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## **Second Evaluation Round**

### **Evaluation Report on Greece**

Adopted by GRECO  
at its 26<sup>th</sup> Plenary Meeting  
(Strasbourg, 5-9 December 2005)

## I. INTRODUCTION

1. Greece is the 30<sup>th</sup> GRECO Member to be examined in the 2<sup>nd</sup> Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the “GET”) was composed of Mr Henry MATTHEWS, Professional Officer, Office of the Director of Public Prosecutions (Ireland); Mr Victor QUESADA MORALES, State Lawyer, State Tax Administration Agency (Spain); and Mr Björn THORVALDSON, Deputy at the National Commissioner of the Icelandic Police (Iceland). This GET, accompanied by a member of the Council of Europe Secretariat, visited Greece from 30 May to 3 June 2005. Prior to the visit the GET experts were provided with replies to the Second Round Evaluation Questionnaire (doc. Greco Eval II (2005) 1E) as well as copies of relevant legislation and other relevant documentation.
2. The GET met with officials from the following authorities: Ministry of Justice (Directorate of Legislative Co-ordination and International Legal Relations; Working Group on Corruption; Directorate of Pardon and International Judicial Co-operation); Ministry of Internal Affairs, Public Administration and Decentralisation (General Directorate of Human Resources; Body of Inspectors for the Public Administration; National School of Public Administration); Ministry of Public Order (Directorate of Internal Affairs of the Hellenic Police; Directorate of Public Security; Directorate of Education); Ministry of National Economy and Finance (Division of International Economic Relations; Tax Department; General Division of Customs and Excise; General Directorate of Economic Inspection; Body for the Prosecution of Economic Crime: SDOE/YPEE; Ministry of National Defence; Ministry of Development; Ministry of the Environment (Town Planning and Public Works); Ministry of Health and Social Solidarity; Senior Judges and Prosecutors from the Greek Judiciary (Supreme Court, Court of Appeal and Court of First Instance in Athens and Administrative Courts); National School of Judges; University of Athens; Committee of Article 7 (the Greek Financial Intelligence Unit); Mayor’s Office of the City of Athens; President’s Office of the Athens and Piraeus Prefecture; General Inspector for Public Administration; Ombudsman; Court of Audit; Central Union of Municipalities and Communities of Greece (KEDKE); Bank of Greece; Hellenic Capital Market Commission; and Ombudsman for the Capital Market. The GET also met representatives from the following bodies: Athens Bar Association; Greek Institute of Certified Public Accountancy (SOEL); Associated Certified Public Accountancy (SOLSA); Economic Chamber of Greece; Hellenic Chamber of Commerce and Industry; Hellenic Banking Association; Transparency International-Greece; Union of Civil Servants (ADEDY); Greek General Confederation of Labour (GESEE), and Vodafone.
3. It is recalled that GRECO agreed, at its 10<sup>th</sup> Plenary meeting (July 2002), that, in accordance with Article 10.3 of its Statute, the 2<sup>nd</sup> Evaluation Round would deal with the following themes:
  - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS No 173<sup>1</sup>), by Articles 19 paragraph 3, 13 and 23 of the Convention;
  - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
  - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS No 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

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<sup>1</sup> Greece signed the Convention ETS No 173 on 27.1.1999 but had not yet ratified it at the time of the visit. The draft law ratifying the Convention was before the Parliament at the time of preparation of the current report ([www.parliament.gr](http://www.parliament.gr)).

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Greek authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Greece in order to improve its level of compliance with the provisions under consideration.

## II. THEME I – PROCEEDS OF CORRUPTION

### a. Description of the situation

#### Confiscation

5. In Greek legal doctrine, confiscation is considered a secondary penalty, which is normally imposed in the context of court proceedings concerning the establishment of criminal responsibility and sentencing.<sup>2</sup> Article 76 of the Criminal Code (CC) provides that it is possible to confiscate “objects which are the product of a felony or a misdemeanour which results from malice, as well as their value, and everything that has been acquired from them, as well as objects which were used in or were intended to be used for the execution of such an act (...) if they belong to the perpetrator or to one of the accomplices”.<sup>3</sup> Judges are obliged to take a decision on the confiscation of previously seized proceeds (Article 373 of the Code of Criminal Procedure). Confiscation is mandatory with regard to objects from which a danger against public order arises even in the absence of a prior conviction (Article 76.2 CC). Furthermore, Article 238 CC provides that in cases of corruption as defined in Articles 235 CC, 236 CC and 237 CC, “bribes offered or their value” must be confiscated. By virtue of the draft law “for the ratification and implementation of the Criminal Law Convention on Corruption - ETS No 173”, confiscation is also applicable to proceeds deriving from the misdemeanours of corruption in the private sector, trading in influence and accounting offences.
6. Article 2 § 6 of Law 2331/1995 on Money Laundering as amended (the AML Law) provides for a special mandatory confiscation regime for “any property<sup>4</sup> which is a proceed from a criminal activity<sup>5</sup> or which has been acquired in any way as a proceed of such criminal activity or property which has been used, entirely or partly, to commit a criminal activity”. If the property does not exist anymore or has not been found, a pecuniary fine is imposed, equal to the value of this property at the time of the conviction, which is defined by the court.
7. Confiscation is imposed even when the property belongs to a third person, provided that he/she was aware of the criminal activity at the time of acquiring the property. The prosecution

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<sup>2</sup> However, confiscation is also ordered when no indictment is made due to the death of the person responsible or when the indictment is terminated or is declared inadmissible. In these cases confiscation is decided by an order of the judicial council or a decision of the court, which stops the indictment or declares it inadmissible and, if no indictment was made, by an order of the competent judicial council of the competent Magistrate’s Court.

<sup>3</sup> In addition, Article 81 CC provides that, for crimes aiming at obtaining financial profits, courts may impose, together with the penalty of imprisonment, a financial penalty or a fine, even where this is not explicitly provided for by a law. This is interpreted as enabling courts to impose a pecuniary fine, equal to the value of the proceeds of crime at the time of the conviction, which is defined by the court, if the property does not exist anymore or it has not been found.

<sup>4</sup> “items of any kind, tangible or intangible, movable or immovable, material goods or incorporeal goods, as well as the legal documents or items which prove the deeds of property or the rights to acquire such property” (Article 1 of the Act).

<sup>5</sup> i.e. those crimes listed in Article 1 of the Act, including corruption but not yet, for instance, trading in influence and accounting offences. These offences are included in the list by virtue of the draft law transposing the Convention ETS No 173 into domestic law.

authorities must establish a link between predicate offences and criminal assets. However, in money laundering cases, by virtue of Article 3 § 1 of the AML Law, a balance in the burden of proof (in connection with a conviction carrying a sentence of at least three years' imprisonment for one of the serious crimes mentioned in Article 1 of the Law) has been established to assist the authorities in identifying corruption proceeds liable to confiscation, with regard to any property that the perpetrator has acquired over the past five years. During the on-site visit, the GET was informed that Greece envisaged going even further in the apportionment of the burden of proof in cases of money laundering, in particular, in the context of the transposition into domestic law of the relevant European Community 2<sup>nd</sup> Directive against money laundering (Directive 2001/97/EC) and the implementation of the Council Framework Decision 2005/212/JHA of 24.2.2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.<sup>6</sup>

8. According to statistics provided by the Police, the Directorate of Internal Affairs of the Hellenic Police (DIAHP) has received 521 complaints regarding bribery against 521 Police Officers since 1999 and 31 complaints against other public officials since 2003. Preliminary investigations have been opened in 45 cases.<sup>7</sup> Since 1999, 4 police officers have been prosecuted for the laundering of corruption proceeds.<sup>8</sup> There are no specific figures on interim measures or confiscation orders taken in relation to corruption cases, but the persons met during the on-site visit provided the GET with a few examples of successful interim measures and confiscation in corruption cases.

#### Interim measures

9. The general provisions on interim measures are laid down in Articles 251 to 269 of the Code of Criminal Procedure (CCP).<sup>9</sup> In particular, by virtue of Article 251 CCP, following a prosecutor's order (except in urgent cases or *in flagrante delicto*), investigators must take all necessary steps to collect and store evidential material. Articles 258-259 CCP and 262 to 269 CCP deal with the seizure and sequestration of objects and documents. Article 260 CCP provides that investigators can seize titles and securities held by public or private banks and other institutions, and any other deposited object or document, irrespectively of whether or not these belong to the accused person or are registered in his name, provided they are related to a crime. Seizure may also be ordered by the Court at any stage of the proceedings.
10. According to Article 5 of Law 2331/1995 "on the prevention and suppression of the laundering of proceeds from criminal activities" (AML Law) investigators may, during a formal investigation and with the approval of a prosecutor, freeze bank accounts and open the accused person's safety deposit boxes, even if they are held jointly with another person, provided there are well-based suspicions that the accounts or deposit boxes contain money or items which derive from the laundering of proceeds deriving from a criminal activity (including corruption) or that they contain money or items liable to confiscation. In preliminary investigations, a Judicial Council may also order the prohibition to carry out any activity on the bank accounts and/or to open a deposit box. The investigator's or the council's decision is equivalent to a seizure report; it is issued without having previously heard the accused or a third person and does not necessarily mention a specific account or deposit box.

