subdivision of Northern Greece is based in Thessaloniki, comes under the Attica Internal Affairs Division and was established to help it accomplish its mission.

#### **Internal affairs unit of the Greek police:**

The Division of Internal Affairs was founded in 1999, to stamp out cases of corruption within Hellenic Police. This division operates under a special statutory framework (Law 2713/1999 & Law 2800/2000) and falls directly under the Chief of the Hellenic Police. Its investigation tasks are supervised by a Court of Appeal Public Prosecutor and reports annually through its Head to the Institutions and Transparency Committee of the Parliament. It also co-operates with the Group of European States against Corruption (GRECO).

The field of its action includes: a) Crimes of the Criminal Code that commit or participate officials from all levels of police, border guards and special guards, and those crimes provided by the law against drugs, gambling, weapons, antiquities, smuggling and foreigners. b) Crimes of the Criminal Code and those referred to in Article 2, 4 and 5 of Law 3666/2008 "Ratification and implementation of the UN Convention against Corruption", that staff and officers of the general government sector, as well as employees or officials of the European Union or International Organisations active in Greek Territory, commit or participate in. c) The receipt and control of asset declarations of the police personnel, the border guards and special guards and spouses thereof.

Complaints filed to the Division of Internal Affairs in 2013 involving officials in the broader public sector amounted to **381**. Respectively, the complaints against public officials and policemen amounted to **35**, totally **416** complaints. Complaints concerning public sector employees are much higher than in 2012 (increase 74,77%), which shows that citizens recognize the effectiveness of the Division of Internal Affairs. From the above mentioned cases, 127 were filled to the competent Public Prosecutors Office for further action.

255. Greece provided the following statistical data:

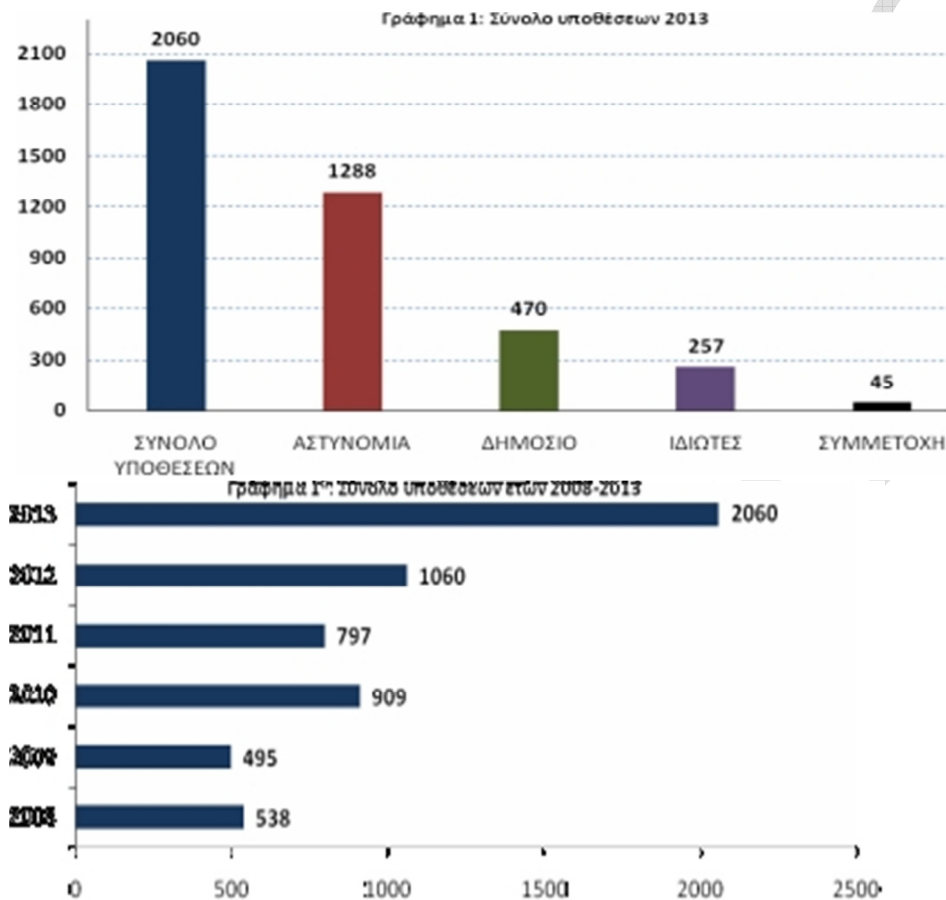
### PRESENTATION OF ACTIVITY

Total cases in 2013: 2060

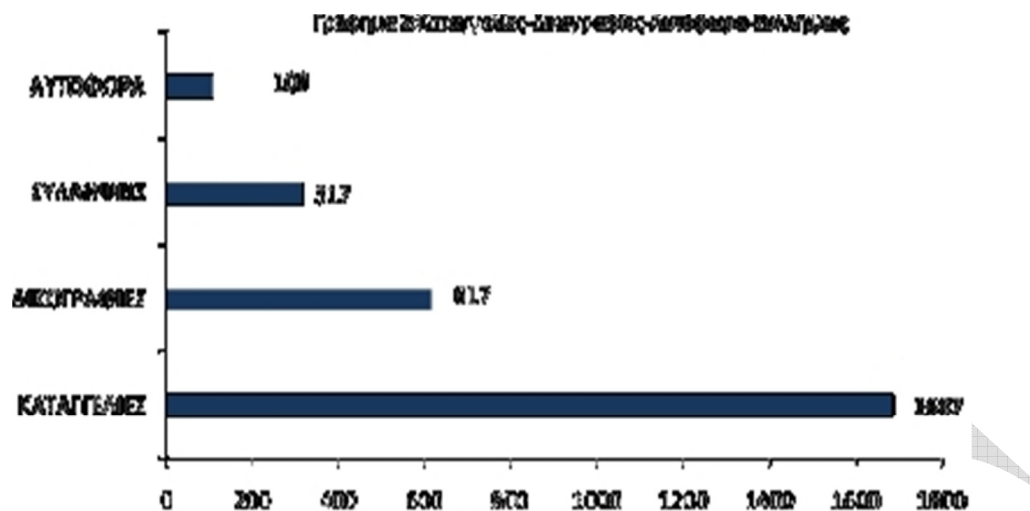
Total increase in cases: 126.87%

### ACTIVITY OF THE DIRECTORATE OF INTERNAL AFFAIRS STATISTICAL ANALYSIS

In 2013 the Directorate of Internal Affairs managed a total of 2060 cases. Of this number, 1288 concerned police staff, 470 concerned employees of the broader public sector, in 45 of which police and civil servants were involved, and 257 concerned private citizens (Chart 1).



The Agency received a total of 1687 complaints and 373 introductory case files; 243 of the cases evolved into ex officio case files: total case files (373+244) = 617. The procedure for in flagrante offences was applied to 108 cases, during which 317 persons were arrested (Chart 2).



## CRIMINAL PROCEEDINGS

### 172.25% increase in criminal proceedings

From 1 January 2013 to 31 December 2013, in cases handled by the Internal Affairs Agency, a total of 520 criminal proceedings were initiated (Chart 15) as follows: 133 against police officers, 22 against special guards, 84 against civil servants and 281 against private individuals.

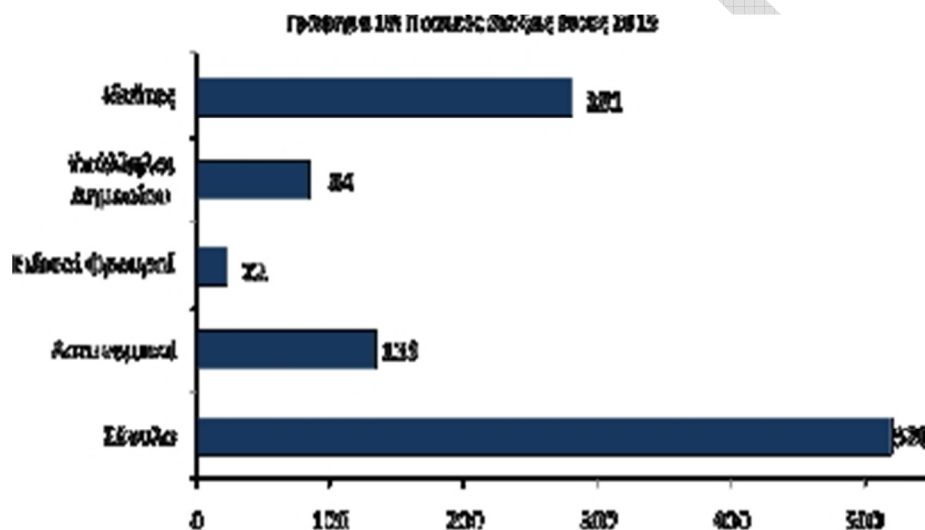


Table 7: Offences committed by police staff in 2013

259 CRIMINAL CODE (CC): BREACH OF DUTY	56
333 CC: THREAT	12
LAWS 3213/2003 & 3849/2010: FAILURE TO FILE ASSET DECLARATIONS	17
235 CC: PASSIVE BRIBERY	12
236 CC: ACTIVE BRIBERY	
386 CC: FRAUD	9
258 CC: MISAPPROPRIATION DURING SERVICE	7
LAW 3691/2008: MONEY LAUNDERING	4
394 CC: ACCEPTANCE AND DISPOSAL OF PRODUCTS OF CRIME	2
375 CC: MISAPPROPRIATION	2

257 CC: EXPLOITATION OF ENTRUSTED ITEMS	1
256 CC: DISLOYALTY DURING SERVICE	1
186 CC: INVITATION AND OFFER TO COMMIT A MISDEMEANOUR	1
261 CC: INSTIGATION OF SUBORDINATES TO TOLERANCE	1
LAW 1608/1950: EMBEZZLERS OF THE STATE	1
390 CC: DISLOYALTY	1

**Table 8: Offences committed by civil servants in 2013**

235 CC: PASSIVE BRIBERY	40
236 CC: ACTIVE BRIBERY	
259 CC: BREACH OF DUTY	19
LAW 3691/2008: MONEY LAUNDERING	17
LAW 1608/1950: EMBEZZLERS OF THE STATE	13
386 CC: FRAUD	11
390 CC: DISLOYALTY	10
258 CC: MISAPPROPRIATION DURING SERVICE	8
375 CC: MISAPPROPRIATION	6
256 CC: DISLOYALTY DURING SERVICE	5
333 CC: THREAT	1
LAW 5227/1931: INTERMEDIARIES	1

### **Overall activity of the Agency in 1999-2013**

From 25 October 1999, when the Internal Affairs Agency was established, until 31 December 2013, the Agency has dealt with 10,553 cases. Overall, 8,816 complaints were made to the Agency, of which 7,017 concerned police staff, 1,029 concerned servants of the broader public sector, 286 concerned involvement of police officers and public officials and 484 concerned private individuals. During this period, the Agency has handled 3,184 case files, in the context of which a total of 2,969 criminal proceedings were initiated. Of this number, 1,238 were initiated against police staff, 33 against border guards, 67 against special guards, 348 against civil servants and 1,272 against private individuals. Finally, in 440 in flagrante offences, a total of 980 persons were arrested. Of this number, 264 were police staff, 19 were border guards, 32 were special guards, 133 were civil servants and 522 were private individuals (Table 9).

- **10,553 cases were investigated**
- **2,969 criminal proceedings were initiated**
- **1,238 criminal proceedings concerned police officers**
- **348 criminal proceedings concerned civil servants**

### **COURT PROCEDURES**

Processing the cases, regardless of how they came to the Internal Affairs Agency, is not its only objective. The Agency is also obliged to check and record the course of the cases in court, until their final stage. The criminal outcomes of interlocutory investigations conducted by the Agency are an important measure of the substance of its tasks. At the same time, collecting and recording the criminal course of the cases provide useful statistics to analyse and draw useful conclusions about

the true picture of corruption and the measures required to address it.

According to information provided to the Agency by the prosecuting authorities, the following sanctions were imposed from 25 October 1999 to 31 December 2013 at first and second instance:

#### **Criminal course of cases from 25 October 1999 to 31 December 2013**

<b>Imprisonment</b>		<b>1st instance</b>	<b>2nd instance</b>	<b>Total</b>
Police officers	Officers	24	11	35
	Lower ranks	191	50	241
	<b>Total</b>	<b>215</b>	<b>61</b>	<b>276</b>
Civil servants		96	28	124
Special guards		9	2	11
Border guards		11	1	12
Private individuals		265	61	326
<b>Total</b>		<b>381</b>	<b>92</b>	<b>473</b>
<b>Grand total</b>		<b>596</b>	<b>153</b>	<b>749</b>

<b>Incarceration</b>		<b>1st instance</b>	<b>2nd instance</b>	<b>Total</b>
Police officers	Officers	6	1	7
	Lower ranks	12	3	15
	<b>Total</b>	<b>18</b>	<b>4</b>	<b>22</b>
Civil servants			1	3
Special guards			0	1
Border guards			1	2
Private individuals			8	48
<b>Total</b>		<b>44</b>	<b>10</b>	<b>54</b>
<b>Grand total</b>		<b>62</b>	<b>14</b>	<b>76</b>

<b>Acquittals</b>		<b>1st instance</b>	<b>2nd instance</b>	<b>Total</b>
Police officers	Officers	53	7	60
	Lower ranks	230	47	277
	<b>Total</b>	<b>283</b>	<b>54</b>	<b>337</b>
Civil servants			18	80
Special guards			2	20
Border guards			3	16
Private individuals			38	230
<b>Total</b>			<b>61</b>	<b>346</b>
<b>Grand total</b>			<b>115</b>	<b>683</b>

#### **General Inspector of Public Administration (Law 3074/2002):**

The General Inspector of Public Administration is the Authority that according to its mission promotes the values of legality, integrity, transparency and accountability in Greek Public Administration. The Inspector General of Public Administration is a distinguished person of wider social acceptance. The Cabinet appoints him for five years after a proposal of the Minister of Interior Public Administration and Decentralization.

Mission: The mission of the General Inspector of Public Administration is:

- To ensure the efficient and effective functioning of public administration,
- To monitor the action and evaluate the performance of all the Inspecting-Controlling Bodies/Units of Public Administration,
- To detect and truck down corruption and maladministration phenomena.

Field of action: According to the institution's founding law 3074/2002, the General Inspector of Public Administration:

- Orders ex officio all kind of inspections, post inspections and investigations in the public sector (Ministries, Regional Administration, Organizations of Local Government of first and second tier and their enterprises, public bodies and state owned enterprises) through the Inspecting-Controlling Bodies/Units of Public Administration,
- Monitors at any time the inspection-control action of the Inspecting - Controlling Bodies/units of Public Administration and evaluates their reports, evaluates the inspection -control activities of the Inspecting-Controlling Bodies/Units of Public Administration and monitors the implementation of the evaluation findings,
- Conducts all kinds of inspections, post inspections and investigations in the civil service and the public sector,
- Conducts annual auditing of the financial statements of the Inspecting- Controlling Bodies of Public Administration and other categories of civil servants, (Heads and stuff of Inland revenue services, Heads and stuff of the Financial Investigations Service and Heads and stuff of Urban Planning Services of local government),
- Refers disciplinary decisions concerning civil service personnel to higher instances,
- Appeals against final disciplinary decisions concerning civil service personnel to the appropriate court,
- Orders administrative measures or initiates disciplinary procedures against civil service personnel. Disciplinary actions against civil service personnel is obligatory when breaches of duty are established in all inspecting-controlling reports,
- Calls and presides over the Inspections -Controls Coordinative Body,
- Issues an annual report about the activities of his Office and the inspecting-controlling bodies/units that he submits to the Parliament, the Prime Minister and the Cabinet. The annual report is discussed in a meeting during a special Session of the Parliament and is published through the National Stationary Office,
- Collaborates with the European Union and International Organizations, such as UN, OECD, Council of Europe/Group of States Against Corruption against corruption and for transparency,
- Organizes seminars and training events especially for the Inspectors- Controllers Bodies and the public administration in general,
- Performs by himself or through his Deputies, or through the Special Inspectors of his Office or other civil service officials, administrative interrogations upon oath,
- The General Inspector of Public Administration is officially informed about legal proceedings against civil servants so he can order administrative measures, disciplinary action and civil action attendance. He is also officially informed about all court instances decisions concerning civil servants.

Organization: The General Inspector of Public Administration enjoys personal and functional independence and is assisted by four deputies and eight Special Inspectors. His Office is organized in two Directorates, the Secretariat and the Financial Statements Auditing, which are stuffed by



twenty civil servants.

The following e-government applications function in the Office of the General Inspector of Public Administration: Electronic protocol with all anticipated possibilities, Budgeting data base, Payroll data base, In Office inspection cases data base, Disciplinary decisions -appeals data base, Criminal proceedings against civil service personnel data base, Civil action attendance orders data base, Common working environment (CIRCA application) with the Inspecting Controlling Bodies/Units which provides instant information concerning the course of the undergoing inspections, direct communication and minimization of paperwork, Financial statements auditing data base with an early warning system, Human Recourses Management data base, Bank accounts and tax data declassification during Financial Statements Auditing. Interoperability exists among the above applications.

Within statistical evaluation of the project of General Inspector of Public Administration, concerning criminal proceedings, after filling audit reports to the competent Public Prosecutor, from 2007 till April 2013, the following prosecutions, indictments and convictions on corruption cases took place: 302 (10%) in 2007, 476 (16%) in 2008, 375 (12%) in 2009, 432 (14%) in 2010, 561 (19%) in 2011 και 866 (29%) in 2012.

#### **Inspectors-Controllers body for public administration (SEEDD):**

The Inspectors-Controllers Body for Public Administration -I.C.B.P.A., known by its Greek acronym SEEDD, was established by Law 2477/1997 and started its operation at the beginning of 1998. It succeeded the Controllers Body for Public Administration, created in 1987 within the Ministry of the Presidency of the Government (now the Ministry of Administrative Reform and E-Government).

SEEDD is not an independent authority; however it is endowed with administrative and operational independence. Since December 2002, it has been operating under the provisions of Law 3074/02 that expanded its powers and the scope of its intervention.

Mission-Objective: Law 3074/2002 provides that SEEDD shall exercise its powers in order to contribute to the efficient and effective operation of public administration and especially to step up the fight against corruption, maladministration, ineffectiveness, low productivity and low quality of the services rendered by the public organizations.

Powers and tasks: SEEDD's powers and tasks for accomplishment of its mission lie in four main categories:

- it conducts inspections, controls and investigations,
- it collects evidence for the prosecution of potential criminal offences committed by civil servants (such as forgery, bribery, violation of the confidentiality obligation, negligence of duty, theft, blackmail, fraud etc.),
- it conducts inquiries/preliminary examinations after a mandate by the competent Public Prosecutor. Furthermore Public Prosecutors, inform SEEDD of any prosecution against public officials or public servants.
- it reviews the assets of public officials. In this framework, according to the provisions of the Law 3213/2003, as amended by law 3613/2007, the Secretary Special of SEEDD may authorize the opening of bank accounts and the access to tax data and records of transactions in the stock market.

Field of Intervention: The following entities are subject to control:

- a) All public services
- b) First and second tier local government organisations (regions, municipalities) and their enterprises
- c) Legal entities of public law
- d) State legal entities of private law
- e) Public enterprises
- f) Enterprises whose Board of Directors is appointed by the State.

SEEDD does not engage in matters falling within the operation of the “independent administrative authorities”, the powers of the Directorate of Internal Affairs of the Police and the Office of Internal Affairs of the Ministry of Mercantile Marine. It does not conduct financial audits and it does not also intervene in disputes between public entities and their employees.

Administrative Structure and Staff: According to the provisions of Law 3074/02, the Secretary Special of SEEDD is appointed by the Prime Minister and the Minister of Administrative Reform and e-Government. The Secretary Special of SEEDD substitutes the General Inspector of Public Administration as President of the Coordinating Control Body, at his absence.

In the exercise of his duties, the Secretary Special is assisted by Head Inspectors assigned to coordinate activities related to specific areas of public service.

SEEDD is composed of 112 Inspectors-Controllers and of 40 Assistant Inspectors-Controllers. They are all permanent civil servants of at least university graduate level, selected by a Special Committee chaired by the Secretary Special, to serve for a three-year term, renewable without time restriction after evaluation of performance. Upon completion of nine consecutive years of service, their term is renewed automatically. As required by its broad field of action and the complexity of its task, SEEDD’s Inspectors and Assistant Inspectors are of multidisciplinary background (jurists, economists, engineers, architects, etc.). The selection of personnel is based on professional achievement and integrity.

Control Process: The legal framework by which SEEDD was established endows the Body with substantial operational independence in the exercise of its tasks. The Secretary Special orders the Inspectors-Controllers to conduct inspections, controls or surveys:

- a) by virtue of his office (ex officio). It should be noted that one of the basic sources of control and the starting point for the commencement of the SEEDD’s controlling process is, in the first place, its programme of action. Extraordinary inspections, controls or investigations may also be conducted whenever deemed necessary and may be prompted by requests of citizens, press announcements or reports in the mass media that have aroused the public interest.
- b) at the order of the Minister of Administrative Reform and E-Government, or
- c) at the order of the respective Minister or Secretary-General of a Decentralized Administration, with regard to their subordinate services and the public entities supervised by them and
- d) at the request of the General Inspector of Public Administration and the Greek Ombudsman.

The control mandates are signed by the Secretary Special, assigned to individual Inspectors-Controllers or groups of Inspectors-Controllers and Assistant Inspectors-Controllers, depending on the nature of the case examined, and communicated to the services to be controlled. The mandate shall determine the object and purpose of the inspection, control or survey, the service to be controlled and the specific deadline by which the control must be completed with the submission of the relevant report.

Joint groups may be set up between the Inspectors-Controllers and Assistant Inspectors-Controllers of SEEDD and Inspectors of other inspection bodies for conducting wide-ranging inspections controls or surveys.

In discharging their duties, the Inspectors-Controllers and the Assistant Inspectors-Controllers shall be subject to secrecy and shall be obliged to treat the various professional and other information that comes to their knowledge, whatever the means by which this reaches them, in the strictest confidence. The Inspectors-Controllers are not entitled to disclose facts concerning the Body and its work, otherwise disciplinary action can be taken against them.

Principles: SEEDD operates with full integrity, impartiality and professionalism, always with full respect of legality and individual rights and freedoms.

The agencies and services falling within the SEEDD's competence for control are obliged to facilitate the work of the Inspectors-Controllers to the best of their ability and provide them with all necessary documents, information and data for the purpose of the control.

The institutional framework provides for increased powers for the Inspectors-Controllers during the inspections, controls or surveys it conducts. In particular:

- The Inspectors-Controllers are entitled to have access to the files of the services they are controlling and they shall be briefed on all confidential data, unless such data pertain to the exercise of foreign policy, national defence and state security.
- In the event that data is not provided or is concealed, or inaccurate or misleading data is given, or in the event that the work of the Inspectors-Controllers is obstructed or misled, it shall be recommended that relevant disciplinary action be taken against the culpable civil servants for violation of duty.
- If any illegal behaviour of a public official or public employee or member of the administration or elected official of first and second tier local government organisations, is ascertained during a control, the Inspector-Controller's report shall be forwarded by the Secretary Special of SEEDD to the competent authorities, with a recommendation that disciplinary action be taken against the culpable person or that other measures be taken if the culpable person is not subject to disciplinary control. In such cases the competent authorities are obliged to take disciplinary action against the culpable.
- If sufficient evidence for the perpetration of a punishable act by a functionary or employee or member of the administration of the controlled service emerges from the inspection/control, the General Secretary of SEEDD shall forward the report to the competent Public Prosecutor.

Control Reports: After the completion of an inspection, control or survey, the competent Inspectors-Controllers and Assistant Inspectors-Controllers shall draw up a documented report and submit it to the Secretary Special.

The report shall contain a description of the case, a depiction of the current situation, the data submitted or used, the procedures by which the case was investigated, the findings, conclusions and recommendations. The recommendations shall contain specific and feasible solutions, focusing on those that should be given priority for implementation, and analyse their positive impact on the agency or service controlled.

Moreover, the Inspectors-Controllers or Assistant Inspectors-Controllers may recommend, insofar as they deem it necessary, the improvements or reforms to be initiated to the institutional framework surrounding the organisational structure and operation of the service, according to the needs of maximum efficiency, and propose measures for reducing operational expenses and the cost of the services provided.

The reports of the Inspectors-Controllers, are submitted to the Secretary General and after their approval by a committee, composed by the Secretary General, his substitute-Head Inspector and the Head Inspector who coordinated the inspection, are communicated to the Minister of the Administrative Reform and E-Government, the relevant Ministers or Secretaries General of the Decentralized Administrations, and the services where the inspection, control or survey took place.

**International Cooperation:** Alongside its main work, SEEDD has already made moves to forge channels of communication, information and cooperation with public administrations of other countries and above all the member states of the European Union, so that international experience and comparison with parallel institutions may contribute to the consolidation and optimisation of its mechanism for controlling public administration. During the past years, SEEDD has developed contacts with foreign counterparts from the United Kingdom (Efficiency Unit, National Audit Office), France (IGA), Portugal (IGAP), Spain and the European Anti-Fraud Office.

#### **Health and Welfare Services Inspectorate (S.E.Y.Y.P.):**

According to its founding Act 2920/2001 (Government Gazette 131/issue no. A'/27-6-2001), as supplemented and amended by Acts 2955/2001 (Government Gazette 256/issue no. A'/2-11-2001), 3204/2003 (Government Gazette 296/issue no. A'/23-12-2003) and 3252/2004 (Government Gazette 132/issue no. A'/16-7-2004), the Health and Welfare Services Inspectorate is a Department of the Ministry of Health and Social Solidarity, reporting directly to the Minister. Administratively and financially it reports to the Ministry of Health and Social Solidarity, however it has full audit independence.

Ministerial Decree no. DY (3-4) a/oik.2161/2001 (Government Gazette 1008/issue no. B'/1-8-2001) established the Regional Office of the Health and Welfare Services Inspectorate in Thessaloniki, having territorial jurisdiction in the Region of Western Macedonia, Central Macedonia and East Macedonia and Thrace.

The Health and Welfare Services Inspectorate conducts audits mandated by the Minister of Health, the Ombudsman or ex officio, in accordance with its founding Act. It also carries out audits at the behest of the General Inspector of Public Administration, who chairs the Inspection and Audit Coordinating Body (S.O.E.E.), aiming at monitoring and coordinating inspections and audits of specific inspectorate bodies and departments, in accordance with Act 3074/2002 (Government Gazette 296, issue no. A'/4-12-2002) on the: "General Inspector of Public Administration. Upgrading Public Administration Inspectorate-Auditors, the Inspection and Audit Coordinating Body and other provisions".

**Mission:** The Mission of the Health and Welfare Services Inspectorate is to develop and operate a central and peripheral mechanism for conducting systematic inspections, audits and investigations in all departments and bodies falling under the jurisdiction or supervision of the Minister of Health and Social Solidarity and the health insurers' departments.

