

# GREECE

## ● Limited enforcement

0.3% of global exports

### Investigations and cases

In the period 2016-2019, Greece opened one investigation, commenced one case and concluded no cases with sanctions.

In 2016, according to media reports, an Athens public prosecutor charged the CEO of the Greek construction group **Ellaktor** and two other individuals with bribery of Cypriot officials in relation to the construction of a waste management plant in Cyprus.<sup>1</sup> Greek judicial authorities had begun their investigation after first having refused a European Arrest Warrant request by Cypriot authorities for the businessman's extradition to the island for questioning over how his company, **Helector**, a subsidiary of Ellaktor, gained waste management contracts to run two landfills in Paphos.<sup>2</sup> The Athens Appeals Court decided that the CEO's conduct was under Greek jurisdiction and that Greek prosecutors were competent to handle the case. In November 2017, the media reported that following an investigation, an Athens prosecutor had ordered the prosecution of the three individuals charged.<sup>3</sup> The main investigation by an investigating judge was to follow. Because of changes in Greek legislation, it is likely that the case will be terminated due to the statute of limitations.

The case in Cyprus against Cypriot public officials and the subsidiary Helector moved forward and in February 2020, a Cypriot court found several officials and the company guilty.<sup>4</sup> The company was fined €60,000 (US\$70,000) and faced potential confiscation of up to €372,000 (US\$435,000).<sup>5</sup> It was also banned from taking part in public contracts in Cyprus for five years, subject to appeal.<sup>6</sup>

In other jurisdictions, in 2017, it was reported that Brazilian authorities were investigating six Greek shipping companies as part of the Operation *Lava Jato* investigations.<sup>7</sup> According to Brazilian prosecutors, Greece's honorary consul in Rio de Janeiro paid bribes and provided insider information to help the shipping companies win more than US\$500 million worth of contracts from Petrobras from 2009 to 2013. The companies reportedly under investigation included **Olympic Agencies, Perosea Shipping, Tsakos Aegean Dynacom Tankers Management, Galbraiths and Dorian Hellas**. In 2019, Greek shipping companies **Aegean Group** and **Tsakos Group** were reportedly named in a court filing by the Parana State Federal Prosecutor's Office which alleged they paid middlemen to secure contracts with Petrobras.<sup>8</sup> Another shipping company named in Petrobras-related money laundering and ship chartering corruption allegations was **Athenian Sea Carriers**.<sup>9</sup>

### Recent developments

In November 2019, the Constitution was amended (art. 86 par. 3) to abolish the very narrow statute of limitations provided by the previous constitutional wording for crimes committed by ministers.

The most significant recent development in the Greek anti-corruption framework was the adoption

<sup>1</sup> <https://www.ekathimerini.com/222946/article/ekathimerini/news/businessman-faces-criminal-charges-over-waste-management-contract>; <http://int.ert.gr/ellaktor-ceo-leonidas-bobo-las-to-face-charges-of-bribing-cyprus-officials/>; <http://cyprus-mail.com/2016/04/28/cyprus-set-to-issue-new-warrant-for-bobolas/>

<sup>2</sup> <https://www.ekathimerini.com/208999/article/ekathimerini/news/greek-judges-reject-cyprus-request-to-extradite-bobolas>.

<sup>3</sup> <https://www.ekathimerini.com/222946/article/ekathimerini/news/businessman-faces-criminal-charges-over-waste-management-contract>

<sup>4</sup> <https://cyprus-mail.com/2020/02/07/former-larnaca-mayor-found-guilty-of-corruption/>

<sup>5</sup> [cyprus.philenews.com/nicosia-court-upholds-confiscation-orders-for-e372600-in-corruption-case/](http://cyprus.philenews.com/nicosia-court-upholds-confiscation-orders-for-e372600-in-corruption-case/).