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<sup>6</sup> See Article 5 of the draft law before the Parliament ([www.parliament.gr](http://www.parliament.gr))

<sup>7</sup> See also Evangelos Kroustallakis, in Miniaia Nomiki Epitheorissi, Armenopoulos, Bull 5, May 2004, p. 657-660

<sup>8</sup> Since the on-site visit, there has been a number of prosecutions of judges allegedly involved in corruption and money laundering cases; at least 9 judges have been decommissioned upon a decision by the Supreme Court (Areios Pagos), acting as supreme disciplinary council in judicial matters, while criminal proceedings are pending.

<sup>9</sup> Special seizure is also provided for in various criminal statutes (e.g. on narcotics, illegal immigration, contraband, etc.).

11. Specific financial investigations– aiming at the identification, tracing and freezing of proceeds of crime or the monitoring of a suspect’s property - are normally conducted by the investigators in charge of the investigation of the offence, generally, the Directorate of Internal Affairs of the Hellenic Police (DIAHP) or local police officers, or both. For felonies and above a certain threshold of presumed prejudice, the investigation is carried out by the Economic Crime Section of the Division of Public Security. Apart from the police or the public prosecutor, financial investigations may be carried out by the Body for the Prosecution of Economic Crime (SDOE), replaced by the Special Investigations Service (YPEE).<sup>10</sup> If necessary, it is possible to appoint financial experts to assess the amount of the potential criminal proceeds. In addition, a specific financial investigation may be carried out concurrently with the investigation into the predicate offence by the “Committee of Article 7 of the AML Law” (the Greek Financial Intelligence Unit – FIU). According to the Greek authorities, there is no financial or banking secrecy before the judiciary, the FIU and the Tax authorities, including SDOE (YPEE). It is possible to use special investigative means in corruption cases, depending on the gravity of the offence. By virtue of Article 12 of the draft law ratifying the Criminal Law Convention on Corruption, it will also be possible to use special investigative means to identify, trace, seize and confiscate proceeds deriving from corruption in the private sector, trading in influence and accounting offences (see Article 253A of the CCP). The same investigative means may be used against natural and legal persons.
12. With regard to the management of seized property, the Code of Criminal Procedure provides that seized movable objects are placed in escrow, until the penal court decides whether they will be confiscated or returned. Furthermore, the deposits frozen under the AML Law remain blocked in the Credit or Financial Institutions where they were discovered, until the penal court decides whether they will be confiscated or returned.

### Money laundering

13. Corruption offences (including attempt), qualify as predicate offences of the money laundering offence, even if they are committed abroad. Article 1 a, xvii of the AML Law refers to Articles 235 (passive bribery of public officials) and 236 (active bribery of public officials), as amended and interpreted by Law 2802/2000, as well as to Article 237 (bribery of judges, which is now a felony) of the Criminal Code. The laws ratifying relevant international conventions on corruption add to the list of predicate offences some additional offences; however, this is not always reflected in the AML Law itself.<sup>11</sup> Article 7 of the draft law ratifying Convention ETS No 173 includes trading in influence, accounting offences and corruption in the private sector in the list of predicate offences of the money laundering offence.
14. By virtue of Article 4 § 10 of the AML Law only credit and financial institutions are required to report suspicious transactions to the FIU. However, during the GET’s visit, a draft law was under preparation transposing into domestic law the Directive 2001/97/EC, which expands the list of the categories of professions required to report suspicious transactions.

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<sup>10</sup> SDOE is also charged with the implementation of the OECD Convention on Corruption. Law No 3296/2004 provided for the creation of the Special Investigations Services (YPEE) with a view to replace SDOE. At the time of the GET’s visit, YPEE was not yet established. This body shall be responsible for investigating corruption and reviewing financial audit controls in cases of suspected fraud. The Greek authorities reported that since the on-site visit, YPEE has become fully operational.

<sup>11</sup> However, the new draft law amending the AML Law, which was before the Parliament at the time of preparation of this report, rationalises this list.

## International Co-operation: provisional measures and confiscation

15. Mutual assistance in criminal matters for the temporary seizure and confiscation of proceeds of crime, including corruption, is based on the provisions of the Code of Criminal Procedure (in particular Articles 457-461 CCP) and applicable international treaties.<sup>12</sup> According to Article 28 § 1 of the Constitution, ratified treaties supersede any other statute. Greece made a reservation to Convention ETS No 141 with regard to the list of offences where confiscation is applicable and may give rise to international co-operation: corruption in the private sector, trading in influence and account offences, as well as offences of corruption involving a legal person, are not explicitly included in the list, despite the fact that, for instance, trading in influence has been criminalised. However, the draft law ratifying Convention ETS No 173 now includes corruption in the private sector, trading in influence and accounting offences in the list of offences where confiscation is applicable.
16. Greek requests or foreign applications for judicial assistance for interim measures or confiscation orders are channelled through the Ministry of Justice, which forwards them to the competent prosecutor and the latter to the Council of the Magistrate's Court, with a view to obtaining a verdict on the legality and regularity of the application. From 2000 to 2005, the Ministry of Justice has handled approximately 15,000 requests. A request has been rejected only once. The Greek FIU is a member of the Egmont Group and co-operates with foreign counterparts.

### **b. Analysis**

17. Greece has registered some notable successes over the last few years in fighting terrorism, organised crime and economic crime, including corruption. The current analysis focuses less on the detection of corruption but more on the efforts and ability of the Greek authorities to effectively deprive offenders of any benefit from corruption.
18. A general problem faced by the GET during the visit was the lack of appropriate information permitting the evaluation of the practical implementation of existing legislation concerning identification, seizure, freezing and confiscation of corruption proceeds. In the GET's view, the availability of appropriate statistics could contribute to a more focused anti-corruption policy with a view not only to obtaining convictions for corruption offences but also to depriving offenders of any benefit from their crimes. *The GET observes that statistics should be collected and properly analysed concerning provisional measures and subsequent confiscation orders in cases of corruption.*
19. According to the Criminal Code, confiscation of "bribes offered or their value" is mandatory. That said, the GET has some remarks concerning the scope of seizure and confiscation and their use in practice.
20. Regarding the scope of seizure and confiscation, in the GET's view, the different provisions applicable (Criminal code, Code of criminal procedure, AML Law and legislation aimed at the ratification of international conventions on corruption) lack harmonisation and it was unclear, at the time of the visit, to what extent it is possible to seize and confiscate not only the "bribes offered or their value" but also any undue advantage deriving from corruption and the instruments used or meant to be used in this connection. The Greek authorities stated that it is possible to

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<sup>12</sup> Greece is, *inter alia*, a party to the 1959 European Convention on Mutual Assistance in Criminal Matters, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, the Civil law Convention on Corruption, the EU Convention on Mutual Assistance in Criminal Matters and the Schengen Agreement.



seize and confiscate any undue advantage; however, they stressed the need to review the application of the relevant provisions in this respect.

21. While the Directorate of Internal Affairs of the Hellenic Police (DIAHP) appears to perform successful seizures with appropriate resources and special investigative means, the powers in relation to tracing, seizure, freezing and confiscation are not readily accessible to ordinary investigators, particularly those involved at an early stage of the investigations (before the proceeds can be dissipated), because the powers required are regulated in different pieces of legislation. From the examples presented during the on-site visit, the GET was under the impression that investigators lack sufficient resources, and possibly training, to deal with complex financial and patrimonial investigations which require seizing the proceeds of corruption.<sup>13</sup> The Division of the Fight against Economic Crime of the Hellenic Police found it difficult to provide concrete examples of such investigations in corruption cases. The examples given, mainly concerning the DIAHP, generally involved cases of petty corruption, most of them relating to police officers.<sup>14</sup> The GET noted that the Body for the prosecution of economic crime (SDOE/YPEE) had only one prosecutor specially attached to SDOE on a permanent basis to deal with criminal cases for the whole country, which is manifestly insufficient.
22. The GET also noted that prosecutors and judges receive training on seizure and confiscation at the School for Judges and Prosecutors and, during on-going professional training, at the Law School of the University of Thrace. However, there is no specialisation in and no specific training available on the identification, tracing, seizure and confiscation of proceeds of corruption.
23. In view of the above, while it is mandatory under Greek law to deprive the beneficiaries of the proceeds of crime, the GET was unconvinced that this facility was used to any significant extent in practice. Consequently, in order to enhance the use of seizure and confiscation, **the GET recommends to review the application of the existing provisions on tracing, seizure and confiscation of corruption proceeds and, where appropriate, to provide adequate training, as well as to increase the resources available with a view to strengthening the efficiency of financial investigations.**
24. There is no specialised body for the management of seized assets. The DIAHP told the GET that seized instruments, money, securities, or vehicles are handed over to the prosecutor, the Fund for Official Deposits or to the Organisation for the Management of Public Materials. In the GET's view, a special body responsible for all the specialist aspects of seizure and management of property and assets, such as associated costs, storage, use of perishable goods, could simplify the work of prosecutors and judges. *The GET observes that consideration should be given to setting up a specific body to manage seized assets.*
25. The GET had serious doubts as to the efficiency of the anti-money laundering regime and its contribution to the fight against corruption, in particular, for the following reasons: i) some institutions with a duty to file suspicious transaction reports (STRs), such as insurance

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<sup>13</sup> However, the Greek authorities indicated that the Police has a specialised unit tracking financial crime and that they generally inform immediately the competent prosecutor.