**Objective:** The objective of the Health and Welfare Services Inspectorate is to improve the

productivity and efficiency of these departments and bodies, to upgrade the quality of health services and care offered, to eliminate maladministration and protect the health and property of the citizens from the provision of health and welfare services in an abusive manner.

**Functional Jurisdiction:** The audit jurisdiction of the Health and Welfare Services Inspectorate includes:

- The central, regional or decentralized departments of the Ministry of Health and Social Solidarity.
- The departments of the Regions, Prefectural Authorities and first degree Local Government Organisations, as well as insurers providing health and welfare services.
- Other public entities and private entities in the public sector, involved in health and welfare and supervised by the Minister of Health and Social Solidarity.
- All providers of health and welfare services in the private sector, supervised by the Minister of Health and Social Solidarity.
- Hospital and private pharmacies, pharmaceutical warehouses, laboratories and, in general, any store producing or marketing any kind of pharmaceutical or medical supplies, slimming and beauty salons, bottled water factories and thermal springs providing services for health purposes.
- Private entities aiming at supplying products which are directly used in the provision of health services.

**Territorial jurisdiction:** The territorial jurisdiction of the Health and Welfare Services Inspectorate extends across all country. A Decree of the Minister of Health and Social Solidarity, promulgated in the Government Gazette, may establish Regional Offices of the Health and Welfare Services Inspectorate, headed by Inspectors appointed by the Inspector General.

As stated above, the Regional Office of the Health and Welfare Services Inspectorate for Macedonia-Thrace, based in the city of Thessaloniki, has been already been established and is in operation, the territorial jurisdiction of which extends to the Regions of Western Macedonia, Central Macedonia, Eastern Macedonia and Thrace.

### **Financial Intelligence Unit**

By Law 3932/2011 which amended Law 3691/2008 the Anti-Money Laundering, Counter-Terrorist Financing Commission was renamed the “Anti-Money Laundering, Counter-Terrorist Financing and Source of Funds Investigation Authority”.

The Authority is a national unit aiming at combatting the legalization of proceeds from criminal activities and terrorist financing, assisting in security and sustainability of fiscal and financing stability.

Its mission, according to Law 3691/2008<sup>5</sup>, as amended by Law 3932/2011<sup>6</sup>, is the collection, the investigation and the analysis of suspicious transactions reports (STR's) that are forwarded to it by legal entities and natural persons, under special obligation, as well as every other information that is related to the crimes of money laundering and terrorist financing and the source of funds investigation. The Authority has been restructured into three (3) individual units as follows:

1) The Financial Intelligence Unit (FIU). In addition to the President, the FIU comprises seven (7)

<sup>5</sup> <http://www.hellenic-fiu.gr/images/stories/files/N3691english.doc>

<sup>6</sup> [http://www.hellenic-fiu.gr/images/stories/files/L3932\\_2011\\_amending\\_L3691\\_2008.pdf](http://www.hellenic-fiu.gr/images/stories/files/L3932_2011_amending_L3691_2008.pdf)

Board Members of the Authority. At the end of each year, the FIU submits an activities report to the Institutions and Transparency Committee of the Hellenic Parliament and the Ministers of Finance, Justice, Transparency & Human Rights and Citizen Protection.

2) The Financial Sanctions Unit (FSU). In addition to the President, the FSU comprises two (2) Board Members of the Authority. At the end of every year, the Unit submits an activities report to the Ministers of Foreign Affairs, Justice, Transparency & Human Rights and Citizen Protection.

3) The Source of Funds Investigation Unit (SFIU). In addition to the President, the SFIU comprises two (2) Board Members of the Authority. At the end of every year, the Unit submits an activities report to the Institutions and Transparency Committee of the Hellenic Parliament and the Ministers of Finance and Justice, Transparency & Human Rights.

The president is an acting Public Prosecutor to the Supreme Court appointed by a Decision of the Supreme Judicial Council and serves on a full-time basis.

**Internal Affairs Service of the Ministry of Finance (Law 4254/2014, Law 3943/2011 art. 5 and Ministerial Decision 2012 G.G. 659/2012):**

The Internal Affairs Service of the Ministry of Finance was established by Law 3943/2011 (Gov. Gaz. 66 A /31-3-2011) with the title: «Fight against tax evasion, staffing of the control services and other provisions that fall into the liability of the Ministry of Finance». According to article 5, the Unit of Internal Affairs is an independent organizational unit, directly subjected to the jurisdiction of the Minister of Finance and its main target is the detection, the direct and effective investigation of corruption cases, in which officials of Ministry of Finance are involved both in criminal offences and disciplinary matters.

Because of the fact that in the meantime the General Secretariat of Public Revenue -which was previously under the direct jurisdiction of the Minister of Finance- became semi-autonomous, it was decided by Law 4254/2014 (Gov. Gaz. 85 A /7-4-2014) paragraph E, subparagraph 2, that the above mentioned Unit of Internal Affairs is renamed into «Internal Affairs Administration» and is directly under the jurisdiction of the General Secretary of Public Revenue. This was dictated by the fact that this Unit was more appropriate to be subjected to the currently autonomous General Secretariat since it was exclusively staffed by officials (Financial Inspectors) coming from sectors of the General Secretariat.

As far as the Ministry of Finance, according to Law 4254/2014 (Gov.Gaz. 85A /7-4-2014), paragraph E, subparagraph, 2b, the establishment of the Unit of Internal Control was enacted, which is directly under the authority of the Minister of Finance. This Unit is divided into three Departments as follows: (aa) Department A – Internal Audit (bb) Department B – Internal Affairs (cc) Department C – IT Systems Audit

Department B of Internal Affairs deals with corruption cases, in which officials of the Ministry of Finance and its supervised entities are involved. However, its responsibilities will be defined by the Presidential Decree which has been drawn up and sent for processing to the Council of State and is soon to be put in effect.

General Secretariat of Public Revenue: According to the Decision of the General Secretary of Public Revenue (Gov. Gaz. 865 B /7-4-2014) the reorganization of the Direction of Internal Affairs and the redefinition of its responsibilities were enacted.

Article 7 of the above mentioned Decision provides that the operational objectives of the

Directorate of Internal Affairs are the following:

- (a) the detection, the direct and effective investigation of corruption cases, in which officials of the General Secretary of Public Revenue are involved both in criminal offences and disciplinary matters.
- (b) to ensure the legal behavior of officers of General Secretary of Public Revenue.

The Direction of Internal Affairs, which has as seat the Prefecture of Attica, is divided into three (3) Departments, one (1) Office and one (1) Sub-direction. The Sub-direction resides in Thessaloniki and is further divided into two (2) Departments and one (1) Office.

The Direction of Internal Affairs exercises the following competences, as it is provided by article 5 of Law 3943/2011, as amended by the provisions of paragraph 18 of article 55 of Law 4002/2011 and article 12 of Law 4110/2013:

- (a) the detection and investigation of criminal offences and disciplinary matters, which are committed by or in which officials of General Secretary of Public Revenue are involved.
- (b) The conduct of administrative investigation, administrative investigation under oath, preliminary investigation or pre-inquisition after a public prosecutor's request or ex officio or after the order of a competent body or after flagrant arrest or based on filed complaints or information collected, processed and evaluated for the investigation of offenses referred to in paragraph 2 of Law 3943/2011, as in effect.
- (c) The performance of the required procedures for the disciplinary and / or criminal prosecution of officials, in accordance with the relevant provisions of disciplinary law, Greek Criminal Code and other special criminal laws.
- (d) The collection, investigation, processing, synthesis, analysis, evaluation and use of information, complaints and evidence relating to the involvement of officials in offenses referred to in paragraph 2 of Law 3943/2011, as in effect.
- (e) The performance of asset audits of the officials , according to paragraph 3 of article 5 of Law 3943/2011, as in effect, and in particular:
  - targeted or sample audits, which are performed on an annual basis, based on the criteria, the determined sample methods and the process defined by the Decision of the General Secretary
  - to officials for whom an investigation, preliminary investigation, pre-inquisition or administrative inquiry under oath is undertaken for the offences referred to paragraph 2 article 5 of Law 3943/2011, as in effect.
- (f) The proposal to the Secretary General of the criteria for the determination of the sample to be audited.
- (g) The conduct of the required procedures for the disciplinary and / or criminal prosecution of officials, in accordance with the relevant provisions of disciplinary law, Greek Criminal Code and other special criminal laws.
- (h) The investigation, processing, synthesis, analysis, and evaluation of complaints collected by the Complaints Office and any information and evidence, related to the commission of criminal and disciplinary offenses.

**(b) Observations on the implementation of the article**

256. Regarding the independence of prosecutors, Greece stressed that there is no subordination of prosecutors to any kind of authority with regard to the performance of their duties. Greece referred to the independence of both judges and prosecutors as provided for in Articles 87 and 88 of the Constitution.

257. The reviewers note that Greece has created law enforcement bodies and authorities specialized in the fight against corruption, in accordance with this provision of the Convention. Greece has put in place a system where there are multiple specialized authorities responsible for combating corruption. Among them the ones with a judicial status, such as the Public Prosecutor against Corruption and the Financial and Economic Crime Prosecutor, enjoy full independence, as provided by the Constitution. The same is true for the Greek financial intelligence unit, which is headed by an active Public Prosecutor to the Supreme Court, and the General Inspector of Public Administration, who enjoys personal and functional independence.

258. The reviewers encourage Greece to continue enhancing coordination among specialized anti-corruption authorities, and steps in this direction, such as the appointment of a special prosecutor coordinating relevant bodies, and the proposed bill to create a Board of oversight of SDOE, are welcome.

259. The reviewers also encourage the FIU to ensure that statistics on Suspicious Transactions Reports (including by offence/region) are collected and welcome indications by the FIU that this will be done in 2015.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 1**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

260. Greece referred to its answer to article 37 par. 2 below.

261. Greece did not provide any cases of implementation or statistics.

#### **(b) Observations on the implementation of the article**

262. The Greek legal system has provided the mitigated punishment or release from punishment for persons who collaborate in investigations as provided for in the Convention. This provision is applied on a case-by-case basis.

263. Moreover, Greek law requires Parliament to approve settlements. The observations under art. 26 regarding administrative and corporate settlements are referred to.

264. Greece's legislation is in accordance with the provision under review.

## **Article 37 Cooperation with law enforcement authorities**



## Paragraph 2

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

### (a) Summary of information relevant to reviewing the implementation of the article

265. Greece provided the following applicable measures on the implementation of the provision under review:

Article 263B §§ 2-5 of the Greek Penal Code, as replaced by Law 4254/7-4-2014, provides, under the title “Leniency for those who uncover corruption acts”, the following:

“... 2. If the perpetrator of the acts of articles 236 §§ 1, 2 and 3 and 237 §§ 2 and 3 or the one who participates in the acts of articles 235 §§ 1, 2 and 3, 237 § 1 and 239 to 261, and of article 390, when committed by an official, contributes substantially, by announcement to the authority, to the disclosure of the participation of an official in these acts, shall be punished by a penalty reduced to the extent of Article 44 § 2 sub. 1 [of the Greek Penal Code]. The Judicial Council by decree issued upon the proposal of the competent prosecutor, can order the suspension of the criminal proceedings brought against the person responsible for a certain period of time, in order to confirm the truth of the facts. By the same decree or judgment the removal or replacement of the procedural coercive measures imposed may also be ordered. (...)

3. An official who is the perpetrator of the acts of articles 235 to 261 and article 390, or a participant in these acts, who contributes substantially, with announcement to the authority, to the revelation of the participation in these acts of other officials, is punished in accordance with the preceding paragraph, if the person accused has a senior position to his/her own and if the official has transferred to the State all the assets acquired, directly or indirectly, from the commission or participation in the commission of these crimes. (...)

4. a) If one of those responsible for the crimes of Articles 235 to 261 and 390 acts or acts of money laundering derived directly from these criminal activities, contributed evidence for the participation in these acts of persons who have served or are serving as members of the Cabinet or Deputy Ministers, the judicial council with a decree issued upon proposal of the prosecutor, order the suspension of the criminal proceedings against him/her. The above suspension may be ordered by the court when the elements are contributed till the decision of the Court of Appeal. By the same decree or judgment the removal or replacement of coercive procedural measures that have been imposed may be ordered.

b) If the Parliament considers, in accordance with the provision of par. 3 of Article 86 of the Constitution, that the evidence is not sufficient for the prosecution against the Minister or Deputy Minister, the decree or judgment is revoked and the suspended prosecution continues. If the Parliament decides the prosecution against the Minister or Deputy Minister under Article 86 of the Constitution, on conviction by the Special Court, the participant, referred in the previous paragraph, who contributed the evidence shall be punished with penalty reduced to the extent of article 44 § 2 sub. 1 [of the Greek Penal Code].

5. If the initiation of criminal proceedings is not possible due to elimination of criminality, as defined in subparagraph b of paragraph 3 of Article 86 of the Constitution, the accused person shall be punished with a penalty reduced to the extent of Article 44 § 2 sub.1. The court may order and the suspension of that sentence, as defined in paragraph 2.”

It should be noted that in par. 3 of the above article, the relationship of superior/inferior between the parties involved does not refer strictly to persons belonging to the same administrative hierarchy but to any relationship in which one official is subordinate to or supervised or guided by another on the basis of the service-related, technical or scientific subject-matter of the work of each of them. The same paragraph makes leniency of the law, at the stage when the penalty is assessed, conditional on the prior transfer from the penitent party to the State of any material benefits he or she has gained from the act. The transfer must be completed by the stage when the penalty is assessed, giving to the court, exceptionally, the possibility, within the framework of a

single procedure, of defining the specific transfers or other actions that the offender must undertake to obtain the relevant immunity.

Moreover, in accordance with the provision of Article 5 paragraph 3 of Law 2713/1999 “any police officer or other person who commits jointly with a police officer crimes as those covered by the provisions of this Law or participated in any way during the commission of such crimes, is punished by a reduced sentence according to Article 83 of the Penal Code, the maximum of which is further reduced in half, with a relevant reduction to the provided sentence and for sec. b and c of the above mentioned article minimum limit of imprisonment, if before the complaint of the offence, for which a criminal proceeding is brought against him, provides information for the involved individuals and their criminal activity and so contributes to the revelation of the case. The court, however, may find him unpunished, considering the repentance and the personality of the specific individual and the specific circumstances under which the offence was committed”. Further, paragraph 4 of the same Article provides that “if the defendant, after prosecution and until irrevocably conviction, gives the information of the previous paragraph, the provided by the law maximum penalty is reduced to half, without excluding the application of Article 84 of the Penal Code”.

266. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

267. The Greek legal system provides for the mitigation of punishment for persons who collaborate in investigations or prosecutions of proven offences.

268. Greece’s legislation is in accordance with the provision under review.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 3**

*3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

269. Greece provided the following applicable measures on the implementation of the provision under review:

Article 263B § 1 of the Greek Penal Code, as replaced by Law 4254/7-4-2014, provides, under the title “Leniency for those who uncover corruption acts”, the following:

1. Acts of articles 236 §§ 1, 2 and 3 [Bribery], 237 §§ 2 and 3 [Bribery of Judicial Officers] and 237B par. 1 [Bribery in the private sector] remain unpunished if the perpetrator on his own will and certainly before being examined for his act, announced it to the public prosecutor or any interrogating officer or other competent authority, by giving a written or oral report, whereby a relevant report is drafted.

This measure, which may lead to full immunity for perpetrators of corruption who voluntarily

reveal their acts, is based on the premise that what is most important for the legal order is to reveal the act of passive bribery committed by the official. Given that such acts are normally committed in an environment of secrecy and that discovery is particularly difficult for the prosecuting authorities, even complete immunity from any consequence for the perpetrator of active bribery is considered tolerable in order to apprehend the corresponding act of passive bribery on the part of the official.

270. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

271. Greece's legislation is in accordance with the provision under review.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 4**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

272. Greece provided the following information on the implementation of the provision under review:

The present answer has to be seen with art. 32 - Protection of witnesses, experts and victims.

In short, Greece has to underline that the current legislative framework provides a sufficient degree of applicability of protective measures for individuals involved in corruption cases that contribute to their disclosure and investigation, both during the investigative stage of the information provided, and during the pre-trial stage and the main process.

According to the provision of Article 5 of Law 2713/1999, the necessary protection is provided to people (police officers or individuals) who participated in the commission of the crimes mentioned in the same article of the above mentioned law, namely providing information for individuals and their criminal activity and in this way contributed to its disclosure. A similar protection is provided also to the witnesses of cases handled by the Internal Affairs Service of the Hellenic Police, at the request of the competent Prosecutor.

Additionally, the provisions of Law 2928/2001 provide for the physical protection of the witnesses or/and of their families during criminal proceedings, such as the non-disclosure of their identity credentials during the trial concerning the offenses on constitution or participation in a criminal organization of Article 187 of the Penal Code, as well as the protection of individuals who have contributed substantially to uncover corruption cases, even if not committed in the context of participation or constitution of a criminal organization. Specifically, paragraph 7, subparagraph IE.17 of law 4254/2014 added to the provision of Article 9 of law 2928/2001, that in addition to individuals who are identified as "witnesses of public interest", the protection mentioned to paragraphs 1 to 5 from alleged acts of intimidation or reprisal, can be provided also "to individuals under Article 253B of the Code of Criminal Procedure, as well as any other

individual who substantially contributes to the disclosure of the crime or, if necessary, also to the families of the above mentioned individuals”.

273. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

274. Greece’s legislation is in accordance with the provision under review.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 5**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

275. Greece has not implemented this provision of the Convention.

276. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

277. Greek authorities explained that, where the need arises, there is nothing that precludes the possibility that the Greek authorities will consider entering into agreement or arrangements with other States concerning the potential provision of mitigated punishment or immunity to collaborators of justice.

278. This provision is an optional one and the reviewers welcome indications by Greece that it could consider entering into such agreements.

**Article 38 Cooperation between national authorities**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

*(b) Providing, upon request, to the latter authorities all necessary information.*

**(a) Summary of information relevant to reviewing the implementation of the article**

279. Greece has provided the following applicable measures on the implementation of the article under review:

In general, Greek public officials are obliged to report crimes of which they become aware “in the exercise of their duties” according to article 37 par. 2 of the Criminal Procedure Code (CPC).

Moreover, in 2007, Greece enacted the Civil Service Code (Law 3528/2007) that reiterates the obligation of every public servant to report a criminal offence.

As far as the specialized authorities are concerned:

**A. The Public Prosecutor against Corruption**

Art. 2 par. 4 Law 4022/2011:

“The Financial intelligence Unit and the Financial and the Economic Crime Prosecutor provide to the Public Prosecutor against Corruption and the judge, each data requested and any other assistance. The same obligation has any public officer or employee, and all public bodies and authorities”.

Art. 2 par. 5 Law 4022/2011 as modified with art. 8 par.1 b Law 4205/2013:

“The judge and the Public Prosecutor against Corruption have access to any information or data relating to or useful for the performance of their duties, not subject to the limitations of the tax, banking, capital market and any other secrets, and any file of any public authority or agency, that maintains and processes personal data. Similarly, they may order with a reasoned order the lifting of tax, banking and stock exchange secrets.... ”

**B. The Economic Crime Prosecutor**

Art. 17 A par. 4 Law 2523/1997:

“The Economic Crime Prosecutor is informed of all complaints and information that has been received from the services of paragraph 3 (The Financial and Economic Crime Unit (SDOE), Customs, the E.L.Y.T. and generally the tax assessment services of the Ministry of Finance) for crimes of his jurisdiction, and explores and evaluates this information and any other information brought to his attention, relating to them, in any manner and medium”.

Art. 17 A par. 8 Law 2523/1997:

“The Economic Crime Prosecutors of par. 1 shall have access to any information or data relating to, or useful for, the performance of their duties, not subject to the limitations of the tax, banking, capital market and any other kind of privacy in any file of any public authority or agency, that maintains and processes personal data.”

**C. The Financial and Economic Crime Unit (SDOE)**

SDOE staff and officials have authority to access every information or data concerning or related with the execution of their duties. Also SDOE officials have an autonomous (without any further permission or order) right to lift bank and tax secrets, only being compelled to respect the confidentiality provisions (Presidential Decree 85/2005, Article 2 paragraph 3).

Art. 30 par. 6 Law 3296/2004:

“Employees of the Financial and Economic Crime Unit have access and receive any information or data concerning or relating to the exercise of their duties and mission, after related official mandate, without the

restrictions on secrecy provisions, but with the obligation to comply with the provisions on confidentiality of article 26 of the Civil Service Code (Law 2683/1999, Government Gazette 19 A)".

#### D. The Greek Financial Police

The Greek Financial Police, in order to successfully achieve its mission cooperates with the center of collection and management of Information (KE.SY.D.E.P.) of the Hellenic Police headquarters, the other departments of the Hellenic and Coastal Guard Police and other competent services, bodies and authorities, being staffed with the necessary police and scientific personnel and equipped with the required technical and material means. It may have access, into the frame of its operational activity, in the records of any police service and of other services, authorities, organizations and bodies if the investigation of them is necessary for the investigation of the violations committed. The head of these services is duly informed about the said activities and is obliged to offer them any possible assistance.

##### Article 44 par. 3 c Law 4249/2014:

"Upon written or electronic request of the director of the Greek Financial Police, government agencies and any entity of the General Government, including judicial and prosecutorial authorities and other public bodies, institutions and companies that engage or are supervised by the State as well as independent authorities and other third parties as in particular financial institutions, organisations of collective investments, chambers, notaries, registrars, heads of cadastral offices, economic or social or professional bodies or organizations are required to provide to the Greek Financial Police all available information and demonstrate without transferring them outside the premises, all original documents, records and information being in their possession."

#### Internal affairs unit of the Greek police

Art. 1 par. 3 Law 2713/1999: "To fulfill its mission, the Office of Internal Affairs Unit, investigates, collect, evaluate and utilize information and data concerning the commission of crimes, acts preliminary examination or investigation under Article 243 par. 2 of the CCP for their establishment and refers the perpetrators to the public prosecutor. When the public prosecutor orders, in accordance with art. 43 and 50 par. 2 CCP, a preliminary investigation or examination for crimes of the preceding paragraph, he may delegate the power to the Internal Affairs Unit. During the execution of the above duties, the Internal Affairs Unit has seamless access to records of all police services and other offices or agencies of the wider public sector, as determined by the provisions of Law 1256/1962, Law 1892/1990, Law 1943/1991 and Law 2198/1994, for matters concerning police officers, under the restrictions of Article 6 of this law. The other police authorities, as well as all political and military authorities are required, when requested, to assist immediately and essentially the staff of the Agency".

#### E. General Inspector of Public Administration

##### Art. 6 par. 5 Law 3491/2006:

"The General Inspector of Public Administration may determine by case, to the bodies of paragraph 2 of Article 1 of Law 3074/2002 (Inspectors-Controllers body for public administration and other Inspectors - Controllers of Ministries, local authorities of first and second degree, their businesses, Legal Entities of Public Law, Private Legal Entities and Public Enterprises or Enterprises the management of which is appointed directly or indirectly by the State by an administrative act or as shareholder), binding time limits for responding or providing data or documents to him."

##### Art. 6 par. 11 Law 3491/2006:

"The Denial of institutions, officials or officers of bodies of paragraph 2 Article 1 of Law 3074/2002 to collaborate, cooperate and provide information or documents in an investigation, inspection or audit by the General Inspector of Public Administration or, under his mandate, by the Bodies and inspection and control Services, constitute a disciplinary offense of breach of official duty, within the meaning of Article 107 par. 1 b of Law 2683/1999 or the relevant, in any case, provisions".

#### F. The Inspectors-Controllers Body for Public Administration

If any illegal behavior of a public official or public employee or member of the administration or elected official of first and second tier local government organizations, is ascertained during a control, the Inspector-Controller's report shall be forwarded by the Secretary Special of SEEDD to the competent authorities, with a recommendation that disciplinary action be taken against the culpable person or that other measures be taken if the culpable person is not subject to disciplinary control. In such cases the competent authorities are obliged to take disciplinary action against the culpable.

If sufficient evidence for the perpetration of a punishable act by a functionary or employee or member of the administration of the controlled service emerges from the inspection/control, the General Secretary of SEEDD shall forward the report to the competent Public Prosecutor.

Art. 5 P.D. 247/1998:

"Audit Process- 1. After the assignment statement audit, the responsible Inspectors Controllers for the performance of their duties may visit the Agency, where the audit is conducted and study at the spot the case. They can also visit, if they deem it appropriate and necessary, any other agency, that belongs to their competence, which engages with the present case and may assist their work. 2. During the inspection and control, the Inspectors Controllers may request information, documents or other data that they consider important for the formation of their judgment, from the officials or members of the board of the controlled authority, discuss with them and seek explanations or opinions on matters that may need special consideration and clarification. Moreover, the Inspectors - Controllers have access, in accordance with par. 4 b of Article 8 of Law 2477/1997, to the records of the controlled services, including privacy secrets, unless those secrets concerning matters of foreign policy, national defense and state security. 4. The services under the audit jurisdiction of S.E.E.D.D. shall facilitate in every way the work of the Inspectors - Controllers and provide all the necessary documents, information, or any other data for the control. All required information has to be transmitted to the Inspectors - Controllers. 5. The refusal to grant the above requested information or data, as well as the deliberate withholding of data or information or the knowing issuing of inaccurate or false data, and in general the obstruction and deception of the Inspectors Controllers apart from possible criminal liability, is considered as a separate disciplinary offense, for which the disciplinary judge may impose one of the sentences provided by par. 4 of article 207 of the Civil Service Code (Presidential Decree 611/1977). The Controlled services cannot argue on the secrecy against the Inspectors, apart from the provisions of par. 4 Article 8 of the Law 2477/1997".

#### G. Health and Welfare Services Inspectorate (S.E.Y.Y.P.)

Art. 6 par. 5 Law 2920/2001:

"The Inspectors, during the exercise of their duties, have access, to the compatible with the object and the nature of the audit, records, including confidential ones, unless they concern matters of foreign policy, national defense and state security. The controlled services and other bodies of art. 2 of this law must provide all data and necessary information for the duty of the Inspectors and cooperate with them as well as facilitate with all means during the audit. All required information has to be transmitted to the Inspectors - Controllers. The negligence or the refusal to grant the above requested information and data, as well as the deliberate withholding or issuing of inaccurate, false or falsified data, and in general the obstruction and deception of the duty of the Inspectors apart from possible criminal liability, is considered as a separate disciplinary offense, for which one of the sentences provided by article 109 of Law 2683/1999 may be imposed".

#### H. Financial intelligence Unit

Art. 7 A par. 1 iii Law 3691/2008 as added with art. 2 of Law 3932/2011:

"The FIU's staff shall collect, investigate and evaluate suspicious transaction reports filed with the FIU by obligated persons, as well as information transmitted to the Authority by other public or private agencies or brought to the Authority's attention through the mass media, the internet or any other source, concerning business or professional transactions or activities potentially linked to money laundering or terrorist financing."