<sup>6</sup> <https://int.ert.gr/helector-cyprus-slapped-with-five-year-ban-on-public-contracts/>; [http://www.treasury.gov.cy/treasury/treasurynew.nsf/All/87DFEAEBA2B80E2BC225841D00234D3D/\\$file/%CE%91%CF%80%CF%8C%CF%86%CE%B1%CF%83%CE%B7\\_3\\_18.pdf?OpenElement](http://www.treasury.gov.cy/treasury/treasurynew.nsf/All/87DFEAEBA2B80E2BC225841D00234D3D/$file/%CE%91%CF%80%CF%8C%CF%86%CE%B1%CF%83%CE%B7_3_18.pdf?OpenElement)

<sup>7</sup> <https://gcaptain.com/brazil-car-wash-probe-expands-to-u-s-greek-shipping-firms/>

<sup>8</sup> <https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/anti-bribery-and-corruption/greek-shipping-companies-aegean-and-tsakos-dragged-into-petrobras-corruption-probe>

<sup>9</sup> <https://www.offshore-energy.biz/maersk-targeted-in-petrobras-bribery-investigation/>

in June 2019 of the new Penal Code and Code of Penal Procedure, which entered into force on 1 July 2019.<sup>10</sup> It amended important provisions in a way which raised questions about its compatibility with international standards.<sup>11</sup> The most important cause of concern was the downgrade of all forms of active bribery from felony to misdemeanour, with associated lower sanctions, while passive bribery remained, in aggravated circumstances, a felony punishable with incarceration of up to 10 years.<sup>12</sup> The new legislation also changed the status of officials of state-owned enterprises from public to private, reduced the pecuniary penalties for bribery and added procedural hindrances to the prosecution of bribery of foreign public officials.

The adoption of the new Penal Code prompted the OECD WGB and the Group of States against Corruption (GRECO) to formally express their concern and to make an ad-hoc visit to Athens on 29 October 2019 to review the situation.<sup>13</sup> The new government, elected in July 2019, proceeded to draft amendments to the new code, which were presented during the ad hoc visit and adopted by the Greek Parliament in November 2019. The most noticeable amendment was that active bribery, under aggravating circumstances, is once again a felony, punishable by incarceration of 5-8 years.<sup>14</sup> Officials of state-owned enterprises were restored to their status as public officials. In December 2019, GRECO adopted its Ad Hoc Report on Greece and addressed four recommendations to Greece.<sup>15</sup>

In August 2019, a law entered into force providing for the establishment of the National Integrity Authority. The Authority is the successor to several institutions and its creation is a positive development taking into account the fragmentation of the competent authorities. It works in cooperation with other bodies with investigating competences, such as the Hellenic Financial Intelligence Unit and the Special Directorate for the Investigation of Economic Crime.

Law 4557/2018 transposed the 4th EU Anti-Money Laundering Directive into Greek Law. The Greek anti-money laundering regime was positively evaluated in the context of the 4th Round Financial Action Task Force Evaluation.<sup>16</sup>

## Transparency of enforcement information

There are no published foreign bribery enforcement statistics. Decisions by the Supreme Court of Greece for Civil and Criminal cases are published in full, but with anonymity protections.<sup>17</sup> The decisions of the lower courts (courts of first instance and appellate courts) are published sporadically in Greek legal publications available to subscribers in hard copy, online and in databases.

Prominent Greek legal databases are NOMOS<sup>18</sup> and the database of the Athens Bar Association, "Isokratis".<sup>19</sup>

<sup>10</sup> L. 4619/2019 and L. 4620/2019

<sup>11</sup> In April 2019, prior to its adoption, Transparency International Greece sent a formal letter to the Minister of Justice expressing concerns about the compatibility of the new bribery provisions with international standards, <http://www.transparency.gr/wp-content/uploads/2019/04/%CE%94%CE%B9%CE%B5%CE%B8%CE%BD%CE%AE%CF%82-%CE%94%CE%B9%CE%B1%CF%86%CE%AC%CE%BD%CE%B5%CE%B9%CE%B1-%CE%95%CE%BB%CE%BB%CE%B1%CF%82-E%CF%80%CE%B9%CF%83%CF%84%CE%BF%CE%BB%CE%AE-%CF%80%CF%81%CE%BF%CF%82-%CE%A5%CF%80-%CE%94%CE%B9%CE%BA%CE%B1%CE%B9%CE%BF%CF%83%CF%8D%CE%BD%CE%B7%CF%82.pdf>

