



Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
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Third Evaluation Round

Evaluation Report on Greece Incriminations (ETS 173 and 191, GPC 2) (Theme I)

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I. INTRODUCTION

1. Greece joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2001) 15E) in respect of Greece at its 9th Plenary Meeting (13-17 May 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2005) 6E) at its 26th Plenary Meeting (5-9 December 2005). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme I (hereafter referred to as the "GET"), which carried out an on-site visit to Greece from 14 to 15 December 2009, was composed of Mr Silvio BONFIGLI, Magistrate, Anticorruption and Transparency Service (Italy) and Mrs Sandra ŠIMKUS, Head of Division of Corruption Analysis, Corruption Prevention and Combating Bureau (Latvia). The GET was supported by Ms Sophie MEUDAL LEENDERS and Mr Christophe SPECKBACHER from GRECO's Secretariat. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2009) 9E, Theme I), as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: Ministry of Justice, Transparency and Human Rights, Ministry of Citizen Protection, General Inspector of Public Administration. The GET also met with representatives of the judiciary, from the Athens Court of First Instance and the Court of Appeal, the Court of Audit as well as the Athens lawyer's association. Finally, the GET met with representatives of the Greek chapter of *Transparency International*, the media as well as academics.
5. The present report on Theme I of GRECO's 3rd Evaluation Round – Incriminations – 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 measures adopted by the Greek authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. 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.
6. The report on Theme II – Transparency of party funding, is set out in Greco Eval III Rep (2009) 9E, Theme II.

II. INCRIMINATIONS

Description of the situation

7. Greece ratified the Criminal Law Convention on Corruption (ETS 173) on 10 July 2007 (Law 3560/2007). The Convention entered into force in respect of Greece on 1 November 2007. Greece has entered one reservation to this Convention in respect of Article 26 (mutual assistance), according to which it may deny mutual assistance if the offence is considered a political offence.
8. The Additional Protocol to the Criminal Law Convention (ETS 191) was also ratified by Greece on 10 July 2007 and it entered into force on 1 November 2007. Greece did not make any reservations to the Additional Protocol to the Criminal Law Convention on Corruption.

Bribery of domestic public officials (Articles 1-3 and 19 of ETS 173)

Definition of the offence

9. *Active bribery* of public officials is criminalised in Article 236 of the Penal Code (Hereafter PC) and active and passive bribery of judges is criminalised in Article 237. Both articles foresee different sanctions according to the monetary value of the advantage at stake and include provisions on effective regret. During the on-site visit, the authorities indicated that these articles were amended by Law 3666/2008 of 10 June 2008 by which Greece ratified the United Nations Convention against Corruption (Hereafter UNCAC).

Article 236, Penal Code, as amended by the Second Article of Law 3666/2008 – Active bribery

1. *One who promises or offers to an official, either directly or through the mediation of a third party, any kind of benefits for himself/herself or for a third party, for future or already completed action or inaction on his/her part which pertains to his/her duties or is contrary to them, will be punished by imprisonment for not less than one year.*

2. *If the value of the benefits exceeds the total amount of seventy three thousand Euro (EUR 73,000), confinement in a penitentiary for not more than ten years will be imposed.*

3. *The act shall not be punished if the above-mentioned person by his/her own will and prior to being examined in any manner whatsoever in regard to the act notifies such act to the Public Prosecutor to the Misdemeanour Court or to any Investigating Officer or to another competent authority by submitting a written report or orally, in which case a relevant report will be drawn up. In that case, the gift or the benefits, if any, which were confiscated or have been delivered to the investigating judge will be returned to the person who gave them and in that instance the provision of article 238¹ shall not apply.*

Article 237, Penal Code, as amended by the Second Article of Law 3666/2008 - Bribery of a judge

1. *If one who is called upon according to law to perform judicial duties or an arbitrator asks for or accepts gifts or other undue benefits or (accepts) the promise that they will receive them so that a case assigned to them will be heard or ruled on in favour or against a certain person, will be punished by imprisonment for not less than one year.*

2. *If the value of the gifts or benefits exceeds the total amount of seventy three thousand Euro (EUR 73,000), confinement in a penitentiary for not more than ten years will be imposed.*

¹ See paragraph 30 for the text of Article 238 PC

3. One who for the purpose referred to hereinabove offers, promises, mediates for or gives such gifts or benefits to one of the persons referred to in paragraph 1 or to a relative of them, will be punished:

a. by imprisonment for not less than one year,

b. by confinement for not more than ten years if the value of the gifts or benefits exceeds the total amount of seventy three thousand Euro (EUR 73,000).