<sup>14</sup> However, in the recent cases of corruption involving members of the judiciary, the GET was told that investigations targeted the suspects' assets, including by checking their declarations of property, which some of them had not supplied in the manner required. After the visit, the Greek authorities mentioned that the Police also managed to resolve recently a complex case involving the laundering of proceeds deriving from drug trafficking and corruption through the State lottery system.

companies, had not yet done so<sup>15</sup>; ii) institutions and professions with an obligation to notify suspicious transactions in terms of money laundering had received no guidelines and training on how to detect corruption; iii) some institutions and professions – such as those included in the relevant 2<sup>nd</sup> EC anti-money laundering Directive (e.g. auditors and private lawyers) - had no formal obligation under the Greek Anti-Money Laundering Law to report suspicions of money-laundering to the Greek Financial Intelligence Unit (FIU); iv) the FIU could not formally suspend a suspicious transaction; and v) the FIU was clearly understaffed and was obliged to recruit analysts from the Body for the Prosecution of Economic Crime (SDOE/YPEE) on an *ad hoc* basis to analyse STRs. The GET was told that Greece had prepared draft legislation on these matters, but in the absence of precise information, the GET was unable to assess to what extent the changes planned had the potential of remedying the aforementioned shortcomings. In view of the above, **the GET recommends that the Greek authorities strengthen their anti-money laundering regime with a view to increasing its efficiency and contribution to the fight against corruption, and to draw-up guidelines and provide training on the detection of corruption.**

26. The Ministry of Justice is the Central Authority for handling mutual assistance requests. The representatives of the Ministry of Justice stressed that they could assist the prosecutors/judges by giving lectures at the Judicial school on the implementation of international treaties and on the procedures in foreign jurisdictions, such as on freezing or waiving of banking secrecy, which may delay or prevent the efficient seizure and confiscation of proceeds of crime. As International treaties, once ratified, become part of the law of the land, judges and prosecutors expressed the wish to have additional information on the time of ratification and the technicalities of implementation. In view of the above, *the GET observes that the Greek authorities in consultation with the Judiciary should identify the needs of the Judiciary when dealing with international treaties and assist them as appropriate.*

### III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

#### a. Description of the situation

##### Definitions and legal framework

27. Greece is a unitary state with administrative and political decentralisation. It is divided into 13 regions, 54 prefectures (*nomoi*), 900 municipalities (*dimoi*) and 133 Communities (*koinotites*). Regions have legal personality. There are also other public bodies established by law, as well as several public corporations, and state-run private law legal entities. Public officials working for the state, local and regional authorities and other statutory public law bodies must comply with the legislation in force and act in the general interest. In carrying out its activities, any body with a public service role must abide, in particular, by the principles of legality, equality, neutrality, continuity and probity.

##### Anti-Corruption Policy

28. There is no anti-corruption plan or general strategy for the Public Sector in a single written document. However, fighting corruption in the Public administration is said to be the Government's priority. The basic objectives are to be found in the general presentation of the Government's priorities in Parliament as well as in major governmental initiatives. The general

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<sup>15</sup> The Greek Financial Intelligence Unit (FIU) informed the GET that 80% of came from the banking sector and the other from the Police, SDOE and the Hellenic Capital Market. At least 3% of the STRs were related to corruption cases.



anti-corruption plan established by the Ministry of Public Administration involves the following steps: a) public information is accessible to all citizens via public service Internet sites and Citizen Service Centres; b) more than 856 administrative procedures are now available on-line, thus interrupting the link between citizens and public servants in vulnerable services and diminishing the possibility of corruption; c) all administrative procedures are being simplified and shared competencies significantly reduced; d) any breach of duty has now become a felony; e) the co-ordination of detection and monitoring procedures in the wider Public Sector is entrusted to the General Inspector for Public Administration<sup>16</sup>; and f) a “Working Group for the consolidation of the principle of transparency and the fight against corruption” was established, which is presided by the Secretary General of the Ministry of Justice and composed of representatives of several bodies in charge of the fight against corruption (see Greco’s First Round Compliance Report on Greece: GRECO RC-I (2004) 2E). In addition, since 2003, the Government has adopted several laws to counteract corruption, including - more recently - in the field of the judiciary and public procurement.

### Transparency

29. Article 10 § 3 of the Constitution provides that public authorities have an obligation to respond to requests for information and providing of documents, within a deadline of not more than 60 days. According to Article 5 of the Code of Administrative Procedure (Law 2690/1999), any person, has a right to access administrative documents of the wider Public Sector (State, public law legal entities, public corporations and other organisations). Access to private documents held by the Administration is possible only for those with a legitimate interest who submit a written application. Article 16 of the Code provides for the restrictive exceptions where access must not be granted. Finally, Article 25 § 4, *b’* of the By-Laws of Courts and Court Officers, provides that Public Prosecutors at Courts of First Instance are vested with the power to ask Public Sector Services and Organisations to provide documents or copies thereof, upon requests made by persons concerned, having a right of access or a legitimate interest. During the visit, the GET was told that there was a draft law under preparation on the further use of public sector information, which aims at transposing into the Greek legal system the Directive 2003/98/EC.
30. In addition to the above rules, Citizen Service Centres (KEP) have been established in Municipalities, by virtue of Law 3013/2002, with a view to supplying citizens with appropriate administrative information and help in their various requests (for example the submission and promotion of applications to various administrative authorities, certificates etc) without them having to go through the time-consuming bureaucratic procedures of central public services. Similar Citizen Communication and Information Offices (CCIO) have been set up in Ministries, Prefectures and Municipalities by virtue of Law 2690/1999. Access to administrative records is provided either directly through these offices or indirectly through the websites of public services. The increased computerisation of data held by Public Administration, as well as the works undertaken to provide more and more online administrative services to citizens is believed to further reduce possibilities of corruption. Local authorities have drafted Charters of Obligations, which detail the obligations of public officials and authorities towards citizens, including the satisfaction of requests regarding the providing of information in writing etc. For matters regarding public tenders, the publishing of the relevant announcement and invitation of the persons concerned is obligatory, while further information is also provided by the relevant Services

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<sup>16</sup> Under Law 3320/2005, the judicial authorities are obliged to notify him/her of every indictment or conviction involving a civil servant or an official or an organ under his/her jurisdiction for cases concerning the execution of their duties. In addition, the General Inspector may investigate matters on its own initiative, in which cases he may lift banking, tax and financial secrecy (Article 14 paragraph 3 of Law 3345/2005).

(responsible for the project) and by the CCIO of the competent Ministries. Finally, by virtue of Law 2539/1997 (Article 10) and Article 121 of the Municipal and Community Code, public authorities may take into consideration public consultation in their decision-making process (through the press or by other means such as websites) at local government level.

### Control of Public Administration

31. Greek legislation provides for, on the one hand, systems of internal or self-control of Public Administration, through appeals against administrative acts before the competent administrative bodies<sup>17</sup> and, on the other hand, a system of judicial control by ordinary administrative courts and the Supreme Administrative Court (Conseil d'Etat) and further by the Court of Auditors and ordinary civil courts.<sup>18</sup> In addition to this control, Greece established a system of inspections of different branches of the Public Administration (by virtue of Law 2477/1997 establishing the Administration Inspectorates), including the Financial Inspection Service of the Ministry of Finance, and, since 2002, the Inspection and Audit Coordination Body<sup>19</sup> and the General Inspector of Public Administration (the role of these bodies has been described in detail in GRECO's First Round Evaluation and Compliance Reports on Greece).
32. The institution of the Ombudsman was established, in the form of an independent administrative Authority, by virtue of Law 2477/1997 and is regulated by Presidential Decree 273/1999. It is foreseen in Article 103 § 9 of the Constitution (the role of the Ombudsman has been described in detail in GRECO's First Round Evaluation Report on Greece).

### Status, recruitment, career and preventive measures

33. The Status of public officials and civil servants is guaranteed by the Constitution (Articles 103 and 104). The GET was told that there are 558,624 public officials.<sup>20</sup> They can be divided into: a) personnel linked to the Administration by a relationship of public law, who enjoy a permanent status (civil servants), b) personnel linked to the Administration by a relationship of public law, who may not enjoy a permanent status (such as senior administrative officers of the offices of Ministers, by virtue of Art. 103.5 of the Constitution); c) personnel linked to the Administration by virtue of a private law contractual relationship (Art. 103.2 and 103.8 of the Constitution) and d) other personnel recruited for a concrete task. The personnel of the Regions are considered state administration personnel, while the personnel of local government organisations are under the

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<sup>17</sup> More specifically, individuals may lodge administrative appeals of the following categories: a) simple, b) specific and c) judicial. The simple administrative appeal or 'hierarchical appeal' may concern the repeal or amendment of an individual administrative act. A specific administrative appeal or 'legality appeal' involves only the control of the legality of the disputed administrative action/decision. In cases of judicial appeals there is a re-examination of a case in substance.