<sup>12</sup> The two forms of custodial sentences (sanctions that lead to deprivation of liberty) according to the Greek Law are imprisonment and incarceration. Imprisonment has a range of 10 days to five years, while incarceration has a range of 5-15 years (besides cases of life incarceration). Imprisonment is the custodial sentence provided for misdemeanours, while incarceration is provided for felonies (unless the court recognises mitigating circumstances. In that case, a person guilty of a felony may receive a sentence of imprisonment. See UNCAC First cycle review of Greece, p. 23 (par. 27) referring to the former Greek Penal Code.

<sup>13</sup> <https://www.oecd.org/greece/oecd-very-concerned-that-active-bribery-is-no-longer-a-felony-in-greece.htm>; [https://www.coe.int/en/web/greco/home/newsroom/-/asset\\_publisher/sCeIUhEJG5bw/content/anti-corruption-body-greco-will-carry-out-urgent-evaluations-of-greece-and-slovenia](https://www.coe.int/en/web/greco/home/newsroom/-/asset_publisher/sCeIUhEJG5bw/content/anti-corruption-body-greco-will-carry-out-urgent-evaluations-of-greece-and-slovenia). GRECO used art. 34 of its Rules of Procedure.

<sup>14</sup> Art. 236 par. 2 of the new Penal code, as amended by art. 3 par. 19 of L. 4637/2019

<sup>15</sup> <https://rm.coe.int/ad-hoc-report-on-greece-rule-34-adopted-by-greco-at-its-84th-plenary-m/1680994dc0>

<sup>16</sup> <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-greece-2019.html>

<sup>17</sup> <http://www.areiospagos.gr/>

<sup>18</sup> [https://lawdb.intrasoftnet.com/nomos/nomos\\_frame.html](https://lawdb.intrasoftnet.com/nomos/nomos_frame.html)

<sup>19</sup> <http://www.dsnet.gr/1024x768.htm>

## Beneficial ownership transparency

There is a central register of beneficial ownership that will be public, but is not operational. The new Anti-Money Laundering and Countering Financing of Terrorism Law<sup>20</sup> establishes a public beneficial ownership database, based on the new requirements of the EU's 4th Anti-Money Laundering Directive 2015/849.<sup>21</sup> This database information will be publicly available, accessible online in Greek and free of charge.<sup>22</sup> The new register, named on the government website as "Real Beneficiaries Register", was temporarily operational for the registration of companies between 3 and 30 March 2020, before being suspended due to the COVID-19 emergency.<sup>23</sup> Competent authorities have direct and unconditional access to the beneficial ownership register.

The General Electronic Commercial Registry (GEMI) database contains comprehensive basic information on most legal persons established in Greece. This information is publicly available, accessible online in Greek and free of charge.<sup>24</sup>

## Inadequacies in legal framework

The legislative process of 2019 described above, which alarmed international bodies, showed that the Greek legislature did not adequately take into account international anti-bribery standards. This led to further legislative amendments, but older cases had to be tried under the more lenient law following the principle of *lex mitior*, especially in the fields of sanctions and the statute of limitations.

Issues raised by the OECD WGB in its 2015 Phase 3bis Review of Greece remain current, including inadequacies in the definition of a foreign public official and the need to ensure that "the limitation period for foreign bribery offences qualified as misdemeanours is sufficient to allow adequate

investigation and prosecution, at a minimum by allowing outstanding MLA [mutual legal assistance] requests to interrupt the limitation period".<sup>25</sup> GRECO's December 2019 report on Greece called for a review of article 236.1 of the Penal Code, with a view to introducing aggravating circumstances decisive for when such an offence can be considered a felony, and for increasing sanctions accordingly.

Criminal liability for corporations is still lacking, despite the positive reform of the liability of legal persons in the 2017 law. The sanctions for legal persons are insufficient, as they do not reflect the profit from bribery offences.