4. The act referred to in the preceding paragraph will not be punished if the above-mentioned person by his/her own will and prior to being examined in any manner whatsoever in regard to the act notifies such act to the Public Prosecutor to the Misdemeanour Court or to any Investigating Officer or to another competent authority by submitting a written report or orally, in which case a relevant report will be drawn up. In that case, the gift or the benefits, if any, which were confiscated or have been delivered to the investigating judge will be returned to the person who gave them and in that instance the provision of article 238¹ shall not apply.

10. Criminalisation of *passive bribery* is provided for under Article 235 PC, as regards public officials and Article 237 (1) PC, as regards judges. Article 235 was also amended by Law 3666/2008, as follows:

Article 235, Penal Code, as amended by the Second Article of Law 3666/2008 – Passive bribery

1. Any official who, in contravention of his/her duty, asks for or receives, either directly or through the mediation of a third party, for himself/herself or for a third party, benefits of any nature or accepts the promise thereof, for future or already completed action or inaction on his/her part which pertains to his/her duties or is contrary to them, will be punished by imprisonment for not less than one year.

2. If the value of the benefits exceeds the total amount of seventy three thousand Euro (EUR 73,000), confinement in a penitentiary for not more than ten years will be imposed.

Elements/concepts of the offence

“Domestic public official”

11. The definition of domestic public official is foreseen in Article 13 PC as regards appointed officials, and Article 263A PC as regards elected officials.

Article 13, Penal Code

An official is a person who has been duly entrusted, even temporarily, with the execution of a duty either in a public, municipal or in any other legal person of public law.

Article 263A, Penal Code

In implementation of articles 235,236,... a public official is considered to be, apart from those mentioned in article 13, a mayor, a president of a local community, and all those who serve either permanently or temporarily and in any kind of capacity:

a) *in businesses or organisations which belong to the State, in organisations of local government or in legal persons of public or private law, who serve, through exclusive or preferential exploitation, the public provision of water, electricity, heating, motor power or*

transportation means or means of communication or the media,

b) in banks whose seat is located within national territory according to the law or their constitution,

c) in legal persons of private law which were founded by the State, by legal persons of public law and by legal persons mentioned in the previous points, providing that the founding legal persons take part in its management, or in case of a limited company in its capital, or when these founded legal persons are commissioned with the execution of state programmes for economic reconstruction or development,

d) in legal persons of private law which, according to the current provisions, may receive funding or sponsoring from the State, or from legal persons of public law or from the above banks.

12. The above-mentioned definitions cover persons carrying out duties or exercising official functions in state bodies (including mayors), irrespective of their type of contract and the temporary/permanent character of the functions performed. They also cover individuals working for state-owned entities or private entities performing public services or receiving public money.
13. Judges and arbitrators are subject to specific bribery provisions under Article 237 PC, which makes reference to “one who is called upon according to law to perform judicial duties or an arbitrator”. The authorities indicated that this expression was also to include prosecutors.
14. As for ministers, they are assimilated to appointed officials as defined in Article 13 PC.

“Promising, offering or giving” (active bribery)

15. Article 236 PC on active bribery of public officials refers to the notions of “promising” and “providing” and the authorities indicated that both the concepts of “offering” and “giving” were included in the Greek word “παρέχω”, meaning “to provide”.
16. In contrast, the elements of “promising”, “offering” and “giving” are all expressly included in Article 237 (3) PC on active bribery of judges.

“Request or receipt, acceptance of an offer or promise” (passive bribery)

17. Both Article 235 PC on passive bribery of public officials and Article 237 (1) PC on passive bribery of judges include the elements of request, receipt and acceptance of a promise of a benefit.

“Any undue advantage”

18. Articles 235 and 236 PC on bribery of public officials use the terms “benefits of any nature” and “any kind of benefits”, respectively. The Greek authorities underlined that these terms cover both material and immaterial advantages, such as the sale of items well below market price, the grant of a preferential loan, the promise of a transfer, a promotion, a new position, an invitation to a social event or sexual favours and that the value of the advantage is irrelevant. As to Article 237 PC on bribery of judges, it refers to “gifts or other undue benefits”, without expressly using the word “any”. However, some examples were given during the on-site visit of judges sentenced by courts in bribery cases involving immaterial advantages.

19. There are no guidelines on the threshold value of acceptable gifts but, according to case-law, gifts of small value given according to socially acceptable practices are not considered as undue advantages. Examples of such gifts are flowers, sweets, wine offered on the occasion of a birthday or the new year. In contrast, offering a dinner at a restaurant was considered a bribe (decision of the Thessalonica Court of Misdemeanours No. 18, 1991).
20. Article 235 PC on passive bribery adds that the request or receipt of the benefit by the official must be "*in contravention of his/her duties*". It was explained to the GET that this expression is meant to convey the notion of "undue" benefit and that it is not mirrored in Article 236 PC on active bribery because the briber may not know exactly what are the duties of the official.

"Directly or indirectly"

21. Provisions on active and passive bribery of public officials specify that the offence may be committed "*directly or through the mediation of a third party*". Article 237 PC on bribery of judges mentions the element of mediation of a third party only in the active part of the offence, under paragraph 3.