<sup>18</sup> The judicial control of the Administration's acts is conducted by: 1) regular administrative courts (Administrative Courts of First Instance and Administrative Courts of Appeal), which, in most cases (taxation conflicts, social security disputes, civil liability of the Public Sector) examine appeals, applications for cancellations, objection and claim for damages of those offended as courts of substance (and not only the legality of the administrative action/decision); 2) the Conseil d'Etat, which mainly examines the legality of the administrative act, 3) the Court of Auditors after an appeal has been lodged especially for a specific (small) category of cases that mainly concern attribution to public liable persons or acts regarding regulations for pensions of public servants etc; and exceptionally, 4) regular civil courts, in cases foreseen in the Constitution or where Public Administration operates as a private law legal entity.

<sup>19</sup> Responsible for monitoring and coordinating the inspections and audits carried out by the Body of Inspectors/Controllers of Public Administration. It also has the right to conduct joint inspections, audits and investigations by joint teams of inspectors of inspection bodies that participate in it (art. 8 §§ 1 and 6 of Law 3074 dated 4.12.2002).

<sup>20</sup> Among them, 362,367 persons enjoy civil service status (342,960 permanent staff and 19,407 with long-term contracts). 44,497 persons working for public entities (legal persons of public law), 79,128 persons for public enterprises, 72,632 persons for prefectures, municipalities and communities.

jurisdiction of those organisations and have in principle the same rights and obligations as state administration officials. Civil Servants (in civil and administrative matters) are generally submitted to the Civil Servants' Code (CSC)<sup>21</sup> as adopted by Law 2683/1999, unless they are submitted to specific provisions by virtue of the Constitution or a special law.<sup>22</sup>

34. There is a standardised procedure for the selection and recruitment of civil servants. Article 103.7 of the Constitution states that recruitment in the wider public sector (except for senior administrative officers of the rank of Ambassador, of the Presidential Administration and of the offices of the Prime Minister, of Ministers and Deputy Ministers) is to be conducted either through a competition or through a selection according to predetermined and objective criteria and is controlled by an independent authority. By virtue of Law 2190/1994 on the "establishment of an independent authority for staff selection and the settlement of administrative issues", the recruitment of civil servants is assigned to the "Higher Council of Staff Selection" (ASEP). In addition, every year, the National School of Administration admits, upon written and oral examination, 150-200 students, destined for managerial posts. The Civil Servants' Code reiterates the safeguards in Articles 12-13. Special selection procedures, characterised by enforced guarantees of transparency and meritocracy, may also be established by law. According to Article 80 CSC, the competences of civil servants are evaluated by virtue of a system of evaluation to be adopted by a Presidential Decree (PD 318/1992).
35. Civil servants are required to have high ethical standards. The provisions on deontology are defined in a consolidated manner either in the CSC, in particular, by Articles 8 (impediments on the basis of a criminal record), 9 (impediments on the basis of a prior dismissal from a public office), 23 (personal administrative record), 27 (ethical behaviour and non-discrimination), or in special enactments according to the public officials' category (e.g. Article 14 § 7 of Law 1268/1982 for the members of Higher Educational Institutions, etc...). Article 8 of the CSC provides for recruitment impediments in case the candidate has been convicted of a felony or "dishonourable offences" (i.e., for any felony, theft, misappropriation, embezzlement, fraud, blackmailing, forgery, bribery, breach of trust to the service, duty violation, etc.).<sup>23</sup> Any criminal offence committed and inserted in the criminal records - even if it is not a recruitment impediment - can be taken into consideration regarding the ethical profile of the candidate. In addition, by virtue of Article 9 of the Code, no person may be appointed as an employee if s/he has been dismissed from a position of public service or an Organisation of Local Administration, or any other legal person of the public sector, on the grounds of the disciplinary sanction of permanent termination or due to termination of employment contract on serious grounds, upon the employee's liability, unless a five-year period from dismissal elapses. If a public official is convicted of a crime, Article 109 of the Code provides for dismissal as a disciplinary sanction. The criminal court may also impose the secondary penalty of deprivation of civil rights, in which case the official is automatically dismissed from his/her post.
36. Greek legislation contains specific provisions regarding education and training of civil servants concerning, among other things, the ethics of public sector employees at various stages of their professional career. According to the Greek authorities, all public officials who hold university

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<sup>21</sup> After the visit, the GET was informed that the Civil Servants' Code is under review, with a view to further reinforcing accountability, transparency and efficiency. At the same time, since the GET's visit, the draft Code of Conduct for Civil Servants has been adopted.

<sup>22</sup> The CSC applies to (permanent) civil servants of the State, Legal Persons of Public Law and local authorities. Civil servants regulated by specific constitutional or legislative provisions, military personnel and other public officials may be subject to the CSC to the extent provided in these specific regulations. By virtue of Article 39 of the CSC it may be interpreted that the category of public officials quoted in Art. 103.5 of the Constitution are also covered by this Code.

<sup>23</sup> A public official convicted for one of the offences mentioned in Article 8 of the CSC, is excluded from the public service.

qualifications and who have studied in Law Schools - and usually assume important duties in the operation of public services as Directors, Heads of Departments etc, - have already, in principle, been taught the rules of ethics of their service.<sup>24</sup> The “basic training” that takes place in the National Centre of Public Administration for graduate students, before definitive recruitment, is compulsory for civil servants and local authorities’ personnel (the latter by a special training unit, the newly established National School of Local Administration). In addition, Article 47 of the CSC on service training, as well as other various laws, such as Article 13 of Law 2527/1997 on the training of public administration personnel provide for the possibility of receiving additional training, including on ethical issues. The law provides for the constant training of officials during their entire course of service regardless of their category, field, expertise and rank. Such training is undertaken by the Institute for Continuous Training, the third component of the National Centre of Public and Local Administration.

37. There are no general provisions in place for the regular rotation of public officials, except Law 3260/2004, which provides for a general system of 3-year rotation for heads of departments, directors and general directors. However, the GET was told during the visit, that there is a system of rotation for some vulnerable positions in some branches of the public sector, such as in the tax administration or for police officers.

#### Conflict of interests

38. Conflicts of interest, accessory activities and incompatibilities are regulated by the Constitution as well as by specific laws. By virtue of Article 104 of the Constitution, a public official must not hold a second position in the Public Sector, unless provided for in a special law and on condition that the income derived from of the second position is not higher than that of the first organic position.<sup>25</sup> However, Article 31 of the CSC allows civil servants to undertake remunerated private projects or work if they are compatible with the duties of his/her position and after special permission by the service. Article 32 of the CSC provides for restrictions in participation in private law legal entities. Civil servants have a duty to declare to their Department their participation in private law legal persons (except in associations and foundations of public interest).<sup>26</sup> Articles 33 and 34 concern incompatibility with parliamentary office and attorney at law as a principle. By virtue of Article 36 of the CSC, on conflict of interests, there is an obligation to abstain from dealing with issues or participating in the issuance of administrative acts in cases where the civil servant (as well as his/her spouse, blood relatives or relatives by marriage or of a person with which the public official has a relation of special friendship or enmity) has a personal interest. Furthermore, any direct or indirect participation of the civil servant in any auction conducted by a committee, to which the servant or the Authority s/he belongs, is subject to disciplinary sanctions (Article 107 § 1 of the CSC). Civil servants with family ties must not participate in the same collegial body. For certain positions, civil servants must not serve in their land of origin.

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<sup>24</sup> After the visit, the Greek authorities reported that such information is now codified in the Code of Conduct for the Civil Service whereas a special Code of Conduct for the health sector was approved by Parliament in November 2005.

<sup>25</sup> Article 35 of the CSC reiterates this provision. However, exceptions are possible by virtue of special law. Thus, Law 1256/1982 enumerates certain conditions for carrying out a remunerated second office in the public sector.

<sup>26</sup> More specifically, the participation of a civil servant in any personal commercial company, limited liability company or partnership or joint venture is prohibited, while the civil servant cannot be chief executive or commissioned executive of a public limited company or manager of a commercial company. In addition, the CSC prohibits civil servants, their spouse or underage children from holding company shares, co-operating or doing business with the service of the servant as well as shares of companies under the special control of the civil servant’s service.

39. Finally, it is generally prohibited to take advantage of the position, public property, status of public official or civil servant as well as of information held, for purposes other than the interest of the service and especially for the satisfaction of personal interests.
40. By virtue of Article 28 of the Civil Servants' Code, civil servants have an obligation to declare their property when being recruited, when getting married or when acquiring property of significant value. In case of suspicions, the competent authority must open an inquiry. By virtue of Law 3213/2003, several categories of public officials, ministers, members of parliament, judges and prosecutors as well as certain other high rank public officials as mentioned in Article 1 of the Law, have an obligation to regularly declare their assets. Article 4 of the Law provides for criminal sanctions including imprisonment, deprivation of civil rights and confiscation (see GRECO's First Round Compliance Report on Greece).
41. Generally, there are no measures to prevent the improper migration of public officials to the private sector. However, it is possible to enact limitations in the way they exercise their profession in the private sector, for example in the case of appointment as a lawyer of a former prosecutor/judge, after s/he has retired from the service. In this case the latter cannot exercise his/her profession as a lawyer in courts of the region where s/he offered his/her services at the time of his/her retirement or where s/he had served during the last two years (Article 21 § 3 of Presidential Decree 3026/1954 "Code of Lawyers"). In addition, the GET was informed, after the visit that, according to Article 17 para. 13 of Law 1418/1984, technical personnel of the civil service, legal entities of public law and the wider public sector, including public banks, the public electricity enterprise, the Greek telecommunications organisation and other state-owned enterprises cannot be employed by enterprises registered as contractors or designers - and thus are excluded from public procurement procedures - for a period of at least 2 years since their retirement. Any breach of this provision brings about the automatic exclusion of both the individual and the enterprise from the relevant registries.