Art. 7 B Law 3691/2008 as added with art. 2 of Law 3932/2011:

“Powers of the Units of the Authority: 1. The Units of the Authority shall have access to any records of public authorities or organizations that process data, including Tiresias S.A. 2. During their audits and investigations, the Units may request cooperation and information from natural persons, judicial or investigating authorities, public services, legal persons in public or private law and organizations of any nature”

Art.40 Law 3691/2008 as amended with art. 4 Law 3932/2011:

“Cooperation and Exchange of Confidential Information: 1. The Authority may forward and exchange confidential information with the competent prosecutorial authorities or other authorities with investigating or auditing powers, as well as the competent authorities referred to in Article 6, where such information is deemed useful for their tasks and the performance of their legal duties. Moreover, it may request information on the results of any investigation that has been carried out by the aforementioned authorities, as well as any information provided for in Article 7 of this law. 2. The competent authorities may also exchange confidential information on the performance of their obligations under this law and inform each other on the results of the relevant investigations. Bilateral or multilateral memoranda of understanding may specify the modalities for such exchange of information. 3. The above authorities may carry out joint investigations into cases of common interest and responsibility, for the fulfilment of their obligations under this law. 4. For the purposes of the implementation of the provisions of this law, confidential information shall mean any information about the business, professional or commercial behaviour of legal or natural persons or entities, data on their transactions and activities, tax records and information on criminal offences and breaches of tax, customs or other administrative laws and regulations. Confidential information shall also include any information which the transmitting or exchanging agencies have obtained in the context of their international cooperation with their foreign counterparts, provided that this is permitted by the terms and conditions of such cooperation.”

#### I. Internal Affairs Service of the Ministry of Finance

According to art. 12 par. 4 of Law 4110/2013, the provisions of art. 30 par. 6 of Law 3296/2004, referring to SDOE, apply also for the Internal Affairs Service and its staff.

Related provisions of other treaties:

Art. 21 Council of Europe Criminal Law Convention against Corruption:

“Each Party shall adopt such measures as may be necessary to ensure that public authorities, as well as any public official, co-operate, in accordance with national law, with those of its authorities responsible for investigating and prosecuting criminal offences: a) by informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences established in accordance with Articles 2 to 14 has been committed, or b) by providing, upon request, to the latter authorities all necessary information”.

Art. 7 par. 1b United Nations Convention against Transnational Organized Crime:

“Measures to combat money-laundering - 1. Each State Party: (b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national center for the collection, analysis and dissemination of information regarding potential money laundering.”

280. Greece provided the statistics for 2012 from the Financial Intelligence Unit, according to which, in 2012 the F.I.U. sent to the Public Prosecutor 279 cases on laundering of proceeds of crime<sup>7</sup>:

### STATISTICS 2012

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<sup>7</sup> [http://www.hellenic-fiu.gr/images/stories/files/STATISTICS%202012\\_ENG.pdf](http://www.hellenic-fiu.gr/images/stories/files/STATISTICS%202012_ENG.pdf)



### CASES STARTED IN 2012

CASE CATEGORY	ΠΛΗΘΟΣ
CASES UNDER INVESTIGATION	732
CASES CLOSED	3.191

NUMBER OF CASES SENT TO PUBLIC PROSECUTOR
279

### FREEZING ORDER DETAILS

NUMBER OF ORDERS	FROZEN CRIMINAL ASSET (EURO)
303	€ 238.272.958

### ESTABLISHED CRIMINAL ASSET PER PREDICATE OFFENSE

PREDICATE OFFENSE	ESTABLISHED CRIMINAL ASSET(EURO)
PASSIVE BRIBERY	€957.750
HUMAN TRAFFICKING	€72.288
TAX EVASION	€97.931.473
PROTECTION OF ECONOMIC INTERESTS OF THE EUROPEAN UNION	€5.282.721
CRIMINAL ORGANIZATION	€8.788.139
ALL OTHER OFFENSES THAT RESULT IN IMPRISONMENT FOR OVER 6 MONTHS	€125.240.587
<b>TOTAL</b>	<b>€238.272.958</b>

#### (b) Observations on the implementation of the article

281. The Greek legal system has incorporated and applied to a large extent the provisions of article 38 of the Convention. Greece also provided statistics.
282. The reviewers recommend Greece to enhance its coordination among relevant agencies and to clarify mandates in light of competing priorities. They further recommend Greece to establish a consistent practice of sharing case related information on specific cases.

### Article 39 Cooperation between national authorities and the private sector

#### Paragraph 1

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

#### (a) Summary of information relevant to reviewing the implementation of the article

283. Greece cited the following applicable laws on the implementation of the provision under review:

Art. 3 par. 7 Law 3213/2003 (Law on asset declaration) as added with art. 6 Law 4065/2012:  
“Persons Referred to in Article 5 of Law 3691/2008 have an obligation to inform without delay the competent committees of this Article if they know or have serious indications or suspicions that any breach of the obligations of the controlled under this Act or under ministerial decisions issued by authorization, is committed, is attempted to commit or has been committed or attempted to commit.”

Art. 6 par. 5 Law 3213/2003 as added with art. 7 Law 4065/2012:  
“Individuals and employees of legal entities of article 5 of Law 3691/2008 in breach of the notification requirement provided in paragraph 7 of Article 3, are punishable with imprisonment up to two years”

Art. 5 Law 3691/2008 (AML Law):  
“Obliged persons (reporting entities) - 1. Obliged persons that are subject to the requirements of this Law shall be the following: a) credit institutions, b) financial institutions, c) venture capital companies, d) companies providing business capital, e) chartered accountants audit firms, independent accountants and private auditors, f) tax consultants and tax consulting firms, g) real estate agents and related firms, h) Casino enterprises and casinos operating on ships flying the Greek flag, as well as public or private sector, enterprises, organisations and other bodies that organize and/or conduct gambling and related agencies and agents, i) Auction houses, j) Dealers in high-value goods, only to the extent that payments are made in cash in an amount of EUR 15,000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked. A joint decision of the Minister of Economy & Finance and the Minister of Development shall lay down criteria for classification under this category, k) auctioneers, l) pawnbrokers, m) notaries and other independent legal professionals, when they participate, whether by acting on behalf of and for their clients in any financial or real estate transaction, or by assisting in the planning and execution of transactions for the client concerning the :i) buying and selling of real property or business entities; ii) managing of client money, securities or other assets iii) opening or management of bank, saving or securities accounts, iv) organization of contributions necessary for the creation, operation or management of companies. v) Creation, operation or management of trusts, companies or similar structures. The provision of legal advice continues to be subject to professional secrecy, unless the lawyer or notary participates in money laundering or terrorist financing activities or if his legal advice is provided for the purpose of committing these offences or if he is aware that his client seeks legal advice in order to commit such offences. n) Natural or legal persons providing services to companies and trusts (trust and company service providers) -except the persons under items j and jc of this article - which by way of business provide any of the following services to third parties:  
§ forming companies or other legal persons;  
§ acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons or arrangements;  
§ providing a registered office, business address, correspondence or administrative address and any other related services for a company, a partnership or any other legal person or arrangement;  
§ acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;  
§ acting as or arranging for another person to act as a nominee shareholder for another person other than a company listed on a regulated market, within the meaning of Article 17, paragraph 2, point a, hereof, that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards. A decision of the Minister of Development will specify the requirements for the incorporation, authorization, registration and the pursuit of business or profession referred to in this subparagraph, by natural or legal persons”.

Article 26 Law 3691/2008:  
“Reporting of suspicious transactions to the Commission -The obliged persons and their staff, including managers, must: a) promptly inform the Commission, on their own initiative, where they know, suspect or have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted; and b) promptly furnish the Commission or other anti-money laundering and anti-terrorist financing authorities, when requested, with all necessary information, in accordance with the procedures established by the applicable legislation.”

In this context, Greece referred to the process for electronic submission of STRs, as described on the F.I.U. website<sup>8</sup>:

Article 50 Law 3691/2008: “Access of the judicial authorities to records and data - In case of a preliminary judicial examination, investigation or trial for the offences referred to in Articles 2 and 3, the public prosecutor, the investigating judge and the court have access to the books and records that the obliged persons are required to keep according to the legislation in force and may attach to the case file only extracts from these books or records containing the entries that concern the investigated person. The accuracy of the extracts shall be certified by the legal representative of the obliged legal entity or by the obliged natural person. The public prosecutor, the investigating judge and the court shall have the right to examine these books and records in order to verify the accuracy of the entries in the extracts or the existence of other entries that concern the aforementioned person. This person may only control the existence of the entries allegedly concerning him”.

Related provisions of other treaties:

Article 13par. 2 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism: “Measures to prevent money laundering :

“In that respect, each Party shall adopt, in particular, such legislative and other measures as may be necessary to: a) require legal and natural persons which engage in activities which are particularly likely to be used for money laundering purposes, and as far as these activities are concerned, to: i. identify and verify the identity of their customers and, where applicable, their ultimate beneficial owners, and to conduct ongoing due diligence on the business relationship, while taking into account a risk based approach; ii. Report suspicions on money laundering subject to safeguard; iii. take supporting measures, such as record keeping on customer identification and transactions, training of personnel and the establishment of internal policies and procedures, and if appropriate, adapted to their size and nature of business”

Article 7 par. 1a United Nations Convention against Transnational Organized Crime:

“Measures to combat money-laundering- 1. Each State Party: (a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions”.

284. Greece referred to the annual report of the FIU for 2011 (available online<sup>9</sup>), according to which, in 2011 3,507 new cases were brought to inspection. The origin of these referrals is as follows:

Obliged persons in Greece:

- A) Banks 1,329,
  - B) Public Services and Organizations 1,149,
  - C) Companies transfer funds 749,
  - D) Stockbrokers 71,
  - E) Other insiders 182,
  - F) Other F.I.U.s 24,
  - G) Others 3
- Total 3,507**

**(b) Observations on the implementation of the article**

<sup>8</sup> [http://www.hellenic-fiu.gr/index.php?option=com\\_content&view=article&id=71&Itemid=74&lang=en](http://www.hellenic-fiu.gr/index.php?option=com_content&view=article&id=71&Itemid=74&lang=en)

<sup>9</sup> [http://www.hellenic-fiu.gr/images/stories/files/AnnualReport2011\\_GR.pdf](http://www.hellenic-fiu.gr/images/stories/files/AnnualReport2011_GR.pdf)

285. The Greek legislation provides for cooperation between its national investigating and prosecuting authorities and entities of the private sector. The reviewers encourage Greece to continue to enhance this cooperation so that the reporting of corruption becomes systematic in practice.

## **Article 39 Cooperation between national authorities and the private sector**

### **Paragraph 2**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

286. Greece cited the following applicable laws on the implementation of the provision under review:

Article 40 of the Greek Criminal Procedure Code, obliges all persons who become aware of a crime to report the matter to the public prosecutor or any law enforcement authority. The CPC does not specify any penalties for persons who breach this provision. Greece has put in place some measures to facilitate the reporting of corruption. In 2007, the 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. Furthermore both the General Inspector of Public Administration and the Inspectors-Controllers Body for Public Administration have portals on their websites that allow citizens to send their reports on corruption related issues<sup>10</sup>.

New Law 4254/7-4-2014 (paragraph IE / subparagraph IE 15 - new article 45B of the Greek Criminal Procedure Code).

New Law 4254/7-4-2014 (paragraph IE / subparagraph IE 17 par. 2 amendment art. 9 Law 2928/2001/ subparagraph IE 17 par.6 amendment art. 26, 110 and 125 of Law 3528/2007)

Related provisions of other treaties

Art. 22 Council of Europe Criminal Law Convention against Corruption:

“Protection of collaborators of justice and witnesses: Each Party shall adopt such measures as may be necessary to provide effective and appropriate protection for: a) those who report the criminal offences established in accordance with Articles 2 to 14 or otherwise co-operate with the investigating or prosecuting authorities, b) witnesses who give testimony concerning these offences”.

287. Greece provided the following cases of implementation and statistics:

#### **General Inspector of Public Administration:**

From 1,499 cases, 50.1% were brought to the G.I. through named complaints to the office and at the same time the percentage of anonymous complaints amounted to 15.9% of all cases.

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<sup>10</sup> <http://www.gedd.gr/index.php?action=report%3E,%3Chttp://rns.seedd.gr/PortalCont/Inet/z001ProtalContatsadd.asp>

**Internal affairs unit of the Greek police:**

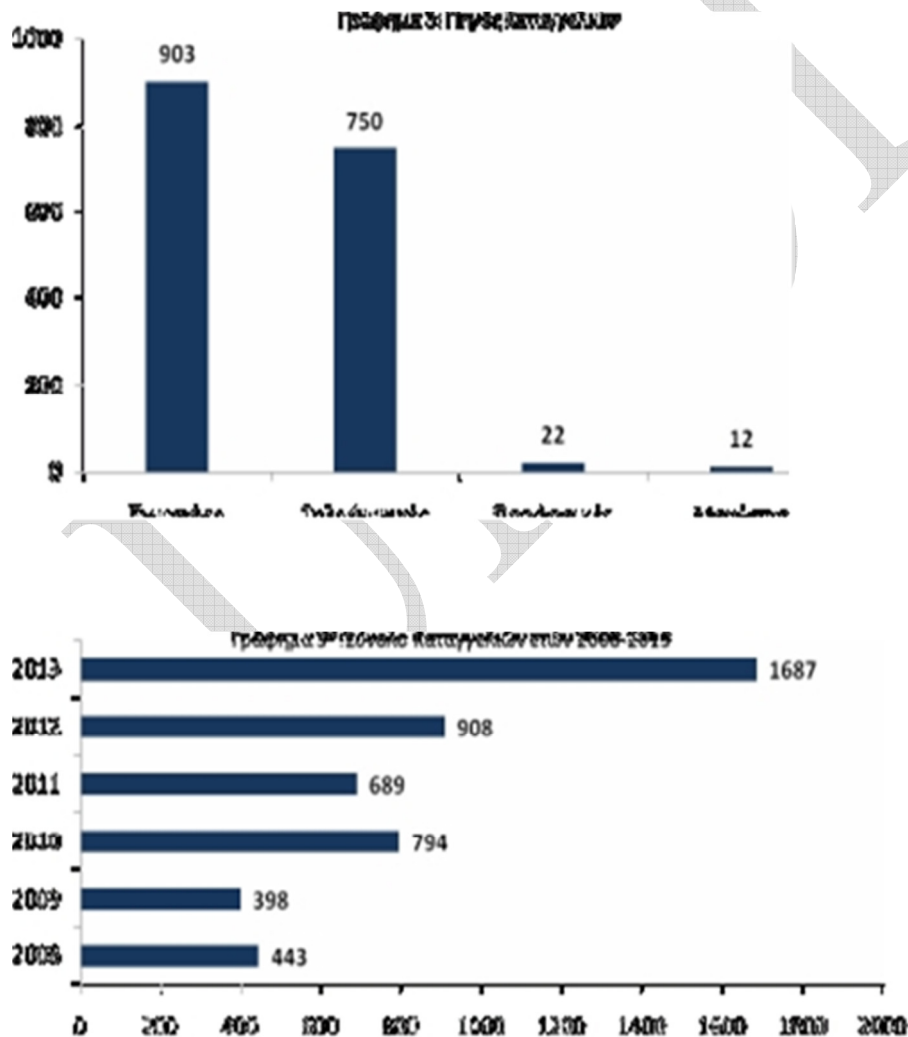
In the year 2012, from 1,060 cases 908 where brought to the Unit through complaints (415 named and 493 anonymous), of which 333 came from the Call Center Service, 552 of postal letters and documents transmitted by other authorities and 23 by physical presence to the Unit or gathering information from its staff).

The data for the year 2013 are the following:

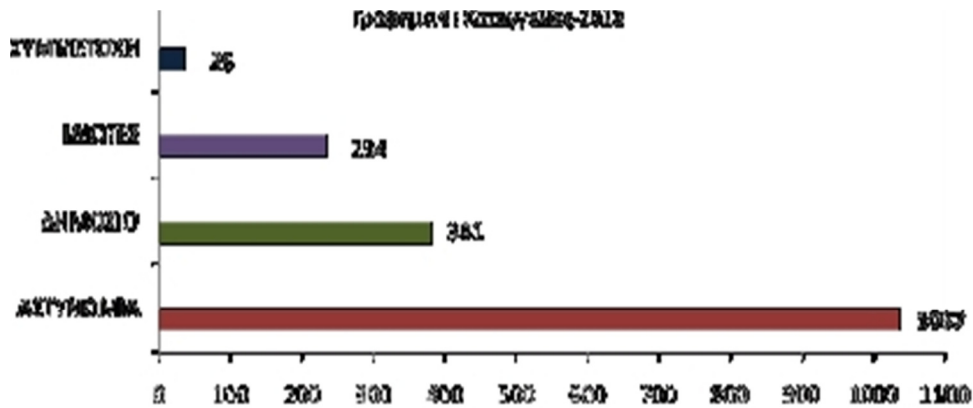
**COMPLAINTS**

**Total complaints in 2013: 1,687**  
**Total increase in complaints: 85.59%**  
**Detailed presentation of the Agency’s activity in 2013**

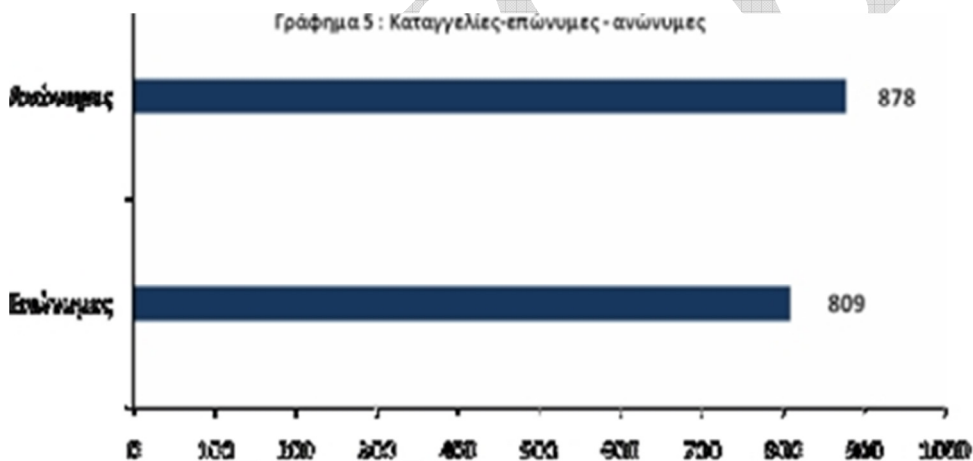
From 1 January 2013 to 31 December 2013, the Directorate of Internal Affairs received a total of 1687 complaints. Of this number, 750 were made directly to the Agency’s hotline, while 903 were made by letter, fax and transmission of documents by other authorities. Moreover, 34 were either made by citizens personally coming to the Agency or on the basis of information collected by its staff (Chart 3).



Of these 1,687 complaints, 1,037 concerned police staff, 381 concerned employees of the broader public sector, 35 concerned involvement of police staff and civil servants and 234 concerned private individuals (Chart 4).



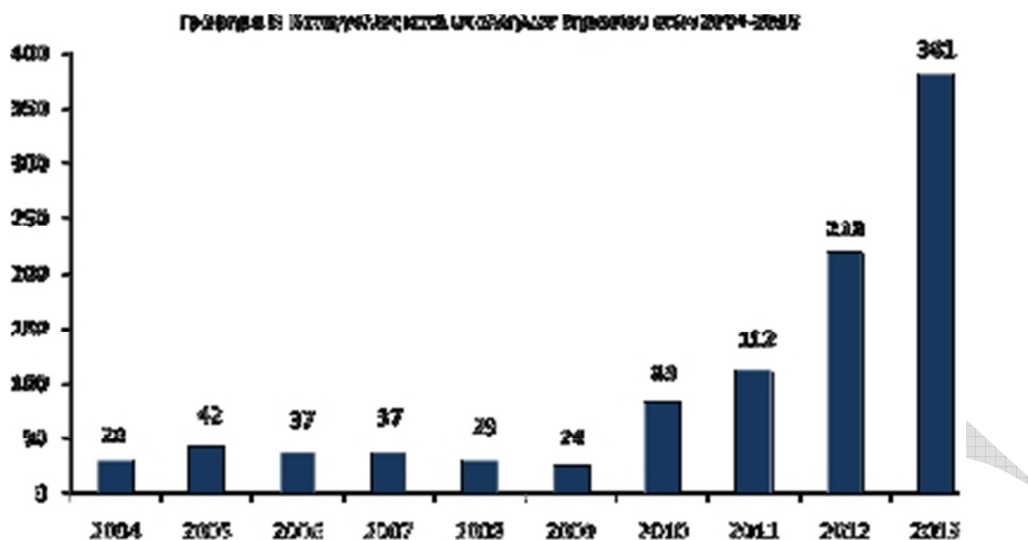
Of the complaints arriving at the Agency in 2013, 809 were identified, i.e. they were made either by persons who gave their true identity or by (police and non-police) authorities, while 878 were anonymous, i.e. they were made by persons who either did not want to reveal their identity or gave false information, by anonymous letter or telephone, at the Agency's hotline (Chart 5).



### Public sector - Complaints

#### 74.77% increase in complaints relating to civil servants

Complaints made to the Agency in 2013 relating to civil servants of the broader public sector came to 381. This absolute number of cases can be broken down to 588 sectors-cases (see p.20). Respectively, complaints against public officials and police officers came to 35, i.e. a total of 416 complaints.



It is clear that complaints relating to civil servants are very increased compared to 2012 (+74.77%); this is considered as evidence that a large part of the civil society is aware of the operation of the Agency, recognising that the Internal Affairs Agency takes immediate and effective action.

The Internal Affairs Agency can be contacted as follows:

- By visiting its offices at 23 Kifissias Avenue, Maroussi;
- By fax: 2106856508;
- By letter to: 23 Kifissias Avenue, postcode 15123, Maroussi;
- By telephone: 210-8779700 and 10301;
- By email to: [dey1@otenet.gr](mailto:dey1@otenet.gr) and [internalaffairs@astynomia.gr](mailto:internalaffairs@astynomia.gr).

**Inspectors-Controllers Body for Public Administration:**

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>Number of reports</b>	885	1,018	1,187	1,964	1,747	2,393	3,038	2,954	2,020	2,877

**(b) Observations on the implementation of the article**

288. In Greece, any person must report criminal acts of corruption. However, the failure to fulfill this obligation is not sanctioned. Greek authorities explained that the number of complaints received has reached a quite satisfactory level and shows the effectiveness of the available channels.

289. Greece’s legislation is in accordance with the provision under review.

**Article 40 Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

**(a) Summary of information relevant to reviewing the implementation of the article**

290. Greece cited the following applicable laws on the implementation of the provision under review:

The Greek FIU:

LAW 3691/2008 Article 7B par. 4

“Powers of the Units of the Authority

4. During such investigations and audits, no provision requiring banking, capital market, tax or professional secrecy shall be applicable vis-à-vis the Units, without prejudice to the provisions of Articles 212, 261 and 262 of the Code of Criminal Procedure.”

The Public Prosecutor against Corruption

LAW 4022/2011 as modified with art. 8 par.1 b Law 4205/2013 Article 2

“The investigating judge and the Public Prosecutor against Corruption have access to any information or data relating to or useful for the performance of their duties, not subject to the limitations of tax, banking, capital market or any other secrets, and to any file of any public authority or agency, that maintains and processes personal data. Similarly, they may order with a reasoned order the lifting of tax, banking and stock exchange secrets. The order must state the person related to the investigated case and contain the exact period of time for which the secrecy shall not apply, which may not exceed the period of one month. When it is considered that it should last longer, the investigating judge or prosecutor are required to introduce the matter to the relevant judicial council otherwise the order ceases by the end of the month.”

The Economic Crime Prosecutor

Art. 17 A par. 8 Law 2523/1997

“The Economic Crime Prosecutors of par. 1 shall have access to any information or data relating to, or useful for, the performance of their duties, not subject to the limitations of tax, banking, capital market and any other kind of secrecy, and to any file of any public authority or agency, that maintains and processes personal data.”

The Financial and Economic Crime Unit (SDOE)

Art. 30 par. 6 Law 3296/2004

“Employees of the Financial and Economic Crime Unit have access and receive any information or data concerning or relating to the exercise of their duties and mission, upon a related official order, not subject to any secrecy provisions, but with the obligation to comply with the provisions on confidentiality of article 26 of the Civil Service Code (Law 2683/1999, Government Gazette 19 A)”.

Article 2 para. 3 and 4 P.D. 85/2005

“3. SDOE is competent to access and obtain any information or evidence which relates to its tasks and mission, upon a related official order, not being subject to the restrictions of secrecy provisions, but with the obligation to comply with the provisions on confidentiality under article 26 of the Public Servants’ Code (L. 2683/1999). (...)

4. SDOE cooperates and shares information related to its mission, with other authorities, services and bodies in and out of Greece, and participates in official inter-service organs.”



### Greek Financial Police

Art. 32 par. 4 Law 3986/2011 as amended by Art. 44 par. 2 Law. 4249/2014

“When a control is being conducted by the Financial Police Division for the confirmation of infringements of tax and customs legislation, or a preliminary examination or investigation for economic crimes within its jurisdiction, the tax, customs, banking, capital market or business secrecy does not apply”.

### Internal Affairs Service of the Ministry of Finance

According to art. 12 par. 4 of Law 4110/2013, the provisions of art. 30 par. 6 of Law 3296/2004, referring to SDOE, apply also for the Internal Affairs Service and its staff.

All cases in FIU require that the tax, banking and capital market secrecy shall not apply.

291. Greece did not provide any cases of implementation or statistics.

#### **(b) Observations on the implementation of the article**

292. Greece’s legislation is in accordance with the article under review.

### **Article 41 Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

293. Greece has adhered to a number of international agreements relating to the exchange of data on criminal records to be used for the purposes described in Article 41. These include:

1. Law 4218/1961, Ratification of the European Convention on Mutual Assistance in Criminal Cases, articles 13 and 22,
2. Law 1760/1988, Ratification of the Convention on judicial assistance in criminal cases between the Government of the Greek Republic and the Arab Republic of Egypt, article 11, and
3. Law 2312/1995, Ratification of the Convention between the Greek Republic and the Republic of Tunisia on Extradition and Mutual Assistance in Criminal cases, article 11.

The most important instruments in this field to which Greece is bound are:

1. Framework Decision 2009/315/JHA on the organization and content of the exchange of information extracted from criminal records between Member States, and
2. Framework Decision 2009/316 JHA, on the establishment of the European Criminal Records Information System, pursuant to article 11 of the framework decision 2009/315/JHA.

These instruments aim at improving the exchange of information between EU Member States on convictions and, where imposed and entered in the criminal records of the convicting Member State, on disqualifications arising from criminal conviction of citizens of the Union. In addition to the obligations of a convicting Member State to transmit information to the Member States of the person's nationality concerning convictions handed down against their nationals, an obligation on the Member States of the person's nationality to store information so transmitted is also introduced, in order to ensure that they are able to reply fully to requests for information from other Member States. Finally, these instruments lay down the framework for the development of a fully computerised system of exchange of information on convictions between Member States.

294. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

295. Greece's legislation is in accordance with the article under review.

**Article 42 Jurisdiction**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

*(d) The offence is committed against the State Party.*

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

**(a) Summary of information relevant to reviewing the implementation of the article**

296. Greece indicated that the jurisdiction of Greek criminal courts is mostly regulated in the General Part of the Penal Code, as follows:

“PENAL CODE

BOOK ONE, GENERAL PART CHAPTER ONE: THE PENAL LAW

[...]

II. Territorial limits of penal laws Article 5

Crimes committed within the Greek territory

1. Greek penal laws apply on all acts committed within the Greek territory, even when committed by aliens.
2. Greek vessels and aircrafts are considered part of the Greek territory wherever they are situated, unless they are subjected to foreign law in accordance with international law.

Article 6

Crimes committed by Greeks abroad

1. Greek penal laws also apply on any act that they regard as a felony or misdemeanour, which has been committed abroad by a Greek, if such act is regarded as a punishable act by the laws of the country where it has been committed, or if it has been committed in a country that is constitutionally unsettled.
2. Prosecution shall also be turned against an alien who was Greek at the time when the act was committed. Moreover, prosecution shall also be turned against a person who acquired the Greek nationality after the act was committed.
3. In so far as misdemeanours are concerned, the victim’s complaint requesting prosecution or a request for prosecution by the government of the country where the misdemeanour was committed is necessary in order for the provisions of paragraphs 1 and 2 to be applied.
4. Petty violations committed abroad are punished only in cases specifically provided for by law.

Article 7

Crimes committed by aliens abroad

1. Greek penal laws are also applied against an alien for an act committed abroad that they regard as a felony or misdemeanour, if this act is directed against a Greek citizen and is also considered as a criminal offence according to the laws of the country where it was committed or if it was committed in a constitutionally unsettled country.
2. The provisions of paragraphs 3 and 4 of the previous article are also applied herein.

Article 8

Crimes committed abroad that are always punishable according to the Greek laws

Greek penal laws apply for Greeks and aliens, irrespective of the laws of the place where the crime was committed, for the following acts committed abroad:

- (a) High treason, treason aimed against the Greek state and terrorist acts (article 187A);
- (b) Crimes relating to the military service and the obligation to join the armed forces (special part, Chapter 8);

- (c) A punishable act committed by the above persons under their capacity as officials of the Greek state or of any institution or body of the European Union based in Greece;
- (d) an act against or addressed to an official of the Greek State or a Greek official of an institution or body of the European Union, in the course of or in connection with the performance of his/her duties;
- (e) Perjury in a proceeding pending before the Greek authorities;
- (f) Piracy;
- (g) A crime related to currency (special part, Chapter 9);
- (h) An act of slave-trading, human trafficking or lewd conduct with a minor for pay, travel with the purpose of intercourse or other lewd acts against a minor or underage pornography;
- (i) Illegal trafficking of narcotic drugs;
- (j) Illegal circulation and trading of obscene publications;
- (k) Any other crime covered by special provisions or international conventions that are signed and ratified by the Greek state, providing for the application of the penal laws of Greece.

#### Article 9

##### Non-prosecution of crimes committed abroad

1. Prosecution of an act committed abroad is excluded: (a) if the perpetrator was tried abroad and found not guilty or, in case he/she was found guilty, has served his/her sentence in its entirety; (b) if, according to the foreign law, the act has fallen under the statute of limitations or the penalty imposed has been prescribed or pardoned; (c) if, according to the foreign law, a complaint by the victim is necessary for prosecution and such complaint was either never made or has been withdrawn.
2. The above provisions are not applied in relation to the acts stipulated in article 8.

#### Article 10

##### Calculation of penalties served abroad

A penalty served abroad in whole or in part is subtracted from the subsequent penalty imposed by the Greek courts, if a verdict on guilt is pronounced in Greece for the same act.

#### Article 11

##### Recognition of foreign penal decisions

1. If a Greek has been found guilty abroad for an act that, in accordance with the provisions of Greek laws, entails the imposition of supplementary penalties, the competent court of misdemeanours may impose such penalties.
2. The competent court of misdemeanours may also impose the measures of security provided for by the Greek laws to anyone found guilty or innocent abroad.

(...)

#### Article 16

##### Place of commission

The act is regarded as having been committed at the place where the perpetrator committed the punishable act or omission in whole or in part, as well as the place where the punishable result occurred or, in cases of attempt, the place where the punishable result should have occurred according to the perpetrator's intent."

It should be noted, that Article 8 (c) and (d) of the Penal Code above was only recently amended (by Law 4254/2014), in order to incorporate in the Penal Code provisions found previously under Article 6 of Law 2802/2000 and Article 11 of Law 2803/2000.

In particular, Article 8(c) in its current (new) wording widens the principle of State Protection by treating criminal offences committed abroad by officials of European Union institutions or agencies which have their seat in Greece in the same way as those committed abroad by Greek officials. This fulfils the obligation under Article 7(1)(d) of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, which was ratified by Law 2802/2000, as well as Article 6(1)(d) of the Protocol to the Convention on the protection of the European Communities' financial interests, which was ratified by Law 2803/2000.

The new Article 8(d) also widens the principle of State Protection by treating criminal offences committed abroad against Greek officials of European Union institutions or agencies in performing their service or in connection with the performance of their duties in the same way as those committed abroad against Greek officials (nationals and foreigners - such as honorary consuls or administrative personnel of consulates). This fulfils the obligation under Article 7(1)(c) of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, and Article 6(1)(d) of the Protocol to the Convention on the protection of the European Communities' financial interests. Specifying cases 'addressed to' as well as cases 'directed against' officials serves specifically to cover active corruption against officials of the Greek State and Greek officials of European Union institutions and agencies, which in its former wording would run up against the condition that the act be directed against the official himself/herself (see Ch. Mylonopoulos International Criminal Law, 2nd Edition, 1993, page 288).

Finally, an important addition was made by Law 4254/2014 in Article 236 Penal Code regarding active bribery. The new par. 4 of this Article now reads:

“4. With regard to the applicability of this article to acts committed abroad by a foreign national, it is not necessary that the conditions under Article 6 are satisfied.”

This addition substantially widens the application of the principle of active personality under Article 6 of the Penal Code, while at the same time incorporating the provisions of a number of special laws which were previously applied (Article 6 of Law 2802/2000, Articles 11 of Law 2803/2000, Article 9 of Law 3560/2007 and Article 10 of Law 3666/2008) in the Code itself. Firstly, the penalisation of the criminal offences of active corruption committed by nationals abroad no longer requires the government of the country where the act was committed to file an application, as was the case with misdemeanours. And secondly, the double criminality condition no longer applies to acts of active corruption committed by nationals abroad. Given the broad concept of a “public official”, that includes foreign officials in accordance with Article 263A - it is them that the provision actually targets, since national officials fall within the scope of Article 8 of the Penal Code -, the provision in question fulfils the obligations arising from Article 7(1)(b) of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, which was ratified by Law 2802/2000, Article 6(1)(b) of the Protocol to the Convention on the protection of the European Communities' financial interests, which was ratified by Law 2803/2000, Article 17 of the Convention against Corruption of the Council of Europe, which was ratified by Law 3560/2007, as well as for the most part Article 42 (2) (b) UNCAC with regard to bribery offences. It should be noted that in any case there is no reciprocity issue in the European Union, given that all Member States have adopted similar provisions. It should be regarded as self-evident, that the provision in question also applies to cases of active corruption of members of the European Commission or the European Parliament and members of the Court of Justice and the Court of Auditors of the European Union, under article 159A in conjunction with Article 159(3), and under Article 237(2) and (3) in conjunction with Article 263A(3) of the Penal Code respectively.

297. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

298. Greece's legislation is in accordance with the article under review.

## Chapter IV. International cooperation

### General observations

299. International treaties are transposed into Greek law through the adoption of domestic legislation, or possibly, in the case of EU legislation, by Presidential decree or Ministerial decision, and prevail over domestic law in the event of any potential conflict. According to the presumption principle, the Greek law is presumed to be in accordance with Greece's international law obligations. Conversely, domestic law and the principle of reciprocity are applied when no multilateral or bilateral treaty, convention or agreement exists.
300. The reviewing States note that it was difficult to assess in detail Greece's practice of providing mutual legal assistance in corruption cases, due to the absence of comprehensive data on any requests Greece has refused, and, more generally, the absence of a specific system for collecting data. They welcome, in this context, indications by the Greek authorities that a comprehensive programme to digitalize justice is underway and expected to be completed by October 2015, which would allow authorities to collect data on the type of mutual legal assistance requests (e.g., underlying offences), the timeframe for providing responses to these requests, and the response provided, including any grounds for refusal.
301. A further general remark pertains to the reviewers' observations in this chapter. While it is noted that Greece interprets its domestic legislation in accordance with international treaties such as UNCAC, which assume the force of law, and notwithstanding the application of the monist system in Greece, the reviewers have made certain recommendations under chapter IV where the domestic legislation is either silent or does not specifically address certain matters, in the interest of greater legal certainty, especially concerning non-treaty partners, to whom the domestic legislation can be directly applied. It is, however, understood that all requests, whether treaty-based or non-treaty based, are dealt with in accordance with the provisions of the domestic legislation and Greece's international law obligations.

### **Article 44 Extradition**

#### **Paragraph 1**

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

302. Greece provided the following information on the implementation of the provision under review.

Greece grants cooperation on extradition for all corruption offences established in accordance with the Convention based on the principle of dual criminality.

Usually, for extradition cases the European Convention on Extradition of the Council of Europe of 1957 (Law No. 4165/1961) is used. The European Convention on Extradition, incorporated

into the Greek Legal System by Law No. 4165/1961, is a multilateral convention (entered into by the Council of Europe Member States and by other countries, such as Israel, Republic of Korea and South Africa).

Basic rules on extradition are also contained in Arts 436-456 of the Code of Criminal Procedure (see Annex 1). If there is no bilateral agreement or convention in place, Greece applies the principle of reciprocity.

303. Greek authorities indicated that, during the last three years, Greece has received no extradition requests and has dealt with no case of extradition for corruption offences in the sense of this Convention. For a close-enough example from the year 2011 relating to the execution of a European Arrest Warrant against a Greek national please see below.
304. From 1 January 2010 to 31 December 2014, Greece sent 69 extradition requests and received 302 extradition requests in matters not related to corruption and money laundering offences.
305. Regarding requests received, Greece indicated that it has refused extradition in about 15-20 percent of the cases, mainly due to the Greek nationality of the requested person, because he/she had been granted asylum, or for reasons of possible human rights violations. In the vast majority of cases concerning requests coming from Albania (these make about 80 percent of all cases), as well as the USA, Canada, Serbia etc., the request is rarely denied.
306. Regarding requests sent, Greece indicated that there is very good cooperation with Albania, which executes almost all of the Greek requests. Issues have been encountered with the USA, Canada and Australia, due to the increased evidentiary requirements of these countries, leading to their not accepting to proceed with the extradition requested.

**(b) Observations on the implementation of the article**

307. This is a mandatory provision and has application to all the offences established in accordance with this Convention. Greece states that it is in compliance with the provisions of paragraph 1, in that it cooperates on extradition in relation to all corruption offences based on the principle of dual criminality. It is noted that extradition is limited to the extent that Greece has not criminalized some offences established under the Convention. However, Greece confirmed that UNCAC could form the basis for extradition as it has been ratified by Law No. 3666/2008, and so there would seem to be no legal obstacles to granting extradition for UNCAC offences. Greece confirmed that should an extradition request be filed on the basis of UNCAC and lacking another more appropriate legal basis, Greece would act in accordance with the provisions of the present Convention. Greece further explained that Law 3666/2008 simply ratifies the Convention, meaning that it has become an integral part of Greece's domestic law and ranks high among statutory instruments, just below the Constitution but above other laws. There is no need for elaborate provisions of the ratification law specifying the above, nor are such provisions included in Law 3666/2008. The Law simply says that the Convention is ratified and has the power accorded to international treaties by Art. 28 par. 1 of the Greek Constitution.
308. In its reply Greece also refers to Law No. 4165/1961 which was the law which ratified the European Convention on Extradition of the Council of Europe of 1957 and that Law reflects very much that language of that Convention. Where there is no convention Articles 436-456

have relevance, and even where there is a convention they also have application except where they are in conflict with it.

309. Greek authorities confirmed that the European Convention on Extradition, incorporated into the Greek Legal System by Law No. 4165/1961, has for many years been operating as a satisfactory basis for the extradition of offenders. Failing any other bilateral or multilateral convention, i.e. when the extradition request is filed based on the principle of reciprocity, the provisions of articles 436 et seq. of the Greek Code of Criminal Procedure, apply. Such provisions also act *complementarily* to other bilateral and multilateral conventions *on issues not covered thereby*.

310. There have been no UNCAC related extradition requests in the last three years. Due to the lack of specific examples of implementation, including cases where dual criminality issues were raised and resolved, it is difficult to assess the implementation of the provision in practical terms. Greece's legislation is in accordance with the provision under review.

## Article 44 Extradition

### Paragraph 2

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

#### (a) Summary of information relevant to reviewing the implementation of the article

311. Greece indicated that it has partly implemented this provision of the Convention with EU Member States and cited the following applicable measures:

This paragraph establishes an exception to the basic principle of dual criminality, which is a basic legal principle for extradition cases according to article 338 of the Code of Criminal Procedure. However, an important exception is provided for with regard to EU member States in article 10 par. 2 of Law No. 3251/2004 according to which

“... The execution of the European Arrest Warrant shall be allowed, without verification of the dual criminality of the act, for the following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State: i) participation in a criminal organisation, ii) acts of terrorism, iii) trafficking in human beings and procurement to prostitution, iv) violation of sexual liberty, sexual exploitation of children and child pornography, v) illicit trafficking in narcotic drugs and psychotropic substances, vi) illicit trafficking in weapons, munitions and explosives, vii) offences pertaining to corruption and bribery, viii) offences against the financial interests of the European Communities, ix) laundering of the proceeds of crime, x) counterfeiting currency, including of the euro, xi) computer-related crime, xii) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties, xiii) facilitation of unauthorised entry and residence, xiv) intentional homicide, grievous bodily injury, xv) illicit trade in human organs and tissue, xvi) kidnapping, illegal restraint and hostage-taking, xvii) racism and xenophobia, xviii) organised or armed robbery, xix) illicit trafficking in cultural goods,



including antiquities and works of art, xx) swindling, xxi) racketeering and extortion, xxii) counterfeiting and piracy of products, xxiii) forgery of administrative documents and trafficking therein, xxiv) forgery of means of payment, xxv) illicit trafficking in hormonal substances and other growth promoters, xxvi) illicit trafficking in nuclear or radioactive materials, xxvii) trafficking in stolen vehicles, xxviii) rape, xxix) arson, xxx) crimes within the jurisdiction of the International Criminal Court, xxxi) unlawful seizure of aircraft/ships, xxxii) sabotage.

312. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

313. This provision is of a non-mandatory character, i.e. it enables States parties to the Convention to grant extradition without taking into account dual criminality requirements, provided that the law of the respective requested State so permits. In general, Greece requires dual criminality as a requirement for extradition. Different considerations apply in relation to its dealing with fellow Member States of the European Union in certain circumstances, as provided for by Article 10 (2) of Law No. 3251/2004.

314. Greek authorities elaborated on the different considerations applying to the listed offences excluded from verification of dual criminality, as provided for in article 10, par. 2 of Law No. 3251/2004 incorporating the Framework Decision related to the European Arrest Warrant and the surrender procedures into the Greek Legal System. Accordingly, the established case law of the Greek Courts fully complies with the judgment rendered by the European Court of Justice in Case No. C-303/05, which, inter alia, clearly stated that “the actual definition of those offences and the penalties applicable are those which follow from the law of ‘the issuing Member State’... and concluded that “It follows that, in so far as it dispenses with verification of the requirement of dual criminality in respect of the offences listed in that provision, Article 2(2) of the Framework Decision *is not invalid on the ground that it infringes the principle of the legality of criminal offences and penalties*”.

315. Greek authorities explained that the above court judgment coincides with the entire philosophy of the European Arrest Warrant structure, which is the “*creation of an area of freedom, security and justice through the replacement of traditional cooperation relations which have prevailed up till now between Member-States by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice, based on mutual trust.*”

316. Indicatively, Greek authorities refer to Judgments No. 274/2014, 1104/2012, 1403/2011, 185/2010, 1408/2010, 1309/2009 rendered by the Supreme Court of Greece, acting as a Court of Appeal, wherein the Supreme Court confirmed that for the offences stipulated by Law No. 3251/2004, to the extent that they are punished in the issuing Member State by the imposition of a penalty involving deprivation of liberty for at least three (3) years as their maximum, *dual criminality does not need to be verified and the European Arrest Warrants have to be executed.*

317. By way of example, Greek authorities referred to the Supreme Court ruling in Judgment No. 1403/2011.

In this case, the Hungarian judicial authorities (Municipal Court of Szekesfehervar) had issued a European Arrest Warrant against a Greek national. The Thessaloniki Court of Appeal sitting in Council, in its Judgment No. 595/2011, ruled for the execution of the European Arrest

Warrant. The requested person lodged an appeal against such judgment before the Supreme Court. The offence – for which surrender was requested – was the offence of fraud, as to the Hungarian Law, while, as to the Greek Law, the requested person had committed the offence of embezzlement, based on the described actual facts.

Upon examining whether the conditions for the execution of the warrant against the Greek national applied, i.e. the non-initiation of penal proceedings in Greece for the same offence and the safeguarding that the Greek national would be transferred to Greece for serving his sentence in Greece, the Supreme Court held that the European Arrest Warrant under investigation had to be executed without verifying the dual criminality of the act, as it referred to legally covered offences (Law No. 3251/2004) and the requested person should be punished by the issuing state by the imposition of a penalty involving deprivation of liberty for at least three (3) years as its maximum. Therefore, in that case, *dual criminality did not need to be verified*. All other conditions concurred and the appeal was dismissed.

318. The reviewers are satisfied with the information provided.

## **Article 44 Extradition**

### **Paragraph 3**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

319. Greece cited the following applicable measures.

According to article 437 CCP, in cases of multiple crimes the extradition is permitted for all acts, if one of them is punishable by one of the above penalties.

Furthermore, according to article 2 par. II of Law 4165/1961, “If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.”

320. As stated above, during the last three years Greece has neither received any extradition or Surrender requests for offences under this Convention nor dealt with any such case.

#### **(b) Observations on the implementation of the article**

321. This is a non-mandatory provision. Greece’s reply refers to article 437 of the Code of Criminal Procedure and quotes from Article 2 par. II of Law 4165/1961 and appears to be in compliance with the provisions of this paragraph.

## **Article 44 Extradition**

#### Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

#### (a) Summary of information relevant to reviewing the implementation of the article

322. Greece explained that it undertakes to fulfil its obligations from the present provision. Corruption crimes are not considered as political offences. It provided the following information on the implementation of the provision under review.

##### Legal basis

- 1) The present convention itself may be considered as the legal basis for extradition.
- 2) Also, according to article 3 of law N. 4165/1961 the following rules apply:

##### “Article 3 - Political offences

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.
2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.
3. The taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed to be a political offence for the purposes of this Convention.
4. This article shall not affect any obligations which the Contracting Parties may have undertaken or may undertake under any other international convention of a multilateral character.”

323. Greece referred to its answer to article 44 par. 18

#### (b) Observations on the implementation of the article

324. The position relating to this paragraph is governed by article 3 of Law No. 4165/1961, which does not allow for extradition if the offence is regarded as a political one. Paragraph 4 of that article would appear to provide an exception where obligations have been entered into by international conventions of a multilateral character.

325. Greek authorities further explained that the concept of “political offences” gives way when it comes to fulfilling the international obligations of Greece. To give one notable example, the Supreme Court case law has held that terrorism *is not a political offence*, so terrorism-related cases are heard by Joint Jury Courts (jury and regular judges) and the locally competent Three-Member Appeal Court of Felonies. More specifically, in its Judgment No. 1413/2010, the Supreme Court held that “*The penal offences committed by terrorists do not constitute political crimes*”. Furthermore, the same judgment provides that:

“No legislative definition of the notion of political crime has been formulated. By way of interpretation, a political offence is a crime expressly directed against the constitutional rule of Greece and which, at least, intends to the reversal or distortion thereof. Such pursuit, however, could not be only subjectively expressed, as the offender’s political ideology; it has to be also objectively reflected by the actual contribution that a criminal behavior had or could have to the breach of the established sovereignty. In addition, a crime can be related to a political offence if the breach caused by such crime to another legal right directly leads to the preparation of means for the commission of a political offence, in the above sense. This connotation may apply only if the political crime has already been committed. Within this framework, a political offence is exclusively related to high treason and the preparatory acts thereof (Greek Penal Code, 134 et. seq.). On the contrary, the establishment of a structured group with continuous action or the participation therein, with a view to commit crimes of penal law, unable to affect the constitutional rule of the Country and directed against persons or objects different to those referred to in articles 134 et.seq., Greek Penal Code, *do not constitute a political crime*, regardless of how the alleged offenders ideologically identify their acts”.

326. Greek authorities confirmed that UNCAC offences are extraditable under its bilateral and multilateral treaties, including those signed before ratification of the Convention.

327. Taking into account the above, there are no obstacles with regard to the extradition of persons responsible for offences established in accordance with the Convention. Greece’s legislation accords with the provision under review.

## **Article 44 Extradition**

### **Paragraph 5**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

328. Greece indicated that it does not make extradition conditional on the existence of a treaty. As noted above, the present Convention may be considered as the legal basis for extradition. In any case, the principle of reciprocity is applied.

329. Greece has not dealt with any extradition cases for offences covered by this Convention in the last three years.

330. However should such a case arise, and failing another bilateral or multilateral convention being in place, Greece would apply article 44 of this Convention for filing an extradition request to another State party.

#### **(b) Observations on the implementation of the article**

331. Greece does not make extradition conditional on the existence of the treaty, and adds that UNCAC article 44 would be a sufficient legal basis for extradition.

332. Greece indicates that it would apply the present article should a relevant case arise and provided the following example.

If a Greek public official for whom a European Arrest Warrant and an Interpol Red Notice had been issued with regard to any one of the offences covered by this Convention, was located in a third country, i.e. in Latin America, which has incorporated UNCAC in its domestic law, the related extradition request would be filed based on the present Convention.

333. The provision is adequately implemented.

## **Article 44 Extradition**

### **Paragraphs 6 and 7**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

334. Greece does not make extradition conditional on the existence of a treaty. Greece indicated that the present Convention may be considered itself as the legal basis for extradition (as it is ratified, according to the Greek Law 3666/2008).

335. Article 437, in particular, of the Criminal Procedure Code is also deemed relevant to the implementation of the provision.

#### **(b) Observations on the implementation of the article**

336. As noted under paragraph 5 of the article above, Greece does not make extradition conditional on the existence of the treaty. Article 44 would be a sufficient legal basis for extradition.

## **Article 44 Extradition**

### **Paragraph 8**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

337. Greece cited the following applicable measures:

Legal basis

a) According to article 2 para 1 of Law 4165/1961, extradition shall be granted in respect of offences punishable under the laws of both the requesting and of the requested Party by deprivation of liberty or a security measure for a maximum period of at least one year or by a more severe penalty. Where a conviction to a penalty has occurred or a security measure has been ordered in the territory of the requesting Party, the punishment issued must have been for a period of at least four months.

b) According to article 437 of CCP, the extradition of a foreigner is permitted:

i) when the requested person is accused of an offense, for which a custodial sentence of at least two years is threatened by both the Greek law and the law of the requested party. In cases of multiple crimes the extradition is permitted for all acts, if one of them is punishable by one of the above penalties. If the requested person has previously been irrevocably convicted by a court decision of any State to a custodial sentence of at least three months for a crime not foreseen by Article 438 case c (political, military, tax, press offences etc.), and the extradition is requested for an offense committed in relapse according to the Greek criminal law and according to the law of the requested State, then (in that case) the extradition may be allowed, if the crime is a misdemeanor punishable with any custodial sentence,

ii) when the courts of the requested State have convicted him to a custodial sentence of at least six months for an act, which is characterized as a misdemeanor or a felony according to the Greek criminal law and according to the law of the requested State,

iii) when he consents to be surrendered to the requesting State.

c) In accordance with Article 438 of CCP, extradition is prohibited:

(a) If the person for which extradition is requested was Greek when the act was committed;

(b) If the competence for prosecution and punishment of the crime committed abroad belongs to the Greek courts in accordance with the Greek laws.

(c) If, in accordance with the Greek laws, the crime is characterised as political, military, tax-related or related to the press, or is prosecuted only by complaint of the victim, or when the circumstances show that extradition is requested for political reasons;

(d) If, in accordance with the laws of the state requesting extradition or the Greek state or the state where the crime was committed, a lawful reason preventing prosecution or execution of the sentence or a lawful reason excluding or cancelling punishment has emerged prior to the decision on extradition; and

(e) If it is speculated that the person for whom extradition is requested will be prosecuted by the state to which he surrenders for a different act than the one for which extradition is requested.

338. Reference is also made to Article 3 CCP (quoted above under paragraph 4 of the present article) in relation to political offences, and the information provided under paragraph 15 of the present article in relation to non-discrimination.

**(b) Observations on the implementation of the article**

339. Greece cites and quotes from article 2 para 1, of Law No. 4165/1961, the provisions of which mirror those of Article 2 para 1, of the European Convention on Extradition of 1957. There is also reference to Articles 3 and 437-438 of the Code of Criminal Procedure.

340. It was confirmed during the country visit that the above provisions are standard practice in Greek extradition proceedings, although there have been no recent examples of extradition pertaining to UNCAC offences.

## **Article 44 Extradition**

### **Paragraph 9**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

341. Greece cited Law No. 4022/2011, which provides for a quicker procedure and trial in corruption cases, which could also be considered to extend to extradition proceedings. Law No. 4022/11 refers to the quick management of corruption cases and is practical proof for the awareness and the will of Greece to accelerate investigation and hearing procedures in corruption-related cases. Indeed, experience suggests that the investigation and judicial review of such cases is more rapidly completed in all related procedures.

342. The surrender procedure under European Arrest Warrants is an even faster and more flexible procedure that can be completed even within twenty (20) days, provided that the requested person consents. Another rapid procedure is also stipulated by Law No. 3771/2009 (Extradition treaty with the USA) and by Law No. 3288/2004 (Extradition treaty with Mexico). The above instruments also constitute examples of the Greek authorities expediting extradition procedures relating, among others, to UNCAC offences.