Although the new Penal Procedure Code has provisions for victims' compensation as a means for enhanced plea bargaining for natural persons, bribery offences are excluded. In those cases, only general plea-bargaining rules may apply. Greek legislation does not provide for a regulated settlement procedure, especially for legal persons. Another problem discussed in literature on Greek penal law is that the new Penal Code does not cover as a crime the passive bribery of a foreign public official, as called for under the Council of Europe Criminal Law Convention on Corruption.<sup>26</sup>

## Inadequacies in enforcement system

In general, the biggest obstacle to the investigation and the prosecution of corruption offences is the very slow pace of criminal justice in Greece. Criminal proceedings are not initiated promptly, many delays occur during investigation before and after the formal initiation of criminal proceedings, and the final decisions in complex cases are reached at least 10 years after the act. Another important problem is that even if an investigation is successful in identifying culpability, the judicial process is not based on stable legislative ground. The training and

<sup>20</sup> Specifically, art. 20, par. 6 of L. 4557/2018.

<sup>21</sup> <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-greece-2019.html>, p.125(c)

<sup>22</sup> [http://www.businessportal.gr/Page/display\\_page\\_en/41](http://www.businessportal.gr/Page/display_page_en/41); FATF (2019), Anti-money laundering and counter-terrorist financing measures – Greece, Fourth Round Mutual Evaluation Report, p.125 (a); [www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Greece-2019.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Greece-2019.pdf)

<sup>23</sup> <https://www.gsis.gr/en/citizens-businesses/businesses/real-beneficiaries-register>

<sup>24</sup> [http://www.businessportal.gr/Page/display\\_page\\_en/41](http://www.businessportal.gr/Page/display_page_en/41); <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-greece-2019.html>, p.125(a)

<sup>25</sup> <https://www.oecd.org/daf/anti-bribery/Greece-Phase-3bis-Report-EN.pdf>

<sup>26</sup> Triantafyllou, G., "Corruption offences in the public sector", *Nova Criminalia* (magazine of the Hellenic Criminal Bar Association) No 8 – Jan. 2020, p.9. Triantafyllou argues that the new provisions are in contrast with art. 5 of the Criminal Law Convention on Corruption (CETS 173), <https://hcba.gr/wp-content/uploads/2020/02/NC-8.pdf>

the awareness of law enforcement authorities has been enhanced,<sup>27</sup> but the resulting efficiency needs to be demonstrated.

GRECO's December 2019 report called for strict limits on the type of corruption offences that can be subject to abstention from prosecution under Article 48 of the Criminal Procedure Code. These limits must ensure that this article can be applied only in exceptional, minor corruption cases. It also called for strict monitoring of the defence of effective regret, to ensure it is not abused.

Although the provisions on liability of legal persons have been enhanced since 2017, it can be argued that the sanctions against these entities should be imposed by courts. Administrative bodies have proved reluctant to act decisively in this respect.

Problems with whistleblower protection remain, especially since the EU Whistleblower Protection Directive has not yet been transposed into Greek law. The foreign-bribery detection and investigation regime would benefit greatly if the current National Anti-Corruption Plan were implemented,<sup>28</sup> with the necessary revisions and improvements.

## Recommendations

- Publish foreign bribery enforcement statistics
- Introduce criminal liability and higher sanctions for legal persons, reflecting the profit from bribery, and provide guidance to prosecutors and courts regarding sanctions
- Introduce a settlement mechanism for foreign bribery
- Proceed with the acceleration of court proceedings
- Implement and revise, where necessary, the Greek National Action Plan against Corruption, in order to tackle the systemic deficiencies and consolidate the progress observed in previous years
- Ensure compensation for victims in bribery cases
- Provide adequate resources to the justice system so that it can function effectively and in a timely manner.

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<sup>27</sup> <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-greece-2019.html>, p.39, par. 116: "Greek authorities' implementation of anti-corruption measures has been beneficial for the purposes of AML/CFT [anti-money laundering/countering terrorism financing] and shows an alignment of the objectives and activities of anti-corruption authorities with evolving national AML/CFT policies and identified ML/TF [money laundering/terrorism financing] risks".

<sup>28</sup> <http://www.gsac.gov.gr/attachments/article/234/National%20Anti-Corruption%20Action%20Plan%202018-2021.pdf>