#### Codes of conduct/ethics

42. At the time of the visit, Greece had no codes of conduct applicable to government service, with the exception of the Code of Police Ethics adopted by Presidential Decree 254/2004. Legislation is generally considered to lay down adequate rules of conduct and duties for civil servants and other public officials. Such rules are provided for in Articles 2 § 1, 4 sub., 20 § 2, 25, 103 sub. of the Constitution, in the Civil Servants' Code, and in the statutes regulating the operation of administrative bodies, such as, Articles 3, 4 and 7 of the Code of Administrative Procedure. Rules of conduct also arise from provisions of the criminal law, especially those concerning offences related to service (Articles 235 to 263 CC) but are also deduced from theory and case law and have been consolidated through general constitutional rules. They also result from general principles of law that the case law has designated as establishing fundamental moral values of administrative law. However, during the on-site visit, the GET was told that a code of conduct was under preparation for public officials.<sup>27</sup>
43. The sanctions applicable vary according to the legal framework into which the relevant rule of ethics is incorporated. Thus, for offences against the most important category of such rules, which are included in the above-mentioned relevant instruments for prosecutors/judges and public officials, disciplinary sanctions are applied that include written reprimand, fine, deprivation of right to promotion, demotion, temporary or final removal (Article 93 of Law 1756/1988 and 109

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<sup>27</sup> Since the on-site visit, a Code of Conduct for Civil Servants has been adopted. In November 2005, a specific Code of Conduct for the Health Sector was also approved by the Parliament.



of the CSC). Public officials - except prosecutors/judges - have a right to appeal to ordinary administrative Courts and to the Council of State against a decision for disciplinary sanctions. Information on breaches of codes, on penalties and on enforcement actions are not processed centrally, although the competent judicial authorities are required by Law 3320/2005 to notify the General Inspector of Public Administration on every indictment or conviction involving a public official for cases concerning the execution of his/her duties.

#### Gifts

44. By virtue of Articles 235 and 236 of the CC – on passive and active bribery - public officials should not ask for or accept gifts or any other advantage or promises of gifts in connection with the fulfilment of their duties. The acceptance of any material advantage or compensation in the performance of duties, established by Article 107 q of the CSC is subject to criminal and/or disciplinary sanctions, including exclusion from the public service, depending on the seriousness of the breach, the experience of the public official and the general circumstances under which the breach took place.

#### Reporting corruption

45. By virtue of Article 37.2 of the CCP, civil servants and those to whom the exercise of a public service has been assigned temporarily, are under obligation to notify the competent public prosecutor without delay of any information they may receive in any way regarding a punishable act that is prosecuted *ex officio*, if they have been informed thereof in the exercise of their duties. This obligation applies for serious crimes, under certain circumstances and in a specified manner, even to all individuals (Article 40). Failure to report, may constitute a criminal offence by virtue of Articles 232 (failure to report a crime) or 259 (breach of faith) of the CC. Upon request made by an investigator, Article 261 CPP obliges public officials to submit all relevant information, except if they have to keep a military, diplomatic or other secret related to the security of the State or the exercise of their duties. By virtue of Article 110 of the Civil Servants' Code (CSC), each disciplinary body or hierarchical superior is vested with an obligation to report, prosecute and punish disciplinary offences committed by his subordinates, including corruption, violation of duties or rules of administrative ethics. Failure to do so constitutes a disciplinary offence. Finally, Article 25 of the CSC provides guidelines for public officials receiving illegal orders.
46. Although there is no specific mechanism in place concerning the protection of public officials who report corruption cases, Article 367 paragraph 1 of the Criminal Code explicitly provides that, in the exercise of one's duties, actions undertaken or negative opinions expressed in a public document are not considered criminally liable. According to Article 1 paragraph 2 of Law 3094/2003, the Ombudsman and its assistants cannot be prosecuted for opinions expressed in the course of their duties. The same applies, by virtue of Law 3260/2004 to the Inspectors of the Body of Inspectors of Public Administration, assisting the General Inspector of Public Administration. Moreover, Article 5 of Law 2957/2001, which authorised the ratification of the Civil Law Convention on Corruption, prohibits any sanction against employees or public officials who report acts of corruption to competent persons or authorities, except if they act in bad faith or without reasonable suspicion.

#### Disciplinary proceedings

47. Disciplinary proceedings are dealt with by the competent disciplinary bodies, i.e. the hierarchical superior competent in disciplinary matters, the Executive Board of the Legal Person of Public



Law, the Disciplinary Council; the Appellate Disciplinary Council and the Conseil d'Etat. Disciplinary preliminary investigation, under oath administrative investigation, disciplinary investigations and prosecution are carried out by the competent bodies specified in the law, according to the stage of the procedure (Articles 123 to 129 CSC). At the same time, as mentioned before, there are several Inspectorates for the various branches of Public Administration that investigate disciplinary breaches as well as a General Inspectorate of the Public Administration (GIPA) that inspects the various Inspectorates. The relation between disciplinary and criminal procedures is regulated in detail in Articles 114-115 of the CSC. These procedures can be carried out in parallel. When a disciplinary offence is also a criminal offence, the prescription of the disciplinary offence may be suspended for the duration of the statute of limitation of the crime (Article 112 CSC).

**b. Analysis**

48. The laws adopted and entities established over the last few years appear to indicate a political will to fight corruption. The "Working Group of the Ministry of Justice for the consolidation of the principle of transparency and the fight against corruption" determines which adjustments are needed to Greece's anti-corruption policy and follows its implementation. However, this Working Group is not permanent, meets occasionally and lacks appropriate resources. At the time of the visit, there were no systematic analyses of the phenomenon of corruption within the public administration.<sup>28</sup> Nonetheless, Greece has established a comprehensive system of inspections of the different components of the public sector including the General Inspector of the Public Administration (GIPA). In this connection, the GET was told that from the 421 cases of corruption registered in 2004, 46 were discovered by the GIPA. In the GET's view, this recently created body has the potential to design and implement an effective ant-corruption strategy, including at local level, together with the Working Group of the Ministry of Justice.
49. It would appear that the creation of the Citizen Information Services (1999) and the Citizen Service Centres (2002), as well as their co-ordination at State level by the Ministry of the Interior, Public Administration and Decentralisation has considerably improved the efficiency and transparency of the operation of the public administration. At the same time, the intervention of these services/centres has reportedly reduced possibilities of corruption between public officials and citizens. Further computerisation of data processed by public bodies and increased public services offered on-line are likely to enhance this situation. The right of access to information held by the public administration is enshrined in the Constitution and other legislation and is to be monitored by prosecutors who are not necessarily specialised in administrative law and procedures and who do not receive guidelines on the relevant case-law on access to information for the application of the relevant principles on a case-by-case basis. According to Article 5 of the Code of Administrative Procedure, every person has access to all administrative documents upon simple request. Access to private documents held by the Administration is possible only for those having a legitimate interest to do so. In addition, the deadlines foreseen in the legislation, to respond to a request of information, may be too long in certain cases. In this connection, the GET learned that, in 2004, the Ombudsman had dealt with 22 cases of violation of the transparency principle. However, he cannot impose sanctions and cannot send all such cases to the prosecutor.<sup>29</sup> At the same time, several of the GET's interlocutors expressed the view that by

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<sup>28</sup> However, the General Inspector for the Public Administration (GIPA), the Ombudsman and the Higher Council for Staff Selection (ASEP) publish a annual report on their activities which is presented before the Parliament. These reports, available on the Net, highlight problems of corruption and other related offences detected and reported during the course of their activities (see: [www.parliament.gr](http://www.parliament.gr)).