343. Regarding extradition procedures for requested persons in particular, in Greece these are comparatively very quick. They deploy in two phases: 1) judicial and 2) administrative. Usually, extradition procedures take up to five (5) to six (6) months to complete, whilst in cases where more time is required, the persons requested either, as expected, exercise their legal rights – a practice that is fully respected – or follow delaying tactics, such as filing a request for cancellation against the related Ministerial Judgment, or applying for asylum. Surrender procedures are adjourned under Article 441 of the Greek Code of Criminal Procedure, when a requested person has issues pending before the Greek Justice.

344. Greece did not provide any cases of implementation or statistics.

#### **(b) Observations on the implementation of the article**

345. This is a mandatory provision subject to the provisions of a State party's domestic law. Greece has cited Law No. 4022/2011, which refers to the trial of public officials for corruption offences. The law establishes the public prosecutor on corruption, and also in Article 1.b) covers public officials. It has been suggested that this might extend to extradition cases. It was clarified

during the country visit that the cited legislation is indicative in that the authorities would look at the spirit of the law, although it is not directly applicable in extradition proceedings.

346. Greece also pointed to the existence of expedited extradition procedures under the framework of the European Arrest Warrants, as well as the bilateral treaties with the USA and Mexico.

347. In this context, Greece is encouraged to continue to ensure that extradition procedures are applied expeditiously in line with the provision under review.

## **Article 44 Extradition**

### **Paragraph 10**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

348. Greece cited the following domestic laws:

a) According to article 16 of Law 4165/1961, which is referring to the issue of provisional arrest

“... 1 In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law. 2 The request for provisional arrest shall state that one of the documents mentioned in Article 12, paragraph 2.a, exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought. 3. A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request. 4 Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought. 5. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.”

b) According to article 445 para 2 of the Greek Code of Criminal Procedure “...when there is reasonable suspicion that the person who will be sought for extradition will leave the place he/she is located, the public prosecutor at the court of Appeal has the legal right to issue a provisional arrest warrant, even before the application for the extradition.



349. Greece provided the following additional information on the practical aspects of implementation of the above provisions. Generally, when a requested person is found in Greece, an order for his/her temporary arrest is immediately issued, in compliance with Article 445, par. 2, Greek Code of Criminal Procedure. This means that an applicable Interpol Red Notice is adequate for the Greek authorities to initiate an extradition procedure.

350. After the temporary arrest of a requested person, the applicable extradition procedure is as follows. The requested person is arrested and immediately brought before the locally competent Prosecutor of the Court of Appeal. He/she is informed on the request filed by the applying Authority and remains in detention, waiting for the request to be executed and all required extradition supporting documents to be prepared. Thus, the requested person remains in detention for thirty (30) or forty (40) days, or for as long as it is provided by the related Convention (for example, two months for the USA) and therefore, any escape risk is eliminated. As soon as the request and the extradition supporting documents are received, an arrest warrant is issued by the locally competent President of the Court of Appeal and next the case is brought to hearing before the competent Athens Court of Appeal sitting in Council, which rules for or against the extradition of the requested person. When the Court rules for the extradition, the requested person may lodge an appeal against the related Judgment within twenty-four (24) hours before the Supreme Court, remaining, however, in detention. Should the competent Court of Appeal sitting in Council rule against the extradition and the competent Court of Appeal Prosecutor does not lodge an appeal before the Supreme Court within twenty-four (24) hours, the requested person is dismissed. If, however, the competent Prosecutor of the Court of Appeal lodges an appeal before the Supreme Court within twenty-four (24) hours, the requested person remains in detention until the Supreme Court renders its judgment.

351. In terms of extradition, the Supreme Court acts as a second instance court, i.e. as a Court of Appeal. Should the Supreme Court rule for the extradition, the requested person remains in detention and the final Decision is made by the Minister of Justice, Transparency and Human Rights. Should the Supreme Court rule against the extradition, the requested person stops being in detention and his/her extradition procedure is terminated.

352. There have been no cases of implementation or statistics.

**(b) Observations on the implementation of the article**

353. Greece cites and quotes from Article 16, of Law No. 4165/1961, the provisions of which give effect to Article 16 of the European Convention on Extradition of 1957. Article 445, para. 2 of the Greek Code of Criminal Procedure covers the position where the European Convention on Extradition does not apply and this allows for such procedures where appropriate. Greece's legislation and procedure therefore appear to comply with the provision of this paragraph of the Convention.

## **Article 44 Extradition**

### **Paragraph 11**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party*

*seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

354. Greece confirmed that it has implemented this provision of the Convention. It cited the following domestic laws:

- a) According to article 6 of Law 4165/1961, which refers to the extradition of nationals  
“... 1a A Contracting Party shall have the right to refuse extradition of its nationals.      b  
Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term “nationals” within the meaning of this Convention.  
c Nationality shall be determined as at the time of the decision concerning extradition. If, however, the person claimed is first recognized as a national of the requested Party during the period between the time of the decision and the time contemplated for the surrender, the requested Party may avail itself of the provision contained in sub-paragraph a of this article.  
2 If the requested Party does not extradite its nationals, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting Party shall be informed of the result of its request.”
- b) According to article 438 of the Greek Code of Criminal Procedure “... the extradition of a foreigner is not permitted (is prohibited), if he was a national when the act was committed ..”
- c) According to article 11 case f of the law No. 3251/2004, the execution of the European Arrest Warrant shall be prohibited “... f) if the person against whom the European Arrest Warrant has been issued for the purposes of execution of a custodial sentence or a detention order is a Greek national and Greece undertakes to execute the sentence or the detention order in accordance with its penal law,....”

355. As already mentioned above, Greece has not dealt with any UNCAC-related cases in the last three years. However, should such a case arise, the aforementioned stipulations are to apply. Namely:

- a) In case of a European Arrest Warrant issued for prosecution purposes, and provided that the conditions for its execution are met, the Greek national in question shall be surrendered to the requesting Member State in order to stand trial. As soon as a final judgment is rendered in such State, the requested person shall be re-transferred to Greece and serve the imposed sentence here.
- b) In case of a European Arrest Warrant issued for sentence serving purposes, and provided that all legal conditions are met, the competent Greek judicial authority shall refuse the execution of

the European Arrest Warrant and the Greek national in question shall serve the sentence in compliance with the applicable Greek penal laws.

c) In case of an extradition request issued by a third State, based on a bilateral/multilateral convention or based on the principle of reciprocity, then, upon a related request by the foreign authority, Greece, through its competent authorities, shall consider the possibility to initiate penal proceedings so that the accused Greek national stands trial and, if found guilty, does not remain unpunished. This includes cases where UNCAC will form the basis of the request for extradition.

**(b) Observations on the implementation of the article**

356. This is a mandatory provision and requires a State Party to extradite or prosecute (*aut dedere aut judicare*). In general Greece does not permit the extradition of its nationals (see Article 438 of the Criminal Procedure Code). It will prosecute its nationals in appropriate cases in accordance with recognised principles, see Article 6, of Law No. 4165/1961. This reflects the wording of Article 16 of the European Convention on Extradition of 1957 and provides that Greece may refuse the extradition of its own nationals but requires in the event of a refusal, at the request of the requesting party that it should submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. Greek authorities confirmed that, pursuant to the provision of article 6, par. 2, Law no. 4165/1961, as quoted above, the requested persons (Greek nationals) do not remain unpunished but they are prosecuted in their state of origin.

357. The position in relation to the European Arrest Warrant (EAW) permits the arrest of criminal suspects and their transfer for trial between the member states of the European Union and has been implemented in Greece by Law 3251/2004.

358. The Greek legal and procedural framework appears to correspond to the provision under review.

**Article 44 Extradition**

**Paragraph 12**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

359. Greece indicated that it has partly implemented this provision of the Convention. It was explained that the basic rule is that "the extradition of nationals is not permitted". However, in any case Greece applies the basic principle "aut dedere, aut judicare". Exceptionally, according

to article 13 of Law 3251/2004, which is the equivalent of article 5 of EU Framework-Decision 2002/584/JHA:

“Article 13 - Guarantees to be given for the execution of the European arrest warrant:

1. Where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered in absentia and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia, the execution of the European arrest warrant by the competent judicial authority may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee that the requested person who is the subject of the European arrest warrant will have an opportunity to apply for a retrial of the case in the issuing member state and to be present at the judgement.

2. If the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the European arrest warrant by the competent judicial authority may be subject to the condition that the issuing member state has provisions in its legal system for a review of the penalty imposed - on request or at the latest after 20 years - or for the application of measures of clemency to which the person is entitled to apply for under the law of the issuing Member State, aiming at the non-execution of such penalty or measure.

3. Where the person, who is the subject of a European arrest warrant for the purposes of prosecution, and anyhow after a specific punishable act is imputed to this person, is domiciled in Greece, the execution of the European arrest warrant by the competent judicial authority may be subject to the condition that the requested person, after being heard, is returned to the Greek State, in order to serve there the custodial sentence or detention order passed against him / her in the issuing Member State.”

360. Greece noted that the case law of the Greek Courts is well established as to the requirement for explicit and unconditional assurances for the re-transfer of Greek nationals, a condition applicable to all Member States based on article 5 of the related Framework Decision No. 2002/584/JHA of 13 June 2002. Failing such assurances, the fixed case law provides for the refusal of execution of the related European Arrest Warrants. Indicatively, Greece referred to Judgments No. 37/2008, 69/2008, 77/2009, 73/2013 and 156/2013, rendered by Athens Court of Appeal sitting in Council at public sessions.

**(b) Observations on the implementation of the article**

361. As stated in the comments to article 44, paragraph 11, Greece does not permit the extradition of its nationals and this paragraph therefore has limited applicability to Greece. Article 13 of Law No. 3251/2004 deals with the exception and has reference to Greece’s dealings with its fellow member States of the EU.

**Article 44 Extradition**

**Paragraph 13**

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party,*

*consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

**(a) Summary of information relevant to reviewing the implementation of the article**

362. Greece indicated that it has partly implemented this provision of the Convention. It explained that the execution of the foreign sentence may take place, if there is a relevant bilateral or multilateral agreement in force.

363. The Greek legal order incorporates two cases for the execution of judgments rendered by foreign courts in Greece.

a) The first case refers to the European Arrest Warrant, more specifically to Articles 12(e) of Law No. 3251/2004 for foreign residents in Greece and 11(f) of Law No. 3251/2004 for Greek nationals.

b) The second case refers to Law No. 2313/95, which incorporated into the Greek legal order the bilateral convention between the Hellenic Republic and the Albanian Republic for the mutual execution of court judgments in penal cases.

364. The case law of the Greek Judicial Authorities with regard to the non-execution of a European Arrest Warrant issued by another Member-State against a Greek national, providing for the service of a sentence, is well-established (Article 11(f), Law No. 3251/2004). Indicatively, Greece set forth the judgments below:

a) Pursuant to Judgment No. 25/2007 rendered by the Athens Court of Appeal sitting in Council: The materially competent Court of Appeal sitting in Council ruled that the judicial authority deciding on the execution of a European warrant has to compulsorily refuse the execution thereof in the case of a Greek national and when such warrant has been issued for the service of a sentence. Furthermore, the competent Court of Appeal sitting in Council ordered the immediate enforcement of the judgment in Greece, in compliance with the applicable Greek penal laws.

b) The same are stipulated in Judgment No. 87/2009 rendered by the Athens Court of Appeal sitting in Council. The materially competent Court of Appeal sitting in Council ruled that the judicial authority which decides on the execution of the European arrest warrant when it comes to a Greek national and has been issued for the service of a sentence, has to compulsorily refuse the execution thereof. In addition, the competent Court of Appeal sitting in Council ordered for the immediate enforcement of the judgment in Greece, in compliance with the applicable Greek penal laws.

c) Similarly, the Supreme Court (sitting in Council) held in its Judgment No. 324/2012 the following: In this case, the Romanian Authorities had issued a European Arrest Warrant against a Greek national in order to be brought to Romania and serve a sentence involving deprivation of liberty, since the requested person was found guilty for negligent homicide (car accident). The competent Thrace Court of Appeal sitting in Council had ruled for the extradition, as the Greek Ministry of Justice did not have previously issued a related judgment or provided a related consent for the service of the sentence in Greece. The requested person lodged an appeal before the Supreme Court. The Supreme Court sitting in Council granted the appeal both typically and on its merits, annulled Judgment No. 10/2011 rendered by Thrace Court of Appeal

sitting in Council and denied the execution of the European Arrest Warrant, ordering in parallel the service of the sentence in Greece.

365. It is obvious that in such cases as well, the Greek national by no means remains unpunished but is to serve the sentence imposed to him by the foreign Court in Greece.

366. With regard to UNCAC, so far Greece has not dealt with any such case and therefore there are no related examples.

**(b) Observations on the implementation of the article**

367. Greece replies that it complies in part with this provision of the Convention, i.e. if there is a bilateral or multilateral agreement in force. While UNCAC could provide such a basis, Greece may wish to consider adopting specific measures that would permit the authorities to consider enforcing the remainder of a sentence where extradition of nationals is refused, even in cases where there is no independent treaty basis or convention in place.

## **Article 44 Extradition**

### **Paragraph 14**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

**(a) Summary of information relevant to reviewing the implementation of the article**

368. Greece is a Party to the European Convention on Human Rights and its Protocols. Thus, it complies with all international rules and instruments concerning the respect and protection of human rights.

369. As an EU Member State, Greece fully respects human rights. It has one of the most advanced European Constitutions as to individual rights and complies with all its international obligations relating to the rights of suspects and accused persons in criminal proceedings. For example, recently Directive No. 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (L 280) and Directive No. 2012/12/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings were incorporated into the Greek legal order by Law No. 4236/2014.

370. There have been no cases of implementation or examples.

**(b) Observations on the implementation of the article**

371. Greece confirms that it complies with all international rules and instruments relating to human rights. The position is illustrated through the application of recent Directives No. 2010/64/EU of the European Parliament, of the Council (L 280) and Directive No. 2012/12/EU as incorporated by Law No. 4236/2014.

## Article 44 Extradition

### Paragraph 15

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

#### (a) Summary of information relevant to reviewing the implementation of the article

372. Greece cited the following domestic laws:

a) According to article 3 para 1 and 2 of Law 4165/1961 "... 1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence. 2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons. ..."

b) Article 438 CCP provides that the extradition of a foreigner is not permitted (is prohibited) : "... e) if there is a possibility that the person sought for the extradition, will be prosecuted by the requesting State, for a different act, for which the extradition is sought,"

c) According to article 11 case e) of the Law No. 3251/2004, the execution of the European Arrest Warrant shall be prohibited "... e) if the European Arrest Warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his/her sex, race, religion, ethnic origin, nationality, language, political opinions, sexual orientation or his/her activities for freedom,..."

373. Greece noted that the aforementioned triangle of provisions fully coincides with the European legal culture on the matter in question. The provision under point c) arises from the preamble of Framework-Decision No. 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and surrender procedures among Member States.

374. Examples of illustration are included under the observations for this provision.

#### (b) Observations on the implementation of the article

375. Except in the case of European Arrest Warrants, Greek law does not appear to provide for an express prohibition on extradition where there are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex or ethnic origin. However, from the wording of the available texts provided by Greece, it seems inconceivable that extradition would be granted if the Greek authorities had such a belief.

376. The Greek authorities confirmed this understanding and referred to a very recent judgment (Judgment No. 4/2014) rendered by the Court of Appeal of Eastern Crete sitting in Council, which dismissed the extradition request filed by the Turkish authorities for a Turkish national of Kurdish origin, who was requested for participating in a terrorist organization. The requested person invoked the risk of being prosecuted due to her racial, religious, political or ethnic views, while, at the same time, the requested person had applied for asylum, a request still pending. The Court of Appeal sitting in Council held that the extradition cannot be permitted until the completion of the procedure for the provision or non-provision of asylum, whilst there is the risk that her position may deteriorate due to her political views in case of extradition. Thus, it ruled against the extradition.
377. Greek authorities indicated that they follow the Strasbourg case of *Radu v. The Republic of Moldova*, Judgment No. 50073/07, of 15 April 2014.
378. A further case example was discussed during the country visit in which the extradition of a Togolese national (not involving UNCAC offences) was authorized based on assurances by the United Nations that Togo would provide guarantees of a fair trial and procedure upon his return to Togo.
379. The reviewers are satisfied with the information provided.

## **Article 44 Extradition**

### **Paragraph 16**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

380. Greece indicated that this provision is applied to the extent that the fiscal offence is connected to a corruption offence. Otherwise, Article 438 (c) of the Greek Criminal Procedure Code applies, according to which extradition for fiscal offences is prohibited.
381. By way of clarification, Greece indicated that as a rule, extradition for fiscal offences is not permitted. Indicatively, Greece referred to Judgment No. 414/2010 rendered by the Supreme Court. In this case, the Supreme Court – acting as an appeal court – was called to hear the appeal lodged by a Montenegro national who was requested by the authorities of Croatia for three offences, including the avoidance of customs control. At first instance, the locally competent Athens Court of Appeal sitting in Council ruled for her extradition to the aforementioned Croatian Authorities; however, the Supreme Court, acting a second-instance court, held that

“with regard to the requested extradition and the sentence for the avoidance of customs control, an offence characterized by the Greek Law as illegal trafficking (Article 155 par. 2b, Law no. 2960/2001), *extradition is prohibited*, pursuant to article 5 of the European Convention on Extradition, as till then no contrary agreement has been entered into between Greece and Croatia. Besides, articles 50 and 59-66 of the international Schengen Agreement, whereby the contracting parties undertake to extradite offenders who have committed customs infringement, apply in this case, as the Agreement was ratified in Greece by Law no. 2514/1997, however, it



had not been ratified by Croatia. Therefore, the Court of Appeal sitting in Council, as to the part that the appealed judgment (95/2009) ruled for the extradition of the aforementioned requested person regarding the execution of the sentences imposed for illicit possession of weapons and explosives and forgery of public documents, rightfully applied the Agreement and the law and rightfully took all evidence into consideration. However, it was erroneous in ruling for the extradition and the sentence imposed to the requested person for the aforementioned offence, i.e. the avoidance of customs control (article 298, par. 3, Penal Code of Croatia) and therefore, the contested judgment rendered by Athens Court of Appeal sitting in Council has to be annulled.”

382. As to the countries that have ratified the Schengen Agreement, conditions are different. Pursuant to Article 63, Law No. 2514/97, which incorporated the Schengen Agreement into the Greek legal system, the following are provided:

“The Contracting Parties undertake, in accordance with the Convention and the Treaty referred to in Article 59, to extradite between themselves persons being prosecuted by the judicial authorities of the requesting Contracting Party for one of the offences referred to in Article 50(1), or sought by the requesting Contracting Party for the purposes of enforcing a sentence or preventive measure imposed in respect of such an offence. And “Article 50: 1. The Contracting Parties undertake to afford each other, in accordance with the Convention and the Treaty referred to in Article 48, mutual assistance as regards infringements of their laws and regulations on excise duties, value added tax and customs duties. Customs provisions shall mean the rules laid down in Article 2 of the Convention of 7 September 1967 between Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands on Mutual Assistance between Customs Administrations, and Article 2 of Council Regulation (EEC) No 1468/81 of 19 May 1981.”

383. Indicatively, Greece referred to Judgment No. 659/2012 rendered by the Supreme Court, which heard an appeal lodged against a judgment ruling for the execution of a European Arrest Warrant issued for tax evasion. It judged that

“the claim made by the German State for the taxation of goods imported into the German territory in the manner described in the warrant, stands independent and separate from the appellant’s – requested person’s criminal behavior, involving a tax evasion act that was totally committed in Germany, even if the cigarette quantities were loaded in Greece (which has not been evidenced in this case) and, therefore, does not coincide with any claim of the Greek State. Thus, even if the said goods had been loaded in and passed through Greece, this is an offence committed within the cross-border area of EU member-states, each one of which, if its rights have been prejudiced, has an independent and separate claim for criminal suppression. It is additionally noted that, according to the provisions of article 10(1)(a)(b) of Law 3251/2004, when an offence is a crime related to taxes, duties, customs and foreign exchange, the ascertainment that the Greek State does not impose any such taxes or duties or does not provide for any similar rules related to taxes, duties, customs and foreign exchange as the ones of the issuing member-state may not constitute a reason for refusing to execute the warrant. Therefore, the related appeal ground is unfounded.”

**(b) Observations on the implementation of the article**

384. The reviewers note Article 438(c) of the Code of Criminal Procedure (excerpted below), which specifically precludes extradition for offences classified as fiscal under Greek law. The

matter is satisfactorily addressed with respect to countries that have ratified the Schengen Agreement, in accordance with Article 63, Law No. 2514/97 (quoted by the Greek authorities). The Supreme Court judgment cited by Greece (Judgment No. 414/2010 involving the national of Montenegro) is also acknowledged. Moreover, the Greek authorities explain that an offence established in accordance with the Convention would not be considered as a fiscal offence and that extradition would not be denied in cases where a fiscal offence is connected to a corruption offence. However, with respect to non-EU and non-Treaty partner countries, Greece may wish to clarify the matter in its Code of Criminal Procedure, for greater legal certainty.

#### Article 438

Cases when extradition is prohibited

Extradition is prohibited: ...

(c) If, in accordance with the Greek laws, the crime is characterised as political, military, fiscal or related to the press, or is prosecuted only by complaint of the victim, or when the circumstances show that extradition is requested for political reasons; ...

### Article 44 Extradition

#### Paragraph 17

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

#### (a) Summary of information relevant to reviewing the implementation of the article

385. Greece cited the following domestic laws:

a) According to article 13 of Law 4165/1961, which refers to supplementary information. "... If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Convention, the latter Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof. "

b) According to article 444 of the Greek Criminal Procedure Code "... When there are doubts about the extradition concerning articles 437 and 438, explanations are demanded from the requesting party;...."

386. Greece indicated that consultation and a request for the provision of additional information as to the review of an extradition request is a usual practice at all phases of the extradition procedure applicable in Greece. Should a case be further investigated, the competent Greek judicial authority for the execution of an extradition request calls for further clarifications through the locally competent Prosecutor of the Court of Appeal. By using diplomatic channels, the latter asks for such clarifications through the Ministry of Justice or/and the International Police Cooperation Division / Interpol 4th Department.

387. Indicatively, Greece referred to Judgment No. 123/2010 rendered by the Supreme Court, which was based on Article 444 of the Greek Code of Criminal Procedure (CPC), which does not oppose and supplements the European Convention on Extradition and which also stipulates

that the Court has to adjourn its judgment and seek some supplementary information from the requesting State, in the event, for example, that the identification of the person arrested and the person requested is disputed. Thus, the Supreme Court adjourned the rendering of the final judgment on the lodged appeal and asked for some supplementary information and clarifications from the requesting State, as the person requested kept disputing the identification and similarity of the displayed persons. More specifically, the Court asked: a) to roll fingerprints and send them to the Albanian authorities, b) to photo-shoot the person in compliance with appropriate practices, c) the Albanian authorities to clarify which photo they used for identification purposes, and d) to send to the Albanian authorities photocopies of the certificates produced by the arrested person.

**(b) Observations on the implementation of the article**

388. Greek legislation (Article 13 of Law No. 4165/1961 and Article 444 of the Greek Code of Criminal Procedure) provides for a consultation process. Article 13 is mandatory and applies where the information provided by the requesting State is found to be insufficient, and provides that the necessary supplementary information must be required and a time limit provided for if necessary. Law 4165/1961 ratified the European Convention on Extradition of 1957 but does not appear to have wider application than that convention.

389. Article 444 of the Greek Code of Criminal Procedure has wider application and provides that where there are doubts as to the application of Article 437 and Article 438 (i.e. the Article which set out the circumstances where extradition may be allowed and where it is prohibited), the requesting State is asked to provide clarification.

**Article 44 Extradition**

**Paragraph 18**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

390. Greece confirmed that it has concluded the following extradition arrangements:

1. Law 4165/1961, European Convention on extradition, article 1,
2. Law 5554/1932, Ratification of the Convention on judicial cooperation between Greece and the U.S.A., article 1,
3. Leg. Decree 4009/1959, Ratification of the Agreement between the Kingdom of Greece and the Federal Republic of Yugoslavia on mutual judicial relations, article 44,
4. Leg. Decree 429/1974, Ratification of the Convention between Greece and the Socialist Republic of Romania on Legal Assistance in Civil and Criminal Cases, article 29,
5. Law 841/1978, Ratification of the Convention on Judicial Assistance in Civil and Criminal Cases between the Greek Republic and the Republic of Bulgaria, article 34,
6. Law 1099/1980, Ratification of the Convention between the Greek Republic and the Lebanese Republic on mutual legal assistance in civil, commercial and criminal cases concerning the enforcement of judgments and arbitral decision and extradition, article 14,

7. Law 1184/1981, Ratification of the Convention on Legal Assistance in Civil and Criminal Cases between the Greek Republic and the People's Republic of Poland, article 32,
8. Law 1149/1981, Ratification of the Convention on Legal Assistance in Civil and Criminal Cases between the Greek Republic and the People's Republic of Hungary, article 32,
9. Law 1242/1982, Ratification of the Convention on judicial assistance in civil and criminal cases between the Greek Republic and the Union of Soviet Socialist Republics, article 37,
10. Law 1323/1983, Ratification of the Convention on judicial assistance in civil and criminal cases between the Greek Republic and the Socialist Republic of Czechoslovak, article 30,
11. Law 1450/1984, Ratification of the Convention on judicial cooperation between Greece and Syria, article 30,
12. Law 1689/1987, Ratification of the Convention on extradition between Greece and Egypt,
13. Law 1928/1991, Ratification of the Convention on extradition between the Greek Republic and Australia, article 1,
14. Law 2312/1995, Ratification of the Convention between the Greek Republic and the Republic of Tunisia on Extradition and Mutual Assistance in Criminal cases, article 16,
15. Law 2311/1995, Ratification of the Convention on judicial assistance in civil and criminal cases between the Greek Republic and the Republic of Albania, article 31,
16. Law 2718/1999, Ratification of the Convention relating to extradition between the Member States of the European Union, article 2,
17. Law 2787/2000, Ratification of the Convention on simplified procedure of extradition between the Member States of the European Union, article 2,
18. Law 2813/2000, Ratification of the Convention on Mutual Assistance in Civil and Criminal Cases between the Greek Republic and Georgia, article 30,
19. Law 3007/2002, Ratification of the Convention on Mutual Assistance in Civil, Family and Criminal Cases between the Greek Republic and the Republic of Armenia, article 24,
20. Law 3251/2004 on the European Arrest Warrant,
21. Law 3288/2004, Ratification of the Convention on Extradition between the Government of the Greek Republic and the Government of the United Mexican States, article 1,
22. Law 3770/2009, Ratification of the Protocol to the Treaty on Mutual Extradition between Greece and United States of America, article 1,
23. Law 4168/2013, Agreement between the Greek Republic and the Federative Republic of Brazil on extradition, article 1.