<sup>29</sup> The Greek authorities indicated that prosecutors regularly prosecute cases upon receiving the Ombudsman's reports.

virtue of the legislation and the combined supervision by the prosecutors, the Ombudsman and the Citizen Information Centres, the possibilities for abusive refusals to grant access to information were rather limited. The GET was also told that a new draft law was under preparation with a view to strengthening the right of any individual to accede to information held by bodies of the public sector, including by removing the requirement of demonstrating a "legitimate interest".<sup>30</sup> **The GET recommends to ensure appropriate monitoring of the implementation of the new law on freedom of information.**

50. As to the Rules regulating the rights and duties of public officials, it is clear that all public officials (and not only civil servants) are subject to the same provisions of the Criminal Code (CC), in particular in respect of active and passive corruption and reporting of criminal offences. However, it is not clear whether all public officials are submitted to provisions equivalent to those applying to civil servants under the Civil Servants' Code (CSC) in terms of selection, recruitment, assessment, ethics, training, conflict of interests, etc. A Code of Ethics was adopted in 2004 for the Police. During the on-site visit, the GET was informed of the preparation of two codes of ethics during the on-site visit, but it was still unclear to whom these codes would apply and how detailed their provisions would be as regards ethics, conflicts of interest, reactions to gifts and applicable sanctions.<sup>31</sup> With regard to such matters as gifts, the GET noted that in the Criminal Code, a bribe is synonymous with a gift (*δώρο*) and was informed that the legislator intended to ban any acceptance of gifts by public officials. Consequently, any gift is to be considered as a bribe and has to be refused.<sup>32</sup> It is also recalled that Article 107 of the CSC forbids the acceptance of any material advantage or compensation from the person whose case the civil servant is handling. In the GET's view, the existing rules on gifts (for instance in the course of protocol relations) are not sufficiently detailed (there are no specific guidelines on reactions expected from public officials when offered gifts, for instance gifts of hospitality) and are not well known by public officials and the public.
51. With regard to training, the GET gained a positive impression of the work carried out by the National Centre for Public Administration and its National School of Public Administration (2 year courses, for graduated students), the National School of Local Government (for graduate students) and the Institute of Training (for all civil servants). However, the training offered by the Institute takes only 2 weeks – although not only once in a career - and does not specifically focus on risks of corruption, conflicts of interest, gifts, etc. In addition, it is offered only to civil servants. Temporary staff and other contractual staff are not provided with appropriate training.
52. The GET gained a positive impression of the work carried out by the Higher Council of Staff Selection (ASEP) as an independent authority in charge of recruitment of public officials, whose work is positively evaluated within the country, including by the trade unions. The ASEP only recruits permanent personnel (civil servants and permanent contractual staff, except, for instance, officials of the Legal Office of the State, prosecutors/judges, police officers, doctors and teachers of the public sector)<sup>33</sup> and supervises the recruitment of some temporary staff (e.g. scientists recruited for up to three years) and certain other categories. Its own members recognise that the

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<sup>30</sup> This law transposing Directive 2003/98/EC was adopted by the Parliament in December 2005.

<sup>31</sup> After the on-site visit, the Greek authorities indicated that two Codes of Conduct are in place: one concerns all civil servants and the other the Health Sector. According to Article 19 of the Code of Conduct for the Health Sector, medical personnel is not allowed to seek or take any financial remuneration or any other benefit apart from his/her salary or lawful fee.

<sup>32</sup> However, in a case decided in 2004, the Supreme Court considered that a substantial amount of money offered to a customs official with no intent to obtain a favour was not a bribe. But the representatives of the Judiciary told the GET that this isolated case has been extensively criticized by the legal doctrine and cannot be considered as representing a case-law.

<sup>33</sup> Article 118.6 of the Constitution also upholds the exceptions to the competence of ASEP provided by Law 2190/1994.

recruitment of part of the temporary staff and part of the staff contracted by local administrations is effected without any control by an independent authority, thus enabling various forms of patronage. The GET was also told that by virtue of a Presidential Decree 164/2004, the non permanent staff that had been working for the administration with at least two contracts of 24 months, became public officials, without having gone through a selection process controlled by the ASEP or by any other independent authority.<sup>34</sup>

53. Under Article 80 of the Civil Servants' Code, all civil servants and the personnel of legal persons of public law are subject to a yearly evaluation procedure, further specified in Presidential Decree 318/1992. The criteria for the evaluation of directors, heads of departments and heads of unit include an assessment of their managerial skills, their conduct, their level of expertise, their effectiveness and their level of initiative and inventiveness. The remainder of the personnel is evaluated on the basis of their initiative and inventiveness, their manners and conduct and their effectiveness. The GET was also informed that the Directorate of Internal Affairs of the Hellenic Police (DIAHP) occasionally performs integrity checks, but the GET understood this was done only in respect of police staff. The information gathered by the GET suggests that there is not an adequate system of evaluation of public officials' performance (including their integrity) or that it does not function properly. The GET considers that a proper system of evaluation of public officials during their career, implemented effectively and including integrity, increases public sector performance and thus contributes to reducing possibilities of corruption.<sup>35</sup>
54. In view of the above, **the GET recommends to ensure that all public officials, whether or not civil servants, are bound by appropriate rules and guidelines designed to prevent corruption (in particular in respect of ethics, the expected reaction to gifts and the countering of risks of corruption) and receive appropriate training; to increase the control over the selection procedures of public officials; and to ensure that an effective system of performance evaluation of public officials is established.**
55. As mentioned before, the relevant rules on conflicts of interest, incompatibilities and accessory activities are laid down in the Constitution and other legislation. They mainly apply to civil servants. It is generally accepted that, under certain conditions, civil servants are allowed to undertake remunerated "private projects" or "work" or even hold a second position in the public or in the private sector. This is said to be partly justified by the lower public sector salaries and a certain tradition. Further, Greece does not regulate specifically, nor does it control, the migration of public officials to the private sector. Any restrictions in this regard could possibly be considered, according to the Greek authorities, as an infringement of the constitutional provisions regarding the right to participate in the social and economic life of the country (Article 5 of the Constitution). As described in GRECO's First Round Evaluation Report, Greece established a system of *declaration of property* for public officials and other persons (such as media owners), but there is no comprehensive system of *declaration of interests*. In this connection, the GET noted that situations of incompatibilities and accessory activities of public officials are not always checked in an effective manner. During the on-site visit, representatives of the Greek authorities told the GET that it is envisaged to strengthen the control in this area. **The GET recommends to regulate more strictly conflicts of interest (including the improper migration to the private**

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<sup>34</sup> The Greek authorities stated that this was a requirement imposed by EC Directives. At the time of preparation of this report, Greece was before the European Court of Justice for not properly transposing the relevant provisions, thus allowing all such personnel immediate and automatic access to the Public Administration.

<sup>35</sup> See for instance the Working Paper No 242 of the European Central Bank of July 2003 based on the analysis of public sector performance indicators established in 2000.

**sector), incompatibilities and accessory activities in respect of all public officials and to establish proper monitoring of the application of the rules in this area.**

56. The GET welcomes that a system of rotation has been put in place for some positions of the public administration exposed to corruption (managers, tax administration, police) as a tool to reduce risks of corruption. *The GET observes that this approach should serve as a model for other similarly vulnerable sectors of public administration.*
57. Public officials have an obligation to report corruption offences, usually through their hierarchical superior.<sup>36</sup> In practice, only a very limited number of alleged corruption cases have been reported (mainly anonymously) by public officials. Some of the GET's interlocutors explained that this situation is due to the difficulty to obtain proof, to the alleged absence of dissuasive sanctions for corruption<sup>37</sup> and to the fear of retaliatory measures, in particular, in the absence of effective protection of whistleblowers. In view of the above, **the GET recommends to establish appropriate protection for whistleblowers and to take all other measures deemed necessary to facilitate the reporting of corruption.**

#### **IV. THEME III – LEGAL PERSONS AND CORRUPTION**

##### **a. Description of the situation**

###### Definitions

58. There are different types of legal persons, characterised by their nature, their function and the legal status applied to them. Legal Persons of Public Law are, for instance, municipalities, tertiary educational institutions, lawyers', notaries' and medical associations, etc. The Legal Persons of Private Law are: (i) the Legal persons of civil law of a non-profit nature - whose functions are governed by the civil code, such as associations, fund-raising committees, civil companies with a legal personality – and; (ii) commercial companies - whose functions are governed by the Commercial Code such as a) Personal companies (i.e. general partnerships, special partnerships and unregistered firms); and b) Capital companies (i.e. incorporated companies, limited companies, co-operatives, special partnerships divided into shares and joint ship-ownerships). The legal persons of a mixed character are legal persons of private law (as a rule, an incorporated company), which have been established or nationalised through an act of the State, and are commercially active in a field which is of interest to the public as a whole, such as the State Electricity Company, the Telecommunications Organisation of Greece, etc. Political parties and trade unions are *de facto* associations of people, but by virtue of a decision of the Supreme Court (*Areios Pagos*), these bodies can be held liable for their actions.

###### Establishment of legal persons

59. The establishment of a legal person is subject to constitutive requirements (i.e. the legal procedure which creates the legal person) and statutory requirements (i.e. the articles of partnership/association or the organisation chart, which contain the administrative and functional

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<sup>36</sup> To illustrate this in practice during the visit, the Greek authorities gave to the GET a press release from the Ministry of Development where a public official of the Special Body for Food Control (EFET) had reported to his superior and the superior to the Police that he had been offered €300 for issuing a false certificate of conformity.

<sup>37</sup> According to GIPA, in disciplinary proceedings, 43 civil servants were dismissed in 2004, 39 were suspended for 3 to 6 months and 25 received a fine equivalent to 5 days to 3 months salary. The DIAHP reported several cases of successful criminal convictions as well. Corruption is generally criminally sanctioned with less than 18 months' imprisonment, which is automatically converted into a pecuniary fine.

conditions of the legal person). In practice, these two acts are joined into one aggregate act, which is the Charter of partnership/association. During the on-site visit, the GET was told that a new draft law was about to be adopted with a view to establishing a new centralised and comprehensive Commercial Register that will be easily accessible throughout the country.

60. The establishment of a commercial company is subject to specific requirements. For personal commercial companies (general partnerships, special partnerships), the articles of partnership (a private contract) must be published in the Register of companies kept for this purpose at the First Instance Court of the place where the company's head office is located. For capital companies (limited or incorporated companies), the articles of partnership/association must be drawn up in the presence of a public notary. For *limited companies*, the articles are published in the competent First Instance Court and their summary is published in the Official Gazette. For *incorporated companies*, the articles are approved by the overseeing Authority (the Prefecture of the place where the company's head office is located), and the decision approving its establishment is published in the Gazette. Finally, when commercial companies are created, no minimum capital stock is specified for personal commercial companies. For capital companies, the minimum capital stock for limited companies is €18,000, and for incorporated companies €60,000. There are approximately 58,600 incorporated companies in Greece.
61. To establish a legal person of civil law, the following are required: for associations, the charter memorandum/incorporation act and the organisation chart, which are put in writing, then an application is entered with the First Instance Court of the place where the association's head office is located, where, after an investigation into the legality of the association and whether its aims contravene public morals, a judicial decision is issued, a summary of which is published in the Press (together with the association's particulars). Finally, associations are registered in the Register of associations, held by Courts of First Instance, containing the name, the head office, the aim, the date, the members of the board of directors and the terms in the articles of association; for foundations, the charter memorandum/incorporation act followed by the act of the State in the form of an approving presidential decree, which is published in the Government Gazette; for civil companies with a legal personality, the incorporation of the company, the publicity formalities, the payment of subscriptions by the associates/partners.

#### Transparency and controls of legal persons

62. In order to ensure transparency, the publication of the establishment of the aforementioned types of legal persons is mandatory, either in the Register of companies, in the Register of associations or in the Press. Legal persons are founded and controlled by the overseeing Authority (competent Courts or Prefectures). The Prefecture of the place where the head office of the associations, the civil companies and incorporated commercial companies are located, checks annually that they meet the requirements of the law, i.e. the Civil Code for associations, foundations and civil companies, the Commercial Law and codifying Laws 3190/1955 (on limited companies) and 2190/1920 (on incorporated companies). This constitutes a control of legality.
63. The following authorities supervise the operation of the financial sector and legal persons: the Ministry of Economy and Finance - the Internal Revenue Service (IRS), Tax authorities and the Body for the Prosecution of Economic Crime (SDOE/YPEE); the Ministry of Development; and the company departments of Prefectures. The stock exchange is supervised by the Hellenic Capital Market Commission. Legal persons of public law, such as local authorities and public enterprises are controlled, *inter alia*, by the Court of Audit, the Financial Inspectorate of the Ministry of Economy and Finance and the General Inspector of Public Administration. The



authorities supervising the Capital market were very active in promoting several codes of ethics for all partners participating or involved in the control of the Capital Market. During the on-site visit, the GET was told that financial crimes within the capital market are included in the list of predicate offences in the new draft AML Law.

#### Limitations on exercising functions in legal persons

64. The legislation does not provide for general disqualifications of directors, company secretaries, liquidators and promoters from acting in a leading position in legal persons, when such persons have been found guilty of offences. However, there are some professional limitations deriving from the codifying Laws of 1955 and 1920 and for companies operating in the regulated financial sector (Banks, insurance companies, etc). According to the Greek authorities, the criminal record of the members of the Board or Directors of companies of the regulated financial sector is checked regularly and if a person is found guilty of a corruption offence, dismissal from the legal person's administration is obligatory.

#### Liability of legal persons

65. The aforementioned Laws 3190/1955 and 2190/1920 establish the civil and administrative liability of legal persons for any actions committed on their behalf and the criminal liability of their directors/managers and natural persons connected to them. According to Article 71 of the Civil Code, a legal person is held liable for the actions or omissions of the organs which represent it. Non-senior management or other employees do not usually bind the legal person and thus any personal fault of the employee does not necessarily entail the responsibility of the legal person. The Anti-money laundering (AML) Law also establishes the administrative liability of legal persons for money laundering offences committed on their behalf. By virtue of the ratification by Greece of the EU and the OECD anti-corruption conventions, legal persons operating or having their seat in Greece are liable for the criminal offences committed on their behalf and covered by these conventions.<sup>38</sup> However, the above-mentioned ratifications do not clarify the mechanisms for implementing the civil and administrative liability of legal persons for the offences of corruption, as it is considered that this is resolved by the case-law. During the on-site visit, the GET was told that the draft law for the ratification of Convention ETS No 173 establishes administrative liability for crimes of active bribery, trading in influence and accounting offences, including when such crimes are committed due to a lack of supervision of the legal person.

#### Sanctions

66. According to the Greek authorities, the legislation implementing the relevant OECD and EU Conventions on corruption enables them to impose administrative sanctions on legal persons held liable for the corruption offences covered by these conventions. Law 2656/1998 ratifying the OECD Convention gave to the Body for the Prosecution of Economic Crime (SDOE/YPEE) the competence of monitoring the implementation of the Greek legislation on combating corruption in international commercial transactions involving foreign public officials. The following sanctions can be applied: a) an administrative fine up to three times the value of the benefit, b) temporary or permanent prohibition to exercise its business activities, and c) provisional or permanent exclusion from public grants or benefits. Temporary prohibition and provisional exclusion are imposed for a period of one month to two years. Administrative disputes are adjudicated by the

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<sup>38</sup> See Article 5 of Law 2656/1998, as amended by Article 9 of Law 3090/2002 for the OECD Convention and Article 8 of Law 2803/2000 on the Convention concerning the protection of the financial interests of the European Communities and the Protocols related to it.



regular administrative courts, according to Law 2717/1999. By virtue of the AML Law, it is also possible to impose administrative penalties and fines on a legal person, to temporarily or permanently suspend its activities and to recall its licence to operate, if responsibility against such a legal person has been established.

67. According to Article 76 of the criminal Code, Courts can confiscate proceeds of an offence or such property, the value of which corresponds to such proceeds in administrative and civil proceedings. There are no specific provisions in place to ensure the effective application of sanctions and to prevent legal persons from evading penalties when institutional changes occur within the legal person, merger or winding up. However, according to the Greek authorities this should not create difficulties in practice and is handled by the case-law. Finally, at the time of the visit, there were no records of companies found liable for active bribery or money laundering (trading of influence was not yet criminalised).<sup>39</sup>

#### Accounting rules

68. Traders are obliged to keep proper and faithful accounting records. According to Article 21 of Presidential Decree 186/1992 (Code of Books and Data) as codified by Law 3229/2004, each national or foreign natural or legal person practising an activity on Greek territory, which aims at the acquisition of income from an enterprise or liberal profession, as well as a civil company of a profit or non profit character (i.e. all professionals subject to taxation), have the obligation to keep at their registered address the books and data as well as relevant documents as laid down by the Code for a six year period. There are some exceptions, for instance farmers and agricultural exploitations.
69. The use of invoices or other accounting documents or records that contain false or incomplete or forged or falsified or fictitious data are liable to administrative and criminal sanctions by virtue of Law 2523/1997. According to Article 19 of this Law, the editing or acceptance of false or incomplete tax data is considered a tax evasion offence. Perpetrators and their collaborators are criminally sanctioned. The destruction or hiding of accounting records or books or data is subject to criminal and administrative sanctions as well. Finally, according to Article 18 of the Law, the non-reimbursement or inaccurate reimbursement of V.A.T. and retained taxes, fees or contributions constitute tax evasion offences (see also Article 3 of Law 2656/1998).

#### Tax deductibility

70. Non-tax deductibility of bribes is not explicitly provided for under Greek law. More specifically, facilitation payments are not contained in the list of deductible expenses, which are enumerated, in a restrictive manner, in Article 8 (deductibility of expenses from total income) of Law 2238/1994 (Code of Income Taxation).

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<sup>39</sup> However, the GET was informed, after the visit, that according to public procurement legislation, and especially Presidential Decree 370/1995 as amended, both a natural person and a legal person involved in a bribery case may be excluded for a number of years or even permanently from public bids. A participant in a tender is required to produce a certificate from the competent authority, which demonstrates that s/he does not have a previous conviction for "an offence concerning his/her professional conduct", including convictions for bribery. If the applicant is a legal person, it must demonstrate that it has not been banned previously from a procurement procedure. A draft law amending and codifying procurement procedures has been submitted to public consultation; it includes the establishment of a central registry for banned individuals and legal persons.

## Tax authorities

71. Tax authorities (SDOE/YPEE - and DOY<sup>40</sup>) contribute in various manners to the fight against corruption. According to Article 37 of the CPC, Investigating officials, including tax officials, are under obligation to notify the competent public prosecutor without delay of any information that they have received in any way on a punishable act that is prosecuted *ex officio*. All other civil servants (including tax officials), as well as those to whom the exercise of a public service has been assigned temporarily, are under the same obligation by virtue of Article 37.2 of the CCP. The notification is made in writing and must contain all existing elements referring to the punishable act, the offenders and the evidence. Finally, during the control of tax data, the Directors of Public Fiscal Services (IRS) are under the obligation to notify any information that they have received in any way on corruption or money laundering. The law enforcement bodies (public prosecutor, investigator) can, during the course of their duties, ask for clarifications via the Director of Regional SDOEs (YPEEs) and that way have access to tax data. Tax authorities have an obligation to report suspicious transactions to the FIU by virtue of the Article 4 § 11, 12 and 13 of the AML Law. In the new draft AML Law tax offences and accounting manipulations are also included in the list of predicate offences.