**(b) Observations on the implementation of the article**

391. Law No. 3251/2004 gives effect to the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between member States of the European Union.
392. Greece has also signed bilateral agreements on extradition with a number of countries, including USA, Brazil, Mexico and two of the four neighbouring states, namely Albania and Bulgaria amongst others.
393. Greek authorities explained that the Former Yugoslav Republic of Macedonia (FYROM) and Turkey are Member States of the Council of Europe and bound by the European Convention on Extradition. A bilateral treaty with Turkey has not been requested so far. Nevertheless, the European Convention on Extradition operates satisfactorily. As to the Former Yugoslav Republic of Macedonia, pursuant to an interim agreement signed on 13 September 1995 in New York between the Ministers of Foreign Affairs of the two countries (Greece - Former Yugoslav Republic of Macedonia), chapter 4, article 12, the treaties that have been

entered into with the former Socialist Federal Republic of Yugoslavia on 18 June 1959 and ratified by Greece under Legislative Decree No. 4007/59, still remain in force with the Former Yugoslav Republic of Macedonia, as its successor state.

394. Greece has implemented the provision under review.

#### **Article 45 Transfer of sentenced persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

395. Greece confirmed that it has entered into a number of bilateral or multilateral agreements on the transfer of prisoners, including for offences established in accordance with this Convention. The relevant laws include:

1. Law 1708/1987, Ratification of the Council of Europe Convention on the Transfer of Sentenced Persons,
2. Law 1765/1988, Ratification of the Convention on the Transfer of Sentenced Persons between Greece and Egypt,
3. Law 2313/1995, Ratification of the Convention on the Transfer of Sentenced Persons between Greece and Albania,
4. Law 3351/2005, Ratification of the Additional Protocol to the Convention on the Transfer of Sentenced Persons

396. The most important texts in this field read as follows:

Law 1708/1987 (Official Government Gazette A, 108/26.06.1987) Ratification of the convention for the transfer of sentenced persons

Article two Generally

1. Contracting Parties undertake to provide mutual wider cooperation on transfer of sentenced persons in accordance with the conditions laid down in this convention.
2. A person who is convicted in the territory of a Party may, in accordance with the provisions of this Convention, be transferred to the ground of another Party in order to serve there the sentence that has imposed to him. For this purpose, the desire to be transferred can be expressed either in the State of conviction or the State of enforcement, in accordance with this Convention.
3. Transportation may be requested either by the sentencing State either by the state of execution.

Law 3351/2005 (Official Government Gazette A', 147/23.06.2005)

Ratification of the Additional Protocol to the Convention on the Transfer of Sentenced persons

Article two

Persons having fled from the sentencing State

1. Where a national of a Party who is the subject of a sentence imposed in the territory of another Party as a part of a final judgement, seeks to avoid the execution or further execution of the sentence in the sentencing State by fleeing to the territory of the former Party before having served

the sentence, the sentencing State may request the other Party to take over the execution of the sentence.

2. At the request of the sentencing State, the administering State may, prior to the arrival of the documents supporting the request, or prior to the decision on that request, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory, pending a decision on the request. Requests for provisional measures shall include the information mentioned in paragraph 3 of article 4 of the Convention. The penal position of the sentenced person shall not be aggravated as a result of any period spent in custody by reason of this paragraph.

3. The consent of the sentenced person shall not be required to the transfer of the execution of the sentence.

397. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

398. It is not mandatory to implement this article of the Convention. Greece has considered and entered into bilateral agreements and enacted the implementing legislation in relation to Albania and Egypt. Similarly it has ratified and passed enabling legislation in relation to the Convention on the Transfer of Sentenced Persons and the Additional Protocol to it.

399. Greek authorities indicated that there have been numerous transfers of sentenced persons during the past decades, mainly based on the above mentioned Strasburg Convention, according to the criteria and conditions stated therein, although no statistics or specific examples were available. Greece provided the following additional information concerning the procedure followed.

400. In order to examine the existence of dual criminality, copies of the foreign judgment are transferred to the competent Public Prosecutor, who confirms whether the relevant acts or omissions constitute an offence according to Greek law or would have constituted an offence had they been committed in Greece, as required by Article 6(b) of the Convention. Following this the convicted person is informed about the legal consequences of his/her transfer to Greek penitentiaries and is called upon to submit a signed form of consent. If he/she accepts, the General Secretary of Criminal Policy of the Ministry of Justice decides on the approval or dismissal of the transfer demand. If such demand is approved, apart from the State of conviction the Greek chapter of INTERPOL is notified, in order to proceed with the necessary arrangements to execute the transfer, in cooperation with the INTERPOL chapter in the State of conviction.

401. In addition to this “regular” procedure, in November 2014 the Greek Parliament adopted Law 4307/2014, which transposed into Greek law Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009. Accordingly, the transfer of sentenced persons involving other EU States is nowadays handled in an expedited manner directly by the competent Public Prosecutors, who decide on the recognition and execution of the relevant judgements.

## Article 46 Mutual legal assistance

### Paragraph 1

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

#### (a) Summary of information relevant to reviewing the implementation of the article

402. Greece provided the following information on the implementation of the provision under review:

Greece is party to numerous multilateral and bilateral treaties that could apply to MLA in foreign corruption cases, including the present Convention, the UN Convention on Transnational Organized Crime, and the Council of Europe Conventions on corruption and money laundering. Greece currently has bilateral mutual legal assistance (MLA) treaties in force with 14 countries. Ten other bilateral MLA treaties are no longer in use because international cooperation with those countries is 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. International treaties prevail over the domestic law.

In the absence of a treaty, domestic law is applied on the condition of reciprocity (Article 28 of the Constitution). In such cases, Greece can provide or grant MLA (and indeed almost always does so in practice) under Articles 457-461 of the Criminal Procedure Code (CPC) (see Annex 1).

As a rule, the execution of MLA requests calls for the occurrence of dual criminality, as stipulated in the provisions and treaties mentioned above, although dual criminality is not explicitly required under the cited articles; in any case, dual criminality will always be met in foreign corruption cases, since all domestic legal provisions, including Article 458(3) CPC, are interpreted by Greek jurists in combination with treaties on extradition and MLA to which Greece is party (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)).

403. The Greek judicial authorities operate under the principle that they should endeavor to provide the best judicial assistance possible. Judicial assistance is executed based on Greece's domestic law. If, exceptionally, it is not possible for some requests to be satisfied, Greek judicial authorities will send a justified response on the grounds that render them unable to satisfy the request.

404. With respect to statistics on MLA requests, the Greek authorities indicated that during the period 1 January 2010 to 31 December 2014, Greece sent 932 MLA requests and received 2133. For corruption or UNCAC offences see below:

**YEAR 2011: 4** incoming MLA requests regarding cases of corruption/ UNCAC offences

**YEAR 2012: 7** incoming MLA requests regarding cases of corruption/ UNCAC offences

**YEAR 2013:** 3 incoming MLA requests regarding cases of corruption/ UNCAC offences.

Greece indicated that the large majority of incoming and outgoing requests are satisfied, including all corruption-related requests addressed to Greece. Reasons for countries denying the execution of a request coming from Greece have been, for example, the inability to locate a witness, the fact that the requested action is not allowed under the national Constitution (e.g. USA), and the fact that the offence in question is considered of minor importance (e.g. USA, China). Greece further indicated that normally, no refusals occur in cases of corruption, although statistics on the number of requests that have been declined were not available. With respect to EU Member States, Greece indicated that after the Schengen Agreement entered into force, Greece has satisfied all requests for MLA coming from the countries that have ratified the Agreement, e.g. Switzerland, United Kingdom, etc.

**(b) Observations on the implementation of the article**

405. In order to clarify how the model of judicial assistance works for interrogatory acts under article 458 of the Code of Criminal Procedure, Greek authorities advised of the following:

406. The provisions of the Greek Code of Criminal Procedure (Article 458 inclusive) are ancillary and supplementary. That is, they apply only when no multilateral or bilateral convention or treaty exists. When a convention is in force, the related provisions shall apply; otherwise, the provisions of the Greek Code of Criminal Procedure shall apply.

407. Normally, no great deviations exist between conventions and the provisions of the Greek Code of Criminal Procedure. Indicatively, Greece referred to the application of the Schengen Agreement.

1) In case of a country that has not incorporated the Schengen Agreement into its domestic law, the MLA request is transferred from the Ministry of Justice through the locally competent Prosecutor of the Court of Appeal to the investigating officer(s) of its region, who proceed to the required interrogatory acts (witness statements, in situ investigations, lifting of banking secrecy, etc.), always in compliance with the provisions of the Greek law. As soon as evidence is collected, it is transferred through the competent Prosecutor of the Court of Appeal to the Ministry of Justice and next to the requesting authority.

2) In case of a country that has incorporated the Schengen Agreement into its domestic law, the request may be directly made to the locally competent Prosecutor of the Court of Appeal and the aforementioned procedure shall be followed. In such case, the executed request is sent from the Prosecutor of the Court of Appeal directly to the foreign requesting authority.

3) In the event that the judicial assistance request is filed on the legal basis of article 21, European Convention on Mutual Assistance in Criminal Matters, and involves prosecution, then the request shall be submitted to the Ministry of Justice, which transfers the request to the locally competent Prosecutor of the Court of Appeal and the latter to the locally competent Prosecutor of the Court of First Instance – Department of Penal Proceedings which reviews the case. In addition, the requesting authority is informed on the progress of its request.

408. Greece further indicated that, when executing MLA requests, the Greek judicial authorities are able to make use of all modern judicial and technological “tools” provided by the Greek



legislator for the investigation of Greek cases, for example under article 253A, Greek Code of Criminal Procedure.

409. It was further clarified that dual criminality is a fundamental principle for the provision of MLA, as provided by the terms of the respective treaties and the cited provisions of the CPC. Thus, the Minister of Justice, with the consent of the competent council of appeals judges, may refuse an incoming MLA request if the underlying offence is not extraditable (Article 458(3) CPC), including on the grounds of dual criminality. Reference is made to the Katerini case and the observations made under article 46(8) and (9) below.

## **Article 46 Mutual legal assistance**

### **Paragraph 2**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

410. Greece explained that it can provide MLA in investigations against legal persons, even though its own legal system does not recognize criminal liability of legal person, since Greece can provide MLA in relation to the commission of specific offences and the natural persons involved in the criminal activities of the legal person.

411. Greece did not provide any cases of implementation or statistics.

#### **(b) Observations on the implementation of the article**

412. The reviewers note that the Greek legal system does not provide for the commission of offences by legal persons. They have noted the Greek response in respect of UNCAC article 26, that the Greek legal system applies administrative liability with equally severe sanctions. Greek authorities clarified during the country visit that there is a sufficient basis for the provision of MLA in these cases if there are criminal proceedings underway in another State, regardless whether these are against the legal or natural person, as long as there is an offence.

413. It is noted that the provision of MLA by the Greek authorities is tied to the commission of an offence and the existence of investigations, prosecutions or judicial proceedings in another State, not to the identity of the offender. Nonetheless, in the absence of any practical experience in the provision of MLA in cases of offences involving legal persons, it is recommended that Greece monitor the application of the provision in practice and consider legal clarification if it appears that there are cases where the involvement of a legal person has actually impeded MLA.

## **Article 46 Mutual legal assistance**

### Paragraph 3

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*
- (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*
- (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

414. Greece indicated that it provides assistance with regard to all investigative measures mentioned in the above list, when a bilateral or multilateral convention exists or under the principle of reciprocity, the only limitation being that the measure in question should be allowed by Greek law for the offence in question.

415. With respect to subparagraphs (j) and (k) of the article:

In particular, Department D of the Financial and Economic Crime Unit (SDOE) being competent for the recovery of assets and funds derived from criminal activities, cooperates with the relevant Departments of the Member States of the European Union, to detect and trace, in the country, proceeds and other property resulting from cross-border crime, which may be subject to legal assistance to freeze or seize or confiscate them in criminal matters, and in implementation of Framework Decision 2007/845/JHA of the Council of the European Union dated December 6, 2007, as well as Framework Decisions: a) 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, b) 2003/577/JHA on the execution in the European Union of orders freezing property or evidence, c) 2005/212/JHA on confiscation of crime-related proceeds, instrumentalities and property, d) 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders and e) 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member-States of the European Union.

416. The above Department cooperates, at the national level, with all competent authorities of the country to provide prompt response and assistance to requests made by the respective Departments of the Member States of the European Union, in accordance with the applicable

national and EU legislation, as well as that of third countries covered by mutual administrative assistance conventions signed by Greece. It has been designated as the National Bureau for the recovery of funds and assets derived from criminal activities and as the contact point with the corresponding Departments of the Member States of the European Union recovering funds and assets and aims both to facilitate mutual administrative cooperation and assistance, by rapidly exchanging information and data through the CARIN network (Camden Assets Recovery Interagency Network) and increase mutual understanding of the methods and techniques used in the field of cross-border detection, freezing, seizure and confiscation of the proceeds and other property derived from criminal activities, in order to efficiently combat transnational organized crime. It conducts internal investigations and, where necessary, forwards the requests to the Regional Directorates of the Financial and Economic Crime Unit, to carry out investigations and audits, while it is provided that the law enforcement and judicial authorities of the country are obliged, on the one hand, to promptly inform Department D' of the Financial and Economic Crime Unit for all freezes, seizures and confiscations of assets and funds in order for them to be able to keep records in this respect and, on the other hand, to respond to the requests of EUROPOL and the Member States of the European Union, as the national contact point for the country. The recovery of funds related to any assets and proceeds derived from criminal activities takes place in the context of judicial assistance, following the prescribed procedure, through the Ministry of Justice, Transparency and Human Rights.

417. Greece is handling a large number of MLA requests each year regarding actions falling under the above categories (e.g. effecting service of judicial documents, executing searches and seizures, identifying, tracing and freezing assets etc.). Such actions, which were occasionally executed in the presence of officials of the requesting foreign authority, have been noted; for example, recently after requests by Germany, Italy, Belgium, the USA and others. A very common example of a country requesting the service of judicial documents is Bulgaria. Moreover, Greece has cooperated in several cases with other countries in the parallel execution of requests for MLA and European Arrest Warrants (e.g. with Germany and Italy).

**(b) Observations on the implementation of the article**

418. The reviewers note the response of Greece in this regard. They further note the references to the Framework Decisions which are of course relevant. Reference is made to the description of the manner in which Greece transposes European Union obligations in the general observations under this chapter.

419. It is noted that the types of assistance that can be provided under the cited provisions of the CPC are limited: e.g., examination of witnesses and defendants, onsite inspections, expert opinions and seizure of evidence (Article 458(1) CPC); service of documents (Article 458(2)); transfer of persons in custody (Article 459) and of exhibits (Article 461). Greece may wish to consider specifying in its legislation in more detail, on a non-exhaustive basis, the types of assistance that can be provided for MLA requests that are not based on a treaty.

## **Article 46 Mutual legal assistance**

### **Paragraph 4**

4. *Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

420. Greece explained that the spontaneous exchange of data is possible at the European level (through Eurojust, Presidential Decree 135/2013). There is also a corresponding arrangement with Switzerland, which has been activated many times by the Federal Swiss Prosecuting Authority, which has spontaneously forwarded information on accounts, in the context of pending criminal proceedings.

421. More specifically, in the “PROTON BANK” case, Swiss authorities several times got in touch with the European Judicial Network (EJN) contact points, providing information mostly on accounts held in Switzerland, and this is how the immediate freezing of the accounts was achieved (within 24hours).

**(b) Observations on the implementation of the article**

422. Based on the discussion during the country visit, the reviewers are satisfied with the information provided.

**Article 46 Mutual legal assistance**

**Paragraph 5**

5. *The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

423. Greece explained that *a priori*, every letter rogatory is governed by the principle of confidentiality. Moreover, MLA requests are executed by investigating officers, and thus, the circle of persons involved remains highly restricted and the principle of confidentiality is abided by. In the event that the request includes information useful to the Greek judicial authority, then it seeks permission from the sending State before utilizing it.

424. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

425. The *a priori* position is noted. Greek authorities indicated that they have not encountered the situation where a request to disclose is declined. However, should such a case arise, and provided that a related situation could disturb the foreign affairs of the country, the Greek judicial authorities shall consult with the Ministry of Justice and the Ministry of Foreign Affairs and act correspondingly, with due respect for the corresponding obligations to respect the rights of the accused.

**Article 46 Mutual legal assistance**

**Paragraph 8**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

426. Greece indicated that, upon ratification of the UNCAC, its provisions are directly applicable by the Greek authorities. Waiving banking secrecy is taken for granted for acts prosecuted as felonies, including the most serious corruption offences.

427. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

428. Greek authorities explained that banking secrecy may only be lifted for actions that the Greek penal law defines as offences prosecuted as felonies. The Magistrate Court sitting in Council has established a fixed case law with regard to such matter. Indicatively, Greece referred to Judgment No. 27/2011 by Katerini Magistrate Court sitting in Council. In this case, the aforementioned Council was called to lift banking secrecy upon a related MLA request filed by the German authorities, which investigated the case of a female Greek National having committed tax evasion. The Magistrate Court sitting in Council ruled that the lift should be dismissed, as the modalities of the crime of tax evasion under German law do not establish offences of corresponding severity with such offences characterized as felonies by the Greek Law.

429. As noted above under article 15, felonies are offences punishable with incarceration from 5-20 years or for life. The other category relevant for Convention offences is misdemeanors, i.e. offences punishable with imprisonment from 10 days to 5 years.

430. Notwithstanding the above, the FIU and the Financial and Economic Crime Unit (SDOE) may open an investigation without judicial lifting of bank secrecy.

431. The reviewers note the position of Greece in regards to lifting bank secrecy in felony cases. Furthermore, a case has been reported where the lifting of banking secrecy was denied for a

misdemeanor because the Greek law prohibited such lift. It is recommended that Greece adopt appropriate measures to address cases where judicial lifting is requested for misdemeanors.

## **Article 46 Mutual legal assistance**

### **Paragraph 9**

*(a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

*(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

*(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

432. Greece indicated that it has partly implemented this paragraph of the Convention. It explained that in applying existing bilateral and multilateral MLA conventions, as well as when letters rogatory are executed based on the principle of reciprocity, dual criminality is a fundamental prerequisite for the execution of the relevant applications. An important exception are the 32 categories of offences excluded from the verification of double criminality in the European Arrest Warrant.

433. With respect to subparagraph (b), Greece indicated that Greece, when this does not conflict with its national law and when the condition of dual criminality is observed, it always provides legal assistance, the perceived importance of the matter notwithstanding. On the contrary, other countries, when they consider that a letter rogatory is of minor importance, often refuse to execute it.

434. Greece stated that it has not implemented subparagraph (c).

435. Greece did not indicate what measures it considers to be coercive.

436. No cases of implementation or statistics were provided.

#### **(b) Observations on the implementation of the article**

437. The reviewers note the importance which Greece attaches to dual criminality. In this context, the authorities confirmed that the verification of dual criminality in the context of executing MLA requests is absolute. While dual criminality may be bypassed as to the 32

categories of offences which provide for extradition without dual criminality being verified, this preconditions a minimum sentence of three (3) years.

438. Greek authorities further referred to Supreme Court jurisprudence that in verifying dual criminality, consideration is given to the relevant conduct rather than the strict wording or terminology of the offence.

439. Greek authorities indicated during the country visit that the need to find an appropriate legal basis for addressing requests is one of the main sources of delay (in addition to being unable to locate the requested information). Given this – and notwithstanding the explanation by the Greek authorities that they have never declined assistance in a corruption-related matter on the grounds of dual criminality – it is recommended that Greece adopt a clear provision providing assurance in corruption-related cases where the request involves non-coercive measures (paragraph 9(b)). This could be done, for example, by reference to offences covered by Greece’s international treaties.

## **Article 46 Mutual legal assistance**

### **Paragraphs 10 to 12**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(a) The person freely gives his or her informed consent;*

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

440. Greece provided the following information for the purposes of paragraphs 10 to 12 of this article:

All bilateral and multilateral conventions binding the Greek state provide for this specific possibility. If they do not provide for such an investigative measure, Article 459 of the Greek Code of Criminal Procedure applies, which states the following:

“1. The Minister of Justice with the agreement of the competent Public Prosecutor of the Court of Appeals, may order, at the request of a foreign judicial authority, forwarded through the diplomatic channels, the transfer to it of a person held in prison, in order to be examined as a witness, as well as during cross-examination with witnesses or defendants, on the condition of his/her immediate return.

2. This transfer may only be ordered for a State which, by law or convention, provides the same level of legal assistance to the Greek State. The cost of transfer and return shall be borne by the State requesting the transfer and is advanced by it or by the competent Greek authority, if this option is given to the Greek State by the country requesting the transfer. The provision of paragraph 2, Article 458, shall accordingly apply in this case.”

441. Greece did not provide any cases of implementation or statistics and indicated that practical experience on the above issue is limited.

**(b) Observations on the implementation of the article**

442. The reviewers note the power to act in accordance with paragraph 10 as set out in Article 459 of the Greek Criminal Procedure Code. Greek authorities confirmed that the ratification of this Convention provides the necessary authority in respect of Convention States.

443. In respect of the requirement in paragraph 12 that there be no prosecution in respect of persons transferred to Greece under the terms of these paragraphs, Greece indicated that there are practical considerations that account for the fact that the relevant procedures have not been activated so far in practice. It is obvious that such kind of procedure entails several risks, such as escaping; thus, it is preferable that statements are taken before the Greek judicial authorities (competent investigating officers) in the presence of representatives of the requesting authority – in case of Schengen Member States or the US, etc.

444. It is noted that the undertaking not to prosecute or detain the subpoenaed person for prior offences is only on the requesting foreign authority (Article 458(2)). Moreover, the obligation to



receive credit for service of the sentence is not addressed. Although the Convention is deemed to be self-executing in this respect, Greece is encouraged to adopt measures to address these matters.

## **Article 46 Mutual legal assistance**

### **Paragraph 13**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

445. Greece has designated the Greek Ministry of Justice, Transparency and Human Rights as central authority for receiving and transmitting requests for mutual legal assistance and has informed the Secretary General of the United Nations accordingly.

446. On 5 January 2010 Greece made the following depositary notification (C.N.3.2010.TREATIES-1)<sup>11</sup>:

“... the central authority designated by the Greek Government to receive requests for mutual legal assistance is the following:

Department for Special Penal Affairs and International Judicial Cooperation on Penal Affairs,  
Director Ms. Eleftheriadou

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<sup>11</sup> <https://treaties.un.org/doc/Publication/CN/2010/CN.3.2010-Eng.pdf>

447. Greece provided the following information on the implementation of the provision under review:

The Ministry of Justice, Transparency and Human Rights has been designated as the central authority, in accordance with Article 458 of the Greek Code of Criminal Procedure, which provides the following:

“1. Requests submitted by foreign judicial authorities to carry out investigations of those referred to in Article 457, paragraph 1, are forwarded by the Ministry of Justice and executed, by order of the competent Public Prosecutor of the Court of Appeals, from the investigating magistrate within whose jurisdiction the investigation is to take place, unless this is contrary to the provisions of the Code or the court rules. Witnesses always take an oath before being heard. Otherwise, the relevant provisions of the Code, international treaties and customs apply.

2. Subpoenas to witnesses, experts and defendants, judgments or other documents of the criminal proceedings are served care of the Public Prosecutor, Court of First Instance, in accordance with Articles 155 to 164. The relevant request, if it relates to summoning witnesses or experts, is accepted only if the foreign judicial authority submitting it expressly assumes the obligation not to prosecute or detain the person being summoned for an offence that was committed before he/she appears before the summoning foreign authority.

3. The Minister of Justice, with the agreement of the competent Chamber, Court of Appeals, may refuse to execute the requests referred to in paragraphs 1 and 2 if: a) under the provisions of Articles 437 and 438, the defendant may not be extradited for this act for which the foreign judicial authority conducts an investigation or b) according to the terms of the convention concluded with the country submitting the request, extradition is not mandatory.”

448. The procedure for receiving, forwarding and executing of judicial assistance requests has been described at the beginning of the article. MLA requests may be transmitted directly between law enforcement or through the central authority, depending on the underlying legal framework. Requests under the EU Schengen agreement and urgent requests under some treaties such as the 1959 European Convention may be sent directly to the competent Court of Appeal. Requests in all other cases must be channeled through the Central Authority in the Ministry of Justice. This includes requests sent under the Anti-Bribery Convention, UNCAC, Council of Europe Criminal Law Convention on Corruption, and the CPC. In emergencies, requests may be sent through the Interpol channels.

449. In case of urgency, the International Police Cooperation Division may be addressed. Furthermore, the Prosecution Offices of the Greek Courts of Appeal have created electronic mail accounts for urgent matters and are equipped with facsimile facilities. In addition, European Judicial Network (EJN) contact points have been determined; such contact points may intermediate in order to facilitate and accelerate the whole procedure.

450. Statistics on timeframes for executing MLA requests was not available.

**(b) Observations on the implementation of the article**

451. Greece has made the requisite notification of its central authority to the United Nations.

452. Greek authorities indicated during the country visit that the need to find an appropriate legal basis for addressing requests is one of the main sources of delay, in addition to being unable to locate the requested information. Delays in providing MLA may also be due to the procedure

for processing requests, which involves multiple authorities at different stages in responding to requests. It is recommended that Greece streamline the process for executing incoming MLA requests and maintain statistics on timeframes for responding to requests. Although the timeframes indicated do not suggest inordinate delay, Greece could consider the adoption of relevant guidelines to be followed by the office of the Public Prosecutor of the Court of Appeals who is competent for extradition and MLA. It was explained during the country visit that there are currently five deputy prosecutors and 4 support staff employed in the office.

## **Article 46 Mutual legal assistance**

### **Paragraph 14**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

453. Greece provided the following information:

In principle, letters rogatory must be in writing. However, Greece is quite flexible and allows their receipt by any appropriate means capable of producing a written record (fax, email, etc.).

454. As regards the language accepted, Greece has not made a relevant reservation in the instrument of ratification of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, nor does it impose a relevant obligation to States with which it has no MLA treaty in place. Accordingly, it is normally possible to examine all requests regardless of the language used. If there is a bilateral treaty in place, a particular language for the exchange of requests is usually specified, usually English or French.

455. At the time of ratification (17 September 2008), Greece made the following depositary notification (C.N.762.2008.TREATIES-31)<sup>12</sup>:

“The Hellenic Republic declares that the competent Central Authority to which applications pursuant to chapter IV of the Convention are addressed is the Ministry of Justice and that every relevant request, as well as its accompanying documents shall be translated into the Greek language.”

456. In view of the fact that Greece has not made any reservations for the language used, a great financial burden arises and extra time is required for the investigation and satisfaction of judicial

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<sup>12</sup> <https://treaties.un.org/doc/Publication/CN/2008/CN.762.2008-Eng.pdf>

assistance requests before being executed. On the other hand, the will of the Greek State to cooperate as closely as possible in fighting against criminality is clearly reflected.

457. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

458. The flexible position Greece has reportedly adopted in respect of receipt of requests is noted, although the depositary notification to UNCAC states that requests must be translated into the Greek language.

**Article 46 Mutual legal assistance**

**Paragraph 15 and 16**

*15. A request for mutual legal assistance shall contain:*

- (a) The identity of the authority making the request;*
  - (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
  - (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
  - (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
  - (e) Where possible, the identity, location and nationality of any person concerned;*
- and*
- (f) The purpose for which the evidence, information or action is sought.*

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

459. Greece indicated that, depending on the requested interrogatory act, the Greek judicial authorities produce all necessary supporting documents that may facilitate the satisfaction of a request. In addition, certified or plain copies of the provisions of the applicable penal laws always have to be attached, so that dual criminality to be verified.

460. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

461. The reviewers acknowledge the Greek response. It is noted that these requirements do not appear to be enshrined in any written procedure or guidance. Although the Convention is deemed to be self-executing in this respect, in the interest of greater legal certainty to requesting States, Greece may wish to specify the required content, beyond the treaties Greece is party to, and could consider adoption of relevant guidelines in this regard.

## Article 46 Mutual legal assistance

### Paragraph 17

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

#### (a) Summary of information relevant to reviewing the implementation of the article

462. Greece provided the following applicable measures:

According to the applicable bilateral and multilateral conventions, as well as under the relevant provisions of the Code of Criminal Procedure governing the execution of letters rogatory based on the principle of reciprocity, the respective requests are executed in accordance with the domestic law of Greece and to the extent they are not contrary to the domestic law of the Greek State and, where this is possible, in accordance with the procedures set out in the request. Such provision refers to EU Member States as well.

463. Greece did not provide any cases of implementation or statistics.

#### (b) Observations on the implementation of the article

464. The reviewers note the position in this regard, as was confirmed during the discussions in the country visit.

## Article 46 Mutual legal assistance

### Paragraph 18

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

#### (a) Summary of information relevant to reviewing the implementation of the article

465. Greece does not permit hearings of individuals mentioned above to take place by video conference as described. Hearings taking place by video conferences are not foreseen in Greek law, with the limited exception of Article 3, Act 3771/09 which relates to the exchange of MLA with the U.S.A. The latter foresees that in case the person concerned consents, the hearing can be done at the Embassy of the requesting State, without involvement on the part of the Greek authorities.

466. There were no examples of implementation within the scope of application of the Convention.

**(b) Observations on the implementation of the article**

467. This is a non-mandatory provision of the Convention. It was explained during the country visit that there is a lawmaking committee which – for the purposes of incorporating the European Investigation Order – would allow for hearings to be conducted by the use of judicial video link. At present this is not established.

**Article 46 Mutual legal assistance**

**Paragraph 19**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

468. Greece indicated that it always asks the requested State for permission to use in a different way the information included in the letter rogatory.

469. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

470. The limitation on use is not specified in Greece's domestic legislation and there have been no practical examples. Although the Convention is deemed to be self-executing in this respect, Greece may wish to adopt relevant measures to more clearly address the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 20**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to*

*execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

471. As already mentioned, the principle of confidentiality governs the execution of letters rogatory executed by Greece. If this prevents the execution of a letter rogatory, then the requesting State is advised accordingly, so that it takes the final decision to avoid jeopardizing its investigation. In any case, each request is executed by an investigating officer and the number of persons involved is really restricted, including only the necessary ones, so as the request to be easily executed.

472. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

473. Greek authorities indicated that they have not encountered the situation where a request to disclose is declined. However, should such a case arise, the Greek judicial authorities would consult with the Ministry of Justice – and the Ministry of Foreign Affairs, as necessary – and act accordingly.

**Article 46 Mutual legal assistance**

**Paragraphs 21 and 22**

*21. Mutual legal assistance may be refused:*

*(a) If the request is not made in conformity with the provisions of this article;*

*(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

*(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

*(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

474. Greece provided the following applicable measures:

The above conditions constitute grounds for non-execution under all bilateral and multilateral conventions Greece has acceded to. Furthermore, in accordance with Article 458, paragraph 3 of the Code of Criminal Procedure:

“3. The Minister of Justice, with the agreement of the competent Chamber, Court of Appeals, may refuse to execute the applications referred to in paragraphs 1 and 2 if: a) under the provisions of Articles 437 and 438, the defendant may not be extradited for the act for which the foreign judicial authority conducts an investigation or b) based on the provisions of the convention concluded with the country having submitted the request, extradition is not mandatory.”

475. The 1959 European Convention on Mutual Assistance in Criminal Matters provides that legal assistance “may not be granted” for tax offences. However, after the entry into force of the Schengen Agreement, judicial assistance is granted for tax offences committed in EU countries and those that have transposed the Schengen Agreement into their domestic law (e.g. Switzerland). Regardless of the above, UNCAC could be applied directly with respect to this provision.

476. After the Schengen Agreement entered into force, Greece has been satisfying all the requests for judicial assistance coming from the countries that have ratified the Agreement, e.g. Switzerland, United Kingdom, etc. There is no practice in Greece involving the refusal to execute an MLA request based on the UNCAC.

**(b) Observations on the implementation of the article**

477. The position as regards Articles 437 and 438 of the Code is noted. The Minister of Justice, with the consent of the competent council of appeals judges, may refuse an incoming MLA request if the underlying offence is not extraditable (Article 458(3) CPC), including on the grounds of dual criminality. The recited law appears capable of giving effect in large part to the requirements of paragraph 21. Greece indicated that it has not relied on these provisions.

478. With respect to paragraph 22, reference is made to the manner in which generally accepted rules of international law and international conventions, once ratified by an act and in effect, shall form an integral part of Greece’s domestic legislation (Article 28 of the Greek Constitution as described in the introduction).

479. It is noted that but for the special position of conventions under Greek law, there are no provisions in the Greek legislation to address this provision of the Convention as regards non-European Union Member States. In light of the observations made under article 44(16) above in regards to extradition involving fiscal offences, and in the absence of data on cases where MLA has been refused, Greece may wish to adopt measures to more clearly specify the matter, in the interest of greater certainty for non-treaty partner countries, notwithstanding that the Convention is deemed to be self-executing in this respect.

**Article 46 Mutual legal assistance**

**Paragraph 23**



*23. Reasons shall be given for any refusal of mutual legal assistance.*

**(a) Summary of information relevant to reviewing the implementation of the article**

480. Greece indicated that, in the very few cases that the execution of a letter rogatory is rejected, the responses of the Greek Judicial Authorities are fully documented, making reference to the legal provisions of the domestic law preventing execution.

481. Despite the workload, Greek authorities do not classify the MLA requests they receive into more or less important, on the basis of the principle of discretionary powers. Within the Greek law, the principle of legality applies, even to mutual legal assistance. The non-execution of a request means either that the applicable convention gives rise to a right to refusal or that the Greek law expressly prohibits its satisfaction.

482. Greece did not provide any cases of implementation or statistics. However, a case has been reported (under paragraph 8 above) where the lifting of banking secrecy was denied for a misdemeanor because the Greek law prohibited such lift. In that case, the response by the Greek authorities to the requesting foreign authority was specifically justified under an order of the Magistrate Judges Council.

**(b) Observations on the implementation of the article**

483. Although the Convention is deemed to be self-executing in this respect and the Greek authorities indicate that practical experience does not appear to suggest any difficulties in implementation, Greece may wish to address the matter in the context of ongoing domestic reforms, including the adoption of relevant regulations or guidelines.

**Article 46 Mutual legal assistance**

**Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

**(a) Summary of information relevant to reviewing the implementation of the article**

484. Greece provided the following information:

Greece is trying to satisfy the letters rogatory received, respecting the deadlines set by the requesting State. Furthermore, to avoid delays, the Public Prosecutor of the Supreme Court, by circular no. 9/2008 forwarded through the Public Prosecutor of the Court of Appeals of Athens to all supervised Departments (doc. no. 57647 dated 08-09-2008), stresses the need

to satisfy letters rogatory within the strictly necessary time. The territorially competent investigators who, under Article 458, are entrusted with the execution of letters rogatory, make every effort to urgently satisfy the letters rogatory they receive. However, beyond the letters rogatory, they have to cope with a multitude of briefs, related to temporarily detained persons, requiring immediate action, while the letters rogatory are often extremely complex and require more time for their full satisfaction.

In the past, the Public Prosecutor of the Court of Appeals of Athens was repeatedly responsible for the coordination of actions, within the context of executing letters rogatory by more than two countries simultaneously (e.g. Germany, Italy, Greece, etc.), a coordination which has been proved quite successful.

485. The time required for the satisfaction of an assistance request largely and primarily depends on the actions that are requested to be undertaken.

486. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

487. The reviewers understand the difficulties which can be encountered in this regard and refer to the observations under article 46(13) relating to statistics on timeframes for responding to requests.

**Article 46 Mutual legal assistance**

**Paragraph 25**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

**(a) Summary of information relevant to reviewing the implementation of the article**

488. Greece explained that something like this has happened in very few cases and only when it was deemed that execution would damage the Greek case. In any case, the request is satisfied as soon as the reasons which made its satisfaction impossible cease to exist.

489. Greece indicated that it has not dealt with any such issue under this Convention; should any such issue arise in the future, the above described procedure would be followed.

**(b) Observations on the implementation of the article**

490. The reviewers acknowledge the Greek response, noting that this is a non-mandatory provision of the Convention.

**Article 46 Mutual legal assistance**

## **Paragraph 26**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

491. Greece provided the following information:

Greece, respecting both its international obligations and the main objective, which is the administration of justice, consults and discusses, where appropriate, with the co-competent States that have letters rogatory pending, with the aim of opting for the most appropriate solution.

492. Greece did not provide any cases of implementation or statistics.

### **(b) Observations on the implementation of the article**

493. Although the Convention is deemed to be self-executing in this respect, in the interest of greater legal certainty to requesting non-treaty countries, Greece may wish to adopt relevant measures to provide for consultations before assistance is postponed or refused in the context of its ongoing domestic reforms.

## **Article 46 Mutual legal assistance**

### **Paragraph 27**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

494. Greece indicated that the above provisions are an integral part of the main conventions governing the execution of letters rogatory, which bind the Greek State. Moreover, UNCAC could be applied directly in this respect.

495. Greece has not, so far, dealt with any case submitted on the legal basis of UNCAC.

**(b) Observations on the implementation of the article**

496. The reviewers note the special position of conventions and the direct application thereof. The matter could benefit from further specification in the Greek legislation, for purposes of non-treaty countries.

**Article 46 Mutual legal assistance**

**Paragraph 28**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

**(a) Summary of information relevant to reviewing the implementation of the article**

497. Greece indicated that the above (self-executing) provisions are an integral part of the main conventions governing the execution of letters rogatory, which bind the Greek State.

498. Usually, such practicalities are regulated by the conventions themselves; nevertheless, so far no disagreement or dispute has arisen on the matter of costs.

**(b) Observations on the implementation of the article**

499. Greece could consider addressing the matter of costs in relevant regulations or guidelines, in the interest of non-treaty countries.

**Article 46 Mutual legal assistance**

**Paragraph 29**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records,*

*documents or information in its possession that under its domestic law are not available to the general public.*

**(a) Summary of information relevant to reviewing the implementation of the article**

500. Greece referred to its answer to the previous provision.

501. Although Greece has not dealt with any such request so far, Greek authorities have no problem in providing publicly available documents or files in the context of a request for judicial assistance.

502. According to article 5 of Law 2690/1999 – the Administrative Procedure Code – public documents include both the *administrative documents* and the *private documents* that are kept with public offices. Paragraph 1 of article 5 includes an indicative list of administrative documents, i.e.:

“administrative documents are the ones drafted/issued by public offices, such as reports, studies, minutes of proceedings, statistics, circulars, directives, responses by the Administration, opinions and decisions”.

503. Article 5 par. 1 of the Administrative Procedure Code entrenches the right of any interested party, whether natural or legal person, to have unhindered access to administrative documents, with no need to invoke legal interest. The only condition for the exercise of such a right is the filing of a written application.

504. With respect to non-publicly available government records, according to paragraph 2, article 5, Law 2690/1999 – the Administrative Procedure Code – for such documents and files, the invocation of special legal interest is required. Such data could only be used in the context of the specific purpose for which they are granted.

505. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

506. The reviewers are satisfied with the information provided, although there have been no examples of implementation.

**Article 46 Mutual legal assistance**

**Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

507. Greece provided the following information:

Greece is always open to expanding cooperation in the field of the fight against corruption and has concluded numerous agreements to this effect. These include:

1. Law 5554/1932, Ratification of the Convention on judicial cooperation between Greece and U.S.A.,
2. Leg. Decree 4009/1959, Ratification of the Agreement between the Kingdom of Greece and the Federal Republic of Yugoslavia on mutual judicial relations,
3. Leg. Decree 4218/1961, Ratification of the European Convention on Mutual Assistance in Criminal Cases,
4. Leg. Decree 429/1974, Ratification of the Convention between Greece and the Socialist Republic of Romania on Legal Assistance in Civil and Criminal Cases,
5. Law 841/1978, Ratification of the Convention on Judicial Assistance in Civil and Criminal Cases between the Greek Republic and the Republic of Bulgaria,
6. Law 1099/1980, Ratification of the Convention between the Greek Republic and the Lebanese Republic on mutual legal assistance in civil, commercial and criminal cases concerning the enforcement of judgments and arbitral decision and extradition,
7. Law 1149/1981, Ratification of the Convention on Legal Assistance in Civil and Criminal Cases between the Greek Republic and the People's Republic of Hungary,
8. Law 1184/1981, Ratification of the Convention on Legal Assistance in Civil and Criminal Cases between the Greek Republic and the People's Republic of Poland,
9. Law 1242/1982, Ratification of the Convention on judicial assistance in civil and criminal cases between the Greek Republic and the Union of Soviet Socialist Republics,
10. Law 1323/1983, Ratification of the Convention on judicial assistance in civil and criminal cases between the Greek Republic and the Socialist Republic of Czechoslovak,
11. Law 1450/1984, Ratification of the Convention on judicial cooperation between Greece and Syria,
12. Law 1548/1985, Ratification of the Convention on legal cooperation between the Greek Republic and the Republic of Cyprus in civil, family, commercial and criminal law,
13. Law 1760/1988, Ratification of the Convention on judicial assistance in criminal cases between the Government of the Greek Republic and the Arab Republic of Egypt,
14. Law 2312/1994, Ratification of the Convention on judicial cooperation in criminal cases between Greece and Tunisia,
15. Law 2358/1995, Ratification of the Convention on judicial assistance in civil and criminal cases between the Greek Republic and the People's Republic of China,
16. Law 2311/1995, Ratification of the Convention on judicial assistance in civil and criminal cases between the Greek Republic and the Republic of Albania,
17. Law 2312/1995, Ratification of the Convention between the Greek Republic and the Republic of Tunisia on Extradition and Mutual Assistance in Criminal cases,
18. Law 2746/1999, Ratification of the Convention on Mutual Assistance in Criminal Cases between the Government of the Greek Republic and the Government of Canada,
19. Law 2813/2000, Ratification of the Convention on Mutual Assistance in Civil and Criminal Cases between the Greek Republic and Georgia,
20. Law 2804/2000, Ratification of the Convention on Mutual Assistance in Criminal Cases between the Government of the Greek Republic and the Government of the United States of America,
21. Law 3007/2002, Ratification of the Convention on Mutual Assistance in Civil, Family and Criminal Cases between the Greek Republic and the Republic of Armenia,
22. Law 3277/2004, Ratification of the Convention between the Greek Republic and Australia for mutual assistance in criminal cases,

23. Law 3350/2005, Ratification of the Agreement between the Greek Republic and the Government of the United Mexican States on mutual legal assistance in criminal cases,
24. Law 3663/2008, European Judicial Cooperation Unit (EUROJUST), Joint Investigation Teams and other provisions,
25. Law 3771/2009, Ratification of the Convention on Mutual Assistance in Criminal cases between the Government of the Greek Republic and the Government of the United States of America.

**(b) Observations on the implementation of the article**

508. Greece has implemented the provision under review.

**Article 47 Transfer of criminal proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

509. Greece provided the following information:

At the EU level there have been cases where such transfer was considered and agreed. For example, in the Submarine Case Greek prosecutors undertook the investigation and the prosecution of the Greek perpetrators from German public prosecutors after a meeting held in Eurojust for this matter.

Furthermore, the transfer of criminal proceedings is possible at the level of the Member-States of the Council of Europe, the legal basis being Article 21 of the European Convention on Mutual Assistance in Criminal Matters.

510. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

511. The reviewers are satisfied that Greece may consider (and has in the past) the possibility of transferring criminal proceedings where warranted in the interest of the proper administration of justice.

**Article 48 Law enforcement cooperation**

**Subparagraphs 1 (a) and (b)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

**(a) Summary of information relevant to reviewing the implementation of the article**

512. Greece provided the following information:

This paragraph refers to the exchange of information, which is mainly a matter of police cooperation. There are several channels and networks of cooperation facilitating the exchange of information with other States parties to which Greece is a member, such as INTERPOL, EUROPOL, OLAF, EUROJUST, SECI, and SEEPAG. Assistance may also be sought and provided by the tax authorities and FIU, and the Hellenic Capital Markets Commission [through the International Organization of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding (MMoU)].

More specifically, the following provisions apply, among others, with respect to the subject in question:

1. Law 2605/1998 Ratification of the Convention of European Police Office (EUROPOL), (Council Decision of 6 April 2009 establishing the European Police Office (EUROPOL) (2009/371/JHA),

a) EUROPOL national units have access to all data in the European Information System (EIS, article 11). The main objective of the EUROPOL Information System is to be the reference system for offences, individuals involved, and other related data to support Member States, EUROPOL and its cooperation partners in their fight against organised crime, terrorism, and other forms of serious crime.

b) The Secure Information Exchange Network Application (SIENA) is a state-of-the-art tool designed to enable swift, secure and user-friendly communication and exchange of operational and strategic crime-related information and intelligence between EUROPOL, Member States and third parties that have cooperation agreements with EUROPOL.

2. Law 3640/1956 “Participation of Greece in Interpol” .



3. Law 2514/1997 “Schengen Agreement”, articles 92-101

4. Law 2865/2000 Ratification of Agreement on Cooperation and Combating Trans-Border Crime and the Charter of Southeast European Cooperative Initiative Regional Center for Combating Trans-Border Crime (SECI Centre).

5. Law 4249/2014 article 17: The International Police Cooperation Division is the national authority according to the conventions ratified by Laws 3640/1956 (A 303), 2514/1997 (A 140) and 2605/1998 (A 88) which houses the ENU (EUROPOL National Units), INTERPOL NCB and the SIRENE Office. It is the national agency competent for the exchange of information with foreign authorities and is able to request information for the purposes of tax crime investigation from other law enforcement agencies.

Law enforcement authorities may exchange information in the framework of:

- the performance of their duties;
- a criminal investigation or a criminal intelligence operation.

Information and intelligence, as a rule, are mainly exchanged via the Police Cooperation Division of the Hellenic Police (INTERPOL NCB, EUROPOL National Unit, SIRENE). Information is very often combined and complemented with different types of additional channels (Liaison officers, Joint Investigation Teams, etc.).

6. Presidential Decree 135/2013 “Adaption of Council Framework Decision on 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.

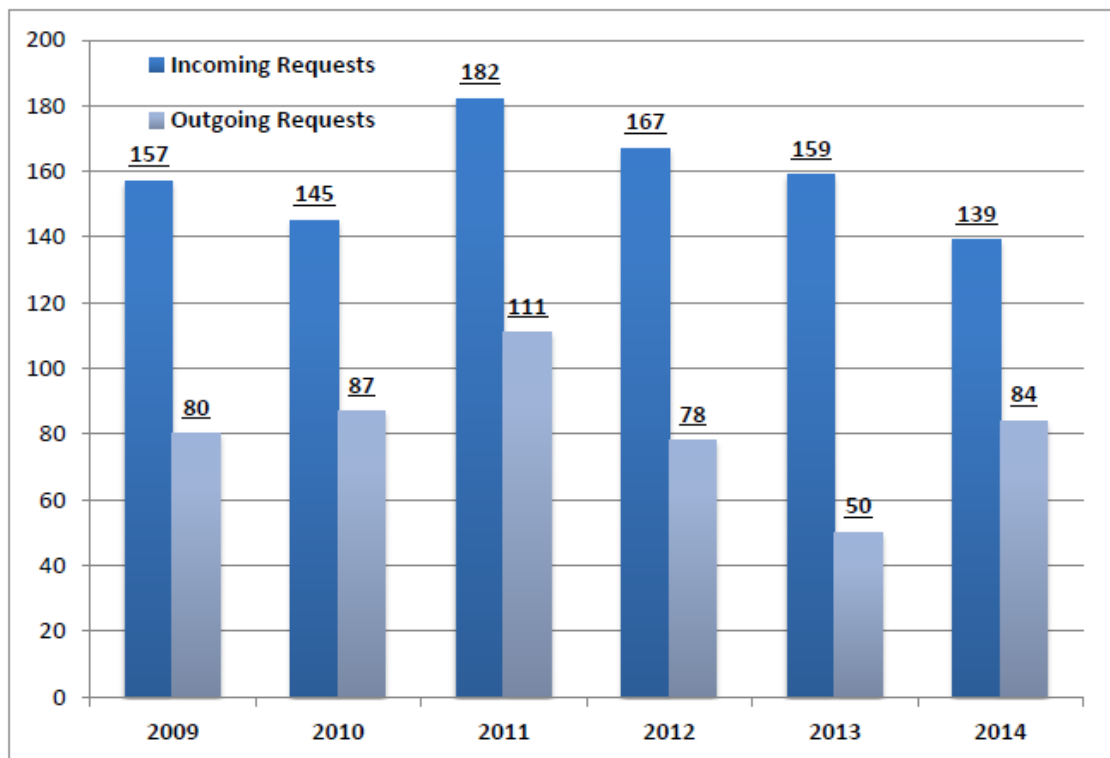
The objective is to be achieved by preventing and combating crime through closer cooperation between law enforcement authorities in the Member States. The exchange of information follows as widely as possible, in relation to offences covered by this Convention is provided by Presidential Degree 135/2013.

7. Law 3663/2008 on Eurojust. Eurojust’s mission is to support and strengthen cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases. Eurojust's tasks include: (a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities; (b) the coordination of investigations and prosecutions; and (c) the strengthening of judicial cooperation (Article 85 TFEU).

513. For the purpose of subparagraph (b), Greece referred its answer to the above mentioned applicable measures, as all of the above matters are dealt with in the context of law enforcement cooperation.

514. Greece indicated that, although no separate statistics are kept with regard to corruption-related law enforcement cooperation requests submitted through the channels of INTERPOL and EUROPOL, a search in the “SIENA” system mentioned above has produced 4 results of cases pertaining exclusively to corruption offences during the last 3 years, one of which has to do with the provision of information regarding the national legal framework for combating the relevant offences.

515. The Greek FIU provided the following data on incoming and outgoing requests from/to other FIUs for the last six years.



Incoming / Outgoing Requests to and from other FIUs

516. Recently the Greek FIU became the national Focal Point in the World Bank/UNODC/Interpol Global Focal Points network through the I-SECOM initiative, expanding the limits of the FIU network and reaching foreign anti-corruption and asset recovery agencies, especially in developing countries. The immediate strategic objective of this initiative is to respond to concerns of asset freezing, seizing, confiscating and recovering stolen assets, especially related to corrupted public officials and political leaders.<sup>13</sup>

517. Greece provided the following list of police liaison officers operating in or outside of Greece.

**1. Contact points for the common use of liaison officers posted abroad**<sup>14</sup>

MS	SERVICE	ADDRESS	TELEPHONE	FAX	MAIL
EL	Ministry of Citizen Protection Hellenic Police Headquarters International Police Cooperation Division 1 <sup>st</sup> Section European Union – International Relations and Missions	4, P. Kanellopoulou ave. 10177 Athens	30 210 6929 012 30 210 6977 503	30 210 692 4006	<a href="mailto:registry@ipcd.gr">registry@ipcd.gr</a>

<sup>13</sup> <http://www.interpol.int/Crime-areas/Corruption/International-asset-recovery>

<sup>14</sup> Art. 7 of the Council Decision 2003/170/JHA, list first published in OJ C 29, 3.2.2004, p. 5.

## 2. List of liaison officers

### 2.1 List of Member States' liaison officers, sorted per region

FROM	SENDING ADM	IN (country)	TOWN	ALSO ACCREDITED TO / (OTHER REMARKS)
EL	Ministry of Public Order and Citizen Protection	Albania	Tirana	
EL	Ministry of Public Order and Citizen Protection	Bulgaria	Sofia	
EL	Ministry of Public Order and Citizen Protection	Cyprus	Nicosia	
EL	Ministry of Public Order and Citizen Protection	FYROM	Skopje	
EL	Ministry of Public Order and Citizen Protection	Georgia	Tbilisi	
EL	Ministry of Public Order and Citizen Protection	Germany	Berlin	(currently vacant)
EL	Ministry of Public Order and Citizen Protection	Lebanon	Beirut	(currently vacant)
EL	Ministry of Public Order and Citizen Protection	Pakistan	Islamabad	(pending secondment)
EL	Ministry of Public Order and Citizen Protection	Romania	SELEC Centre	
EL	Ministry of Public Order and Citizen Protection	Russia	Moscow	
EL	Ministry of Public Order and Citizen Protection	Turkey	Ankara	
EL	Ministry of Public Order and Citizen Protection	United Kingdom	London	

### List of Liaison Officers posted to Greece

HOST COUNTRY	TOWN	FROM	SENDING ADM	ALSO ACCREDITED TO / (OTHER REMARKS)
Greece	Athens	AT	Ministry of Interior	
Greece	Athens	BE	Federal Police	Based in Tirana, Albania
Greece	Athens	BG	Ministry of Interior	
Greece	Athens	DE	BKA	Cyprus
Greece	Athens	DE	Federal Police	
Greece	Athens	ES	Police	Based in Sofia, Bulgaria
Greece	Athens	FR	Ministry of Interior	
Greece	Athens	IT	Ministry of Interior	
Greece	Athens	RO	Ministry of Internal Affairs	
Greece	Athens	UK	NCA	

### Non-EU Member States' Liaison Officers

HOST COUNTRY	TOWN	FROM	SENDING ADM	ALSO ACCREDITED TO / (OTHER REMARKS)
Greece	Athens	ALBANIA	Police	

HOST COUNTRY	TOWN	FROM	SENDING ADM	ALSO ACCREDITED TO / (OTHER REMARKS)
Greece	Athens	<b>AUSTRALIA</b>	Police	Based in Belgrade, Serbia
Greece	Athens	<b>CANADA</b>	Police	Based in Rome, Italy
Greece	Athens	<b>CHINA</b>	Police	(Defence Attache)
Greece	Athens	<b>GEORGIA</b>	Ministry of Interior	
Greece	Athens	<b>ISRAEL</b>	Ministry of Public Security	Based in Bucharest, Romania
Greece	Athens	<b>RUSSIA</b>	Ministry of Interior	
Greece	Athens	<b>TURKEY</b>	Ministry of Interior	
Greece	Athens	<b>USA</b>	FBI-DHS	

518. The Greek financial police cooperate through a number of channels with their counterparts abroad, including through the exchange of information and technical expertise/know-how, for example with Azerbaijan, Lebanon and the Netherlands.