## Role of Accountants and Auditors

72. Like all individuals, accountants, auditors and/or other advising professions are obliged, under Article 40 of the Code of Criminal Procedure, to report suspicions of offences to law enforcement authorities. Law 2523/1997 and especially Article 5 (co-operation of an accountant in the incorrect presentation of the actual state of tax books and data), establishes the responsibilities and sanctions against accountants, auditors and the relevant advising professionals.<sup>41</sup>

### **b. Analysis**

73. At the time of the GET's visit, the Greek authorities were in the process of establishing, through a new registrar, a central registration system for legal persons as the system in place at the time of the visit did not seem to allow for effective access to the recorded information on legal persons throughout the country. According to the Greek authorities, the planned legislation will enable the competent authorities to check more systematically and effectively the establishment and operation of legal persons and will contribute to preventing legal persons from being used to conceal corruption or other illegal activities. Therefore **the GET recommends to speed up the adoption of the new law setting up an appropriate system of central registration for legal persons and to ensure appropriate monitoring of its implementation.**
74. During the on-site visit, the GET was told that it is possible for a natural and/or a legal person to establish a company or to take part in it even in those cases where the person concerned has been found liable for a crime, including corruption, trading in influence, accounting offences or money laundering, except for particular companies such as corporations participating in public contract biddings, banks and other fiduciary enterprises, or companies operating in the fuel market. In the GET's view, for the sake of a credible anti-corruption policy, it is crucial to establish

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<sup>40</sup> Financial Administrative Services

<sup>41</sup> After the visit, the Greek authorities indicated that accountants and internal auditors are required to report to the Board of Directors on a quarterly basis. Under paragraph 2250 of the Greek Auditing Standards, auditors who discover any illegal acts in the course of an audit must report the matter to the Board of Directors and the audit committee of the company; they must also report to the shareholders any act (including bribery) preventing them from reaching a proper conclusion on the company's accounts. If they have any doubt as to whether they have an obligation to report, they must seek the advice of the Accounting and Auditing Supervisory Board.

- adequate professional limitations and to check them effectively, for persons found guilty of economic and financial crimes and to disqualify those persons from holding leading positions in legal persons, where appropriate. Therefore, **the GET recommends to establish an appropriate system of professional limitations for persons found guilty of criminal offences.**
75. Under Greek law, legal persons cannot be held criminally liable for criminal offences. It is therefore very important that the already existing system of administrative and civil liability of companies is used effectively. In the absence of any specific information in this area and of a registry of legal persons who have been subject to corporate sanctions, the GET could not establish how many legal persons had been held liable for crimes, in particular corruption, trading in influence and money laundering, if any. Moreover, the GET could not clearly identify the exact scope and mechanisms for implementing the civil and administrative liability of legal persons for criminal offences in the light of the existing provisions (e.g. in cases of concurrent criminal and administrative or civil proceedings; coordination of investigators, prosecutors and judges at the different stages; confiscation of the proceeds of crimes; consequences in cases of institutional changes within the legal person, etc...). The GET was told that the draft law for the ratification of Convention ETS No 173 and the case-law will clarify these matters. The GET was also informed that the pecuniary sanctions available will continue to be linked to the occurrence and evaluation of a benefit. In this context, and in the absence of a clear definition confirmed by case law, the effectiveness, proportionality and dissuasiveness of the sanctions will depend on the manner in which these provisions will be implemented. In view of these legislative developments, appropriate training will be needed for investigators and prosecutors/judges dealing with corporate criminal offences. Therefore, **in the context of the forthcoming ratification by Greece of the Criminal Convention on Corruption (ETS No 173), the GET recommends that all officials concerned receive appropriate training on corporate liability with a view to making full use of the provisions and sanctions foreseen in cases of active bribery, trading in influence and money laundering and to consider establishing a registry of legal persons which have been subject to sanctions for criminal offences.**
76. The Greek authorities reported that Tax authorities are generally informed, including by SEYO (the School for SDOE/YPEE - officials), on how to detect corruption and on the relevant international rules and standards, especially as SDOE (YPEE) is in charge of the implementation of the OECD Convention on corruption and the OECD Bribery Awareness Handbook for Tax Examiners. In view of the forthcoming new draft law on the ratification of Convention ETS No 173 (establishing new accounting offences with a view to fighting corruption, in line with Article 14 of the Convention) and the draft law on the implementation of the 2<sup>nd</sup> EU Directive against money laundering (establishing tax and accounting offences as predicate offences), the GET is of the opinion that tax authorities will require new resources and additional guidelines and training on how to detect and report corruption (see also Section II of this report).
77. According to the Greek authorities, accountants and auditors have an obligation to report crimes to law enforcement authorities. As already mentioned before, the Code of Criminal Procedure establishes an obligation for all individuals to report crimes (Article 40), under certain circumstances and in a specified manner. During the on-site visit, the representatives of the accountants stated that an accountant would generally not report a case of corruption in order not to lose his/her job, while the representatives of auditors told the GET that they notify to the Greek FIU any suspicious transaction reports they may detect, despite the fact that there was no formal obligation under the Anti-Money Laundering Law at the time of the visit. However, the planned revision of the Law is intended to clarify these issues. In the GET's view there is a lack of

appropriate guidelines and training in these matters. In this context, **the GET recommends that the authorities explore, in dialogue with the professional bodies of accountants and auditors, which measures should be taken to improve the situation in relation to reports of suspicions of corruption to the authorities (e.g. guidelines and training for the detection of corruption).**

## **V. CONCLUSIONS**

78. The fight against corruption appears to be one of Greece's political priorities. Successive public service reforms have laid great emphasis on ethical requirements and quality of service. This is reflected in the large number of laws passed in recent years and the establishment of special bodies to monitor the implementation of these laws, such as the Directorate of Internal Affairs of the Hellenic Police and the General Inspector for Public Administration. Many new laws were about to be adopted at the time of preparation of this report, such as the law for the ratification of the Criminal Law Convention on Corruption, the new anti-money laundering law and the law establishing a new centralised system of registration for legal persons. One of the challenges for Greece will be to take all necessary measures to implement the evolving legal and regulatory framework in an effective manner. Moreover, further review of applicable procedures and training are needed to ensure that offenders are also systematically deprived of the proceeds of corruption offences to the extent possible. Additional measures are recommended with regard to the reporting of corruption by public officials, the protection of whistleblowers, public officials' reactions to gifts and the monitoring of conflicts of interest, incompatibilities and accessory activities. Finally, in order to prevent legal persons from being used to conceal corruption and other suspicious activities, an appropriate system of control and of liability of legal persons, as well as adequate professional limitations must be put in place. Determined action to implement in practice high professional and ethical standards of all public officials and active co-operation on behalf of the private sector, such as accountants and auditors, as well as the provision of appropriate training, will contribute to establishing a zero tolerance attitude towards corruption.
79. In view of the above, GRECO addresses the following recommendations to Greece:
- i) **to review the application of the existing provisions on tracing, seizure and confiscation of corruption proceeds and, where appropriate, to provide adequate training, as well as to increase the resources available with a view to strengthening the efficiency of financial investigations (paragraph 23);**
  - ii) **that the Greek authorities strengthen their anti-money laundering regime with a view to increasing its efficiency and contribution to the fight against corruption, and draw-up guidelines and provide training on the detection of corruption (paragraph 25);**
  - iii) **to ensure appropriate monitoring of the implementation of the new law on freedom of information (paragraph 49);**
  - iv) **to ensure that all public officials, whether or not civil servants, are bound by appropriate rules and guidelines designed to prevent corruption (in particular in respect of ethics, the expected reaction to gifts and the countering of risks of corruption) and receive appropriate training; to increase the control over the selection procedures of public officials; and to ensure that an effective system of performance evaluation of public officials is established (paragraph 54);**

- v) **to regulate more strictly conflicts of interest (including the improper migration to the private sector), incompatibilities and accessory activities in respect of all public officials and to establish proper monitoring of the application of the rules in this area (paragraph 55);**
  - vi) **to establish appropriate protection for whistleblowers and to take all other measures deemed necessary to facilitate the reporting of corruption (paragraph 57);**
  - vii) **to speed up the adoption of the new law setting up an appropriate system of central registration for legal persons and to ensure appropriate monitoring of its implementation (paragraph 73);**
  - viii) **to establish an appropriate system of professional limitations for persons found guilty of criminal offences (paragraph 74);**
  - ix) **that, in the context of the forthcoming ratification of the Criminal Convention on Corruption (ETS No 173), all officials concerned receive appropriate training on corporate liability with a view to making full use of the provisions and sanctions foreseen in cases of active bribery, trading in influence and money laundering and to consider establishing a registry of legal persons which have been subject to sanctions for criminal offences (paragraph 75);**
  - x) **that the authorities explore, in dialogue with the professional bodies of accountants and auditors, which measures should be taken to improve the situation in relation to reports of suspicions of corruption to the authorities (e.g. guidelines for the detection of corruption and training) (paragraph 77).**
80. GRECO also invites the Greek authorities to take account of the *observations* (paragraphs 18, 24, 26 and 56) of the analytical section of this report.
81. Lastly, in accordance with Rule 30.2 of its Rules of Procedures, GRECO invites the Greek authorities to submit a report on the implementation of the above-mentioned recommendations by 31<sup>st</sup> July 2007.