519. The Greek police Internal Affairs Bureau reported that it has provided technical assistance to Serbia in the form of training on corruption investigations on the basis of a bilateral agreement between Greece and Serbia.

**(b) Observations on the implementation of the article**

520. Following the discussion in the country visit, the reviewers are satisfied that Greece has implemented the provision under review, which requires States parties to cooperate closely with one another to enhance the effectiveness of law enforcement action to combat the offences under the Convention.

521. Greece has provided evidence that it has adopted and implemented measures in relation to (a) e.g. membership of EUROPOL, INTERPOL, participation in the Schengen Information System, the Financial Intelligence Unit (FIU) network, Eurojust, Egmont etc., working closely with them to investigate into offences under the Convention. Greece is also member of Camden Assets Recovery Interagency Network and the World Bank/UNODC/Interpol Global Focal Points network.

522. Greece is also a member of the Southeast European Prosecutors Advisory Group (SEEPAG) and the Southeast European Cooperative Initiative (SECI).

523. Presidential Degree 135/2013 “Adaption of Council Framework Decision on 2006/960/JHA of 18 December 2006 deals with simplifying the exchange of information and intelligence.

524. The requirements of the Convention seem to be fulfilled. However, no examples of implementation or related court or other cases have been provided. Examples of the implementation of article 48 with respect to corruption-related offences would be welcome.

**(c) Successes and good practices**

525. Following the discussion in the country visit, the reviewing experts positively note the extensive outreach and cooperation that Greek law enforcement authorities display in their cooperation with counterparts at the European level and beyond, including through the provision of technical assistance and sharing of expertise with other States, which is reflective

of significance that domestic authorities attach to international cooperation and combating corruption at the international level.

526. The reviewers acknowledge that Greece has been able to respond rapidly to incoming requests for law enforcement cooperation, including the freezing of financial accounts, as conducive to the efficient and rapid exchange of information with EU and non-EU States. Several case examples were discussed during the country visit, including:

- In 2012, the international cooperation division in the Greek police received information through INTERPOL Turkey's international cooperation division relating to two Greek citizens who had been arrested in Turkey on drug trafficking charges. The Greek authorities (Financial and Economic Crime Unit (SDOE)) opened a financial investigation that revealed that one suspect had unexplained wealth based on tax records, and information was communicated back to Turkey in one day. The funds in the account were frozen within two days, the person was charged and prosecution commenced. The case is illustrative of others.
- In another recent case, Albanian law enforcement authorities communicated information to the international cooperation division in the Greek police pertaining to an STR of funds in a Greek account. An investigation of the same by the Albanian authorities revealed that relatives of the accused had been involved in drug trafficking. The Greek authorities seized the bank account and real estate that constituted proceeds of crime and prosecuted the matter.

527. The Greek authorities further exhibited a high level of awareness of UNCAC and multilateral conventions as basis for law enforcement cooperation, as demonstrated in several practical case examples discussed during the country visit and referenced under this article and articles 49-50 below. For example, SDOE officers are trained specifically in the use of international cooperation tools, which is positively noted.

## **Article 48 Law enforcement cooperation**

### **Subparagraphs 1 (c) and (d)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

528. Greece provided with the following information:

It is possible to send abroad samples or necessary items for examination by experts.

#### Legal basis

Article 20 of Law N. 4165/1961 which refers to the “Handing over of property”

“1 The requested Party shall, in so far as its law permits and at the request of the requesting Party, seize and hand over property:

a which may be required as evidence, or

b which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.

2 The property mentioned in paragraph 1 of this article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.

3 When the said property is liable to seizure or confiscation in the territory of the requested Party, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.

4 Any rights which the requested Party or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the requested Party as soon as possible after the trial.”

529. For the purpose of subparagraph (d), Greece indicated that police cooperation also includes the exchange of information on the above means and methods.

530. Greece referred to the case examples discussed above and during the country visit.

#### **(b) Observations on the implementation of the article**

531. Greece has cited Article 20 of Law N. 4165/1961 as evidence of complying with these provisions.

532. The requirements of the Convention seem to be fulfilled.

### **Article 48 Law enforcement cooperation**

#### **Subparagraph 1 (e)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

533. Greece provided the following applicable measures:

Article 4 of Ministerial Decision 1027/4/26-tß (B 845/16.6.2010) provides for the detachment of police officers abroad. Liaison police officers assist the cooperation of foreign and national law enforcement authorities through the International Police Cooperation Division of Hellenic Police for combating international organized crime, terrorism, financial crime, illegal immigration, drug trafficking, weapons, and any other form of crime.

There are several bilateral agreements that provide specifically for the posting of liaison officers in other countries and services.

534. Greece referred to the case examples discussed above and during the country visit.

**(b) Observations on the implementation of the article**

535. Greece has cited Article 4 of Ministerial Decision 1027/4/26-tß (B 845/16.6.2010) as evidence that it has adopted and implemented measures.

536. The requirements of the Convention seem to be fulfilled.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (f)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

537. Greece indicated that, apart from the provisions mentioned above, the work of the following units should be noted:

The Financial and Economic Crime Unit (S.D.O.E.) (LAW 3296/2004-Article 30 § 8) cooperates and exchanges information and elements relating to the object of its mission with other authorities, services and bodies, domestic and abroad, and participates in legislated inter-official organs.

The Greek Asset Recovery Office (Article 88 Law 3842/2010) was established as part of the central service of S.D.O.E. "Department D - RECOVERY OF ASSETS AND CAPITAL DERIVED FROM CRIMINAL ACTIVITIES". This department is the designated National Office for the Recovery of Capital and Assets according to Article 1 of Council Decision 2007/845/JHA and as contact point with the corresponding departments of the EU Member States via the CARIN (Camden Assets Recovery Inter - Agency Network). Department D works

with the corresponding departments of the Member States of the European Union to detect, and trace together with the Greek authorities, proceeds and other assets deriving from cross border criminal activities and which may be the subject of legal assistance for freezing, seizure or confiscation in criminal cases and in implementation of Decision 2007/845/JHA as well as

(a) Council Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of assets,

(b) Council Framework Decision 2003/577/JHA,

(c) Council Framework Decision 2005/212/JHA,

(d) Council Framework Decision 2006/783/JHA and

(e) Council Framework Decision 2006/960/JHA.

In addition, it collaborates at national level with all the country's competent authorities to provide an immediate response and assistance when requests are received from the corresponding departments of the Member States of the European Union, in accordance with the national and Community legislation in force, and of third countries which are covered by agreements on mutual administrative assistance which Greece has signed.

The Financial Police (Presidential Degree 9/2011 Article 10) cooperates, in order to fulfil its mission, with the local Hellenic Police Services, as well as with other competent Services, authorities and bodies and is equipped with the necessary logistical resources. Moreover, in the framework of its mission, it cooperates with the competent Services, organisations and bodies of European Union, in accordance with the provisions in force and the international agreements and conventions.

538. Greece referred to the case examples discussed above and during the country visit.

**(b) Observations on the implementation of the article**

539. Greece has provided evidence that it has adopted and implemented measures. The requirements of the Convention seem to be fulfilled. The good practices described above are evidence that Greek authorities can exchange information and coordinate administrative and other measures for purposes of early detection of offences.

**Article 48 Law enforcement cooperation**

**Paragraph 2**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

540. Greece referred to its answer to the previous provision.



541. Greece referred to the case examples discussed above and during the country visit.

**(b) Observations on the implementation of the article**

542. During the country visit Greek law enforcement authorities confirmed that they can use UNCAC as a legal basis for operational cooperation on the basis of Law No. 3666/2008 (the law implementing UNCAC in Greece) in the absence of other bilateral or multilateral treaties or conventions.

543. A case example was referred to where Greece conducted a joint investigation on the implied legal basis of the United Nations Convention against Transnational Organized Crime (UNTOC). Details are provided under article 49 below. There have been no cases to-date on the basis of UNCAC, but the referenced case demonstrates that there would be no problems of cooperation on the basis of UNCAC, should such a request arise, or another multilateral treaty, even at the signatory stage before ratification, because the Greek internal law permits such cooperation before transposition of international conventions into domestic law.

544. Greece has provided evidence that it has adopted and implemented measures. The requirements of the Convention seem to be fulfilled.

**Article 48 Law enforcement cooperation**

**Paragraph 3**

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

**(a) Summary of information relevant to reviewing the implementation of the article**

545. Greece provided the following information:

According to article 44 Law 4249/2014, the Financial Police is responsible, amongst other tasks, to carry out investigations and cooperate with other authorities on tax and customs law infringements such as smuggling, as well as on infringements taking place through the use of new or hardly detectable fraud mechanisms. Moreover, according to Article 14 Law 4249/2014 and Presidential Decree 9/2011, the Cyber Crime Division of the Police considers as its mission to prevent and suppress crimes committed via the Internet or other means of electronic communication, including through cooperation with other authorities.

546. Greece referred to the case examples discussed above and during the country visit.

**(b) Observations on the implementation of the article**

547. Greece has cited articles 44 and 14 of Law 4249/2014 and Presidential Decree 9/2011 as evidence of compliance.

548. The requirements of the Convention seem to be fulfilled.

## **Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

549. Greece provided with the following information:

Law 3663/2008 implemented EU Council Framework Decision of 13 June 2002 on joint investigation teams and includes detailed regulations on the setting up of such teams with other EU Member States to carry out criminal investigations in one or more of the Member States.

Furthermore, ad hoc joint investigations may be set up under article 39 of the Convention implementing the Schengen Agreement of 14 June 1985. This provision is regularly used.

Finally, it is conceivable that joint investigations can be undertaken on a case-by-case basis.

550. Greece did not provide any cases of implementation or statistics.

### **(b) Observations on the implementation of the article**

551. Greece has cited Law 3663/2008 implementing EU Council Framework Decision of 13 June 2002 on joint investigation teams and Article 39 of the Convention Implementing the Schengen Agreement of 14 June 1985 as evidence that it has adopted and implemented measures.

552. Moreover, Article 62 of Law 4249/2014 on the Reorganization of Police Forces allows for the formation of joint investigation in serious crime matters; in practice this is done by the international cooperation department of the Greek police.

553. During the country visit, a case example was referred to where Greek authorities participated in a joint investigation team on the implied legal basis of the United Nations Convention against Transnational Organized Crime (UNTOC). The case involved a drug trafficking/money laundering investigation where Greek authorities cooperated with law enforcement authorities in Australia and the US Drug Enforcement Agency. They employed special investigative techniques in the form of undercover operations together with the US. The defendants in the case were convicted. The case is one of several examples that demonstrate that there are no problems of cooperation on the basis of multilateral conventions, because the Greek internal law permits the operation of joint investigations and special investigative techniques even before the transposition of international conventions into domestic law.

554. Another case example involving a joint investigation between OLAF (the European Anti-Fraud Office of the European Commission) and SDOE was also referred to.

555. The requirements of the Convention seem to be fulfilled.

## **Article 50 Special investigative techniques**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

556. Greece cited article 253B of the Greek Criminal Procedure Code, as this article was inserted by subparagraph IE.16 of article first N. 4254/7-4-2014, which refers to investigations of acts regarding corruption crimes:

“...in cases of the offenses of articles 159, 159A, 235, 236, 237 and 237A of the Criminal Code, provided that they are not committed in the context of a criminal or terrorist organization, the investigation may include:

a) undercover operations conducted by an investigator on order of the competent Public Prosecutor, after informing the Deputy Public Prosecutor of the Supreme Court who supervises and coordinates the work of the Corruption Crimes Prosecutors. This order is given if there are strong indications that any of the offenses referred to in paragraph 1 are being committed or are about to be repeated and the disclosure thereof is otherwise impossible or particularly difficult.  
(...)

b) the lifting of confidentiality, recording of activity outside a residence and correlation or combination of personal data as these acts are provided at cases (c), (d), (e) paragraph 1 of article 253 A of the Code of Criminal procedure. In these cases paragraphs 2 and 3 of the same article 253 A are applied.”

557. Greece did not provide any cases of implementation or statistics.

**(b) Observations on the implementation of the article**

558. Greece has provided evidence that it has adopted and implemented measures. Greek authorities explained that they can conduct special investigative techniques in response to MLA requests in accordance with article 253 A of the Code of Criminal Procedure and on the basis of reciprocity. A case example was referred to wherein an MLA request was received from a country outside the EU requesting for the recording of surveillance in Greece. Greek law enforcement authorities followed the standard procedure under the Code of Criminal Procedure for executing the MLA request, and SDOE conducted the surveillance. The matter involved organized crime, but the Greek authorities indicated that they would proceed in the same manner in a corruption investigation. The timeframe for executing such requests was reported to be around 4 days.

559. The case described under article 49 is referred to as an example that demonstrates that there are no problems of cooperation on the basis of multilateral conventions, because the Greek internal law permits the conduct of special investigative techniques (e.g., undercover operations, surveillance and controlled delivery) even before the transposition of international conventions into domestic law.

560. Regarding the admissibility of evidence derived from the use of special investigative techniques in criminal proceedings, Greek authorities provided that such evidence is admissible if the operation was lawfully conducted (i.e, is not barred by Greek substantive law) and if procedural safeguards are satisfied, including foreign process requirements. By way of example, it was explained that a request for an operation contrary to public order provisions or Greek privacy laws could not be executed and, unless proper procedural safeguards are met, the products of special investigative techniques would also not be admissible. It was explained that there have been no challenges on the admissibility of evidence derived from special investigative techniques to date.

## Annex 1

### CODE OF CRIMINAL PROCEDURE

#### SECTION THREE LEGAL ASSISTANCE

#### CHAPTER ONE EXTRADITION

##### Article 436

###### Extradition in general

1. If no convention applies, the terms and procedure on the extradition of aliens are regulated by the provisions of the following articles.
2. These provisions apply even when a convention applies, if they do not contradict the provisions thereof; they also apply on points not covered by the convention.

##### Article 437

###### Cases when extradition is permitted

###### Extradition of an alien is permitted:

- (a) When the alien is accused of a punishable act for which both the Greek penal law and the law of the state requesting extradition provide custodial penalty, the maximum limit of which is two years or higher or the death penalty. In cases of accumulated crimes, extradition is allowed for each of the accumulated crimes, provided that one of them is punishable with one of the above penalties. If the person for whom extradition is requested has already been irrevocably convicted by a court of any state with a custodial penalty of at least three months for a crime not provided by article 438, section c and extradition is requested for a crime committed in recidivism according to both the Greek penal law and the law of the state requesting extradition, extradition may be allowed if this crime is punishable as a misdemeanour with any custodial penalty;
- (b) When the courts of the state requesting extradition have convicted him to a custodial penalty of at least six months for a punishable act which is characterised as a misdemeanour or a felony by both the Greek penal law and the laws of the state requesting extradition; and
- (c) When the alien explicitly consents to surrender to the state requesting his extradition.

##### Article 438

###### Cases when extradition is prohibited

###### Extradition is prohibited:

- (a) If the person for which extradition is requested was Greek when the act was committed;
- (b) If the competence for prosecution and punishment of the crime committed abroad belongs to the Greek courts in accordance with the Greek laws.
- (c) If, in accordance with the Greek laws, the crime is characterised as political, military, tax-related or related to the press, or is prosecuted only by complaint of the victim, or when the circumstances show that extradition is requested for political reasons;
- (d) If, in accordance with the laws of the state requesting extradition or the Greek state or the state where the crime was committed, a lawful reason preventing prosecution or execution of the sentence or a lawful reason excluding or cancelling punishment has emerged prior to the decision on extradition; and
- (e) If it is speculated that the person for whom extradition is requested will be prosecuted by the state to which he surrenders for a different act than the one for which extradition is requested.

#### Article 439

##### Request for extradition by more than one state

If more than one state requests extradition for the same crime, the extradition is ordered by preference either to the state of the offender's citizenship or to the state where the crime was committed. If simultaneous requests refer to different crimes, extradition is ordered by preference to the state where the graver crime was committed in accordance with the Greek laws or, in cases of crimes of the same gravity, to the state the request of which was the first to arrive; the obligation undertaken by one of the states requesting extradition to further extradite the offender for the remainder of the crimes is always taken into additional consideration.

#### Article 440

##### Limitations in extradition

Extradition may only be carried out upon condition that the person extradited will neither be prosecuted nor convicted by the state where he is extradited nor surrendered to a third state for other acts committed prior to the extradition, apart from the one for which he is extradited. He may be prosecuted, punished or surrendered to a third country for such acts upon condition that:

- (a) The Greek state subsequently consents. The Greek state may demand that such consent be requested according to the form provided for the request for extradition by the code, together with its supporting documents in accordance with articles 443 and 444 or
- (b) If the extradited person did not abandon, despite the absence of any obstacles, the territory of the state where he was extradited, within thirty days from the end of the trial and, in the event of conviction, from the release from prison or if he subsequently returns to the state.

#### Article 441

##### Postponement of extradition

If the person whose extradition is requested is prosecuted or has been convicted of another act in Greece, his extradition is postponed until the conclusion of the prosecution and, in the event of conviction, until the penalty is served or he is released from prison. Security measures that may have been imposed are executed as soon as he returns to Greece in any way. If, however, a five-year period has lapsed since his extradition, the court of misdemeanours of the place of his domicile decides, as soon as he returns, on whether the security measures will be executed or not by considering his personal conditions and by ruling on whether he is dangerous or not.

#### Article 442

##### Provisional delivery of the person whose extradition is requested

If the postponement of extradition provided in article 441 could result in prescription or other serious prosecution impediments according to the laws of the state requesting extradition, provisional extradition of the requested person may be allowed upon condition that he will be sent back as soon as the investigative acts for which he has been provisionally requested are concluded.

#### Article 443

##### Request for extradition

1. In cases falling under article 437, section a, the request that is forwarded through the diplomatic channels must be joined by the summary of charges, the arrest warrant or any other judicial act of the same validity and (if no convention prohibits so) all documents necessary so as to confirm the existence of adequate indications of guilt and refer to trial the person whose extradition is requested; in cases falling under article 437 section b, the request must be joined by the judgment against the person whose extradition is requested and evidence that such judgment is irrevocable. In any case a copy of the law in force at the state requesting extradition punishing the act must also be

forwarded at the same time ; additionally, a summary description of the facts of the case and, finally, a detailed description of the characteristics of the person whose extradition is requested, together with his photograph and fingerprints are also sent, if possible. All such documents may be produced in copies certified by the court or any other competent authority of the state requesting extradition.

2. The request for extradition, together with the documents requested by paragraph 1 and the certified translation thereof are forwarded by the Minister of Foreign Affairs to the Minister of Justice; the latter, after verifying the legality of the request, sends the request and the documents through the public prosecutor of the court of appeals to the president of the court of appeals of the place of residence of the person whose extradition is requested.

#### Article 444

##### Request for clarifications

If doubts exist as to the possibility of effectuating extradition according to articles 437 and 438, the state that made the application for extradition is requested to provide clarifications; extradition may not be ordered unless the clarifications dismiss these doubts.

#### Article 445

##### Arrest of the person whose extradition is requested. Confiscation of evidence

1. Upon receiving the documents, the president of the court of appeals has the obligation to order by warrant without delay the arrest of the person whose extradition is requested and the confiscation of all evidence. The arrest warrant and the confiscation are executed under the care of the public prosecutor of the court of appeals according to articles 251-269, 277, 278b and 280.

2. In cases of urgency and especially when a valid suspicion that the person whose extradition is requested will flee exists, the arrest may take place even in the absence of a warrant, prior to the submission of the request for extradition, by order of the public prosecutor of the court of appeals; diplomatic mediation is not necessary for the arrest; however, a notification forwarded by mail or telegram by the court or other competent authority of the state requesting extradition is necessary; the notification must make reference to the arrest warrant or the decision and the crime. The public prosecutor of the court of appeals immediately informs the Minister of Justice of the arrest; the latter may order the release of the person arrested.

3. If the request for extradition is not submitted, in accordance with article 443, within three months following the arrest at the latest, the arrested person is provisionally released by order of the public prosecutor of the court of appeals. If the documents are submitted within the time limit, the provisions of paragraph 1 and of articles 448 et seq. apply.

4. If, subsequently to the release of the person whose extradition was requested in accordance with the above, the request for extradition of article 443 reaches the Ministry of Foreign Affairs, the extradition process will follow.

5. The person provisionally arrested may challenge his identity by filing a request before the judicial council of the court of appeals, within twenty-four (24) hours as of his presentation before the public prosecutor of the court of appeals; the council enters an irrevocable judgment after hearing the person who filed the request and his counsel. The request may be made orally before the public prosecutor of the court of appeals.

#### Article 446

##### Identity verification. Imprisonment of the arrested person

The person who has been arrested is brought before the public prosecutor of the court of appeals without delay, together with the reports of arrest and confiscation; the public prosecutor questions him in order to verify his identity, while taking into consideration the information gathered by the authority that made the arrest. When the identity is verified, the public prosecutor of the court of

appeals orders his detention at the penitentiary establishment of accused persons and forwards the reports on the arrest and confiscation and the verification of the identity to the president of the court of appeals. If the identity is challenged, paragraph 5 of article 445 is applied.

#### Article 447

##### Notification of documents

The person who has been arrested has the right to be informed either personally or through his counsel of all documents and to request copies thereof at his own expense.

#### Article 448

##### Hearing on extradition

1. Within twenty-four hours from receipt of the reports of article 446, the president of the court of appeals convenes the judicial council of the court of appeals in its three-member formation; the arrested person is brought before the council, if he so consents. He has the right to appear with counsel and an interpreter of his choice or, if he has none, to request the president of the court of appeals to appoint counsel.

2. The judicial council of the court of appeals meets in public hearing, unless the arrested person requests that the meeting be held in camera or he is absent from the proceeding before the council. The council may order ex officio that the meeting be held in camera.

#### Article 449

##### Provisional release of the person arrested

1. The person whose extradition is requested and the public prosecutor may request the council to postpone the hearing. The council may postpone the hearing for a maximum of eight days.

2. The judicial council of the court of appeals may order the provisional release of the person who has been arrested in accordance with the provisions of articles 296, 297 paragraphs 1 and 2, 298, 300, 302-304 at any stage of the procedure. The application of paragraph 3 of article 294 is mandatory. The provisional release is lifted ipso jure as soon as the judgment granting extradition is published. The judicial council of the court of appeals decides on bail.

#### Article 450

##### Judgment on extradition

1. After examining the arrested person, if he has appeared, and following the presentations by the public prosecutor and the person whose extradition is requested or his counsel, the judicial council of the court of appeals enters a reasoned opinion on the request for extradition and rules: (a) on whether the person who was arrested is the same person as the one whose extradition was requested; (b) on the existence of supporting documents requested by the Code or a convention for the extradition; (c) on whether the person who has been arrested and the crime attributed to him or (in cases of extradition requests following a conviction) the crime for which he has been convicted is among the crimes for which extradition is permitted; (d) on whether the conditions of point (d) of article 438 have been met.

2. If the convention allows so, the judicial council of the court of appeals additionally examines the existence of indications on the validity of the charge made against the arrested person, based on the official evidence submitted by the state requesting extradition, and rules on whether such evidence would have allowed for his arrest and referral to trial in Greece, if the crime had been committed within the Greek territory. In order to formulate an opinion on the substance of the case, the judicial council may collect any useful evidence through one of its members, by postponing its final decision for a maximum period of fifteen days. The provision of article 449 paragraph 2 is also applied.



## Article 451

### Appeal against the judgment

1. Within twenty-four hours from the issuance of the judgment, the person whose extradition is requested and the public prosecutor are permitted to file an appeal against the final judgment of the judicial council of the court of appeals before the second panel of the Areios Pagos; the secretary of the court of appeals drafts a report thereon.
2. The Areios Pagos in council formation decides on the appeal within eight days following the provisions of articles 448 and 450. The person whose extradition is requested is summoned in person or through his representative at least twenty-four hours prior to the hearing by care of the public prosecutor of the Areios Pagos.

## Article 452

### Cases when extradition is ordered

1. The Minister of Justice may order the extradition by decision only after the council has entered a favourable and irrevocable judgment.
2. If the council irrevocably decides that extradition should not be made, the arrested person is released by order of the public prosecutor of the court of appeals, who immediately notifies the Minister of Justice accordingly. Additionally, the person whose extradition was requested is also released if the country that requested the extradition does not receive him within two months from the notification of the decision of the Minister on the extradition. In any case, the person whose extradition is requested is released two years after the day of his arrest. This time limit may be extended for six additional months by decision of the judicial council.
3. Any doubt or objection related to the detention of the person whose extradition was requested is resolved by the judicial council of the court of appeals that is competent on the extradition, following his summoning twenty-four hours prior to the hearing. The public prosecutor and the person whose extradition is requested may file an appeal for error of law [cassation] against the judgment of the judicial council.

## Article 453

### Return of confiscated objects

1. Irrespective of the nature of the judgment of the judicial council in relation to the extradition, the council decides on whether the things or exhibits that have been confiscated or in any case attached to the case file must be delivered to the state requesting extradition, the person for whom extradition was requested, a third party raising rights over them or a local authority in order to them to be used in an investigation.
2. During any stage of the proceedings, the judicial council of the court of appeals irrevocably decides on claims raised by third parties having or claiming to have property rights on objects or exhibits that have been confiscated.

## Article 454

### Submission of a new request

Even subsequently to the irrevocable judgment refusing extradition, a new request for extradition may be submitted if it is based on elements that had not been provided for consideration to the council.

## Article 455

### Request for extradition made by the Greek authorities

A request by which the extradition from a foreign state to the Greek judicial authorities of a person charged or convicted is made by the public prosecutor of the court of appeals, in whose district the prosecution is made or the conviction was pronounced, through the Minister of Justice; together

with the request, the public prosecutor forwards all documents provided in article 443 or in the convention, a precise description of the person's features and, if possible, his photograph. Extradition may also be requested by initiative of the Minister of Justice.

#### Article 456

Further extradition to a third country of a person extradited to the Greek judicial Authorities

When a third country requests the extradition of a person who has already been extradited to the Greek authorities, by alleging that a crime had been committed prior to the extradition and different to the one for which he was tried in Greece, such extradition may not be made without the consent of the country which extradited the person to the Greek authorities.

## **CHAPTER TWO OTHER CASES OF LEGAL ASSISTANCE**

#### Article 457 Requests for investigative acts

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

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

#### Article 458 Requests by foreign judicial authorities for investigative acts

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

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

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

#### Article 459 Transfer of the defendant for examination

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

2. Such transfer may be ordered only in a state that, by law or convention, provides the same legal assistance to the Greek state. The costs of transfer and return shall be incurred by the requesting

state and shall be paid in advance by such state or the competent Greek authority, if such facility is also afforded to the Greek state by the requesting country. The provision of paragraph 2 of Article 458 shall apply here mutatis mutandis.

#### Article 460 Witnesses' and experts' expenses

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

#### Article 461 Transmission of exhibits

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