"For himself or herself or for anyone else"

22. Articles 235 and 236 PC on bribery of public officials mention expressly that the advantage may be for the official him/herself or for a third party.
23. Article 237 PC on bribery of judges is drafted differently: the possibility of the advantage being promised or offered to a third party only appears in paragraph 3 of this Article on active bribery, which refers to "*relatives*" of the officials. The term "*relative*" is defined by Article 13 (b) PC as "*the offender's relatives through blood or through marriage, his foster parents or foster children, his spouse, his fiancée, his brothers and their spouses or fiancées and his trustees or guardians, as well as those under his trusteeship or guardianship.*"

"To act or refrain from acting in the exercise of his or her functions"

24. As regards active and passive bribery of public officials, both Articles 236 and 235 PC cover "*future or already completed action or inaction on [the official's] part which pertains to his/her duties or is contrary to them*". These articles therefore go beyond the requirements of the Convention in that it is also possible to establish the official's responsibility for acts which have already been committed.
25. Here again, Article 237 PC contains a different provision: it incriminates the acceptance of undue benefits by the holder of a judicial office or an arbitrator "*so that a case assigned to them will be heard or ruled on in favour or against a certain person*". This formulation clearly confines the incrimination under Article 237 to the adjudicating function of the judge or arbitrator. It was explained to the GET that, when performing other actions of an administrative nature, a judge or arbitrator would be acting as a holder of public office and would therefore be covered by Article 235 PC on passive bribery of public officials.

"Committed intentionally"

26. In accordance with Articles 26 and 27 PC, offences in Greek law have to be committed intentionally to be constituted, unless the law expressly provides for commission by negligence.

This is not the case for bribery offences. According to the authorities, the lowest level of intention – *dolus eventualis* – is sufficient in order to prosecute bribery offences.

Sanctions

27. Active and passive bribery, be they in respect of public officials or of holders of judicial offices, carry the same penalties, which vary according to the value of the advantage at stake:
- if the value of the advantage does not exceed EUR 73,000, the offence is qualified as a misdemeanour and is punishable by between one and five years' imprisonment (Articles 53, 235 (1), 236 (1) and 237 (1) and (3) PC);
 - if the value of the advantage exceeds EUR 73,000, the offence is qualified as a felony, punishable by between five and ten years' imprisonment (Articles 52, 235 (2), 236 (2) and 237 (2) and (3) PC).
28. These sanctions are the same as those applicable to other comparable offences, such as fraud and embezzlement (both qualified as misdemeanours carrying a penalty of between one and five years' imprisonment; if aggravating circumstances occur, such as an advantage whose value exceeds 73,000 €, these offences are qualified as felonies, carrying a penalty of between five and ten years' imprisonment²).
29. In addition to imprisonment, two sets of other measures are applicable to bribery offences:
30. The Criminal Court may impose one of the following sanctions:
- confiscation of the advantages or their monetary value (Article 238 PC);

Article 238, Penal Code – Confiscation of the advantage

In the cases of articles 235, 236, 237 the decision orders the seizure of the advantages given or their monetary value”.

- deprivation of civil rights for a specific period of time (Articles 61, 62 and 63 PC);
 - disqualification from exercising certain functions for between one and five years, which applies to professions requiring a special licence (such as those of doctor or pharmacist), in cases where the offender is also condemned to a deprivation of civil rights for at least three months (Article 67 PC).
31. Other measures are also applicable to public officials or persons working in legal persons of public law (Articles 149 and 8, Law No. 3528 of 9 February 2007 regarding Ratification of the Code for Public Officials and Officials in Legal Persons of Public Law):
- persons convicted of bribery are automatically expelled from the service of public official or of official of a legal person of public law;
 - persons convicted of bribery may not be appointed as public officials or as officials in a legal person of public law.

² Articles 52, 53, 375 and 386 PC

Court decisions/case law

32. The authorities did not provide any statistics, but reported the following decisions, as a sample of convictions for bribery:

- Decision of the Supreme Court No. 1711 of the year 2007: confirms the conviction for passive bribery imposed upon a police official who, in 2001, during the exercise of his duties while checking the legality of a car wash company, requested and received from the owner of the company the amount of Drachmas 60,000 (EUR 176.08) for him not to file a complaint and not to arrest the owner;
- Decision of the Supreme Court No. 1771 of the year 2001: confirms the conviction for passive bribery imposed upon an official of the Labour Supervisory Body, who requested and accepted from a foreign national the sum of EUR 1,000 in order, as part of his official duties, to accelerate the process of issuance of a work permit for the briber-giver's spouse, thereby enabling the renewal of a residence permit for the bribe-giver;
- Decision of the Supreme Court No. 794 of the year 2004: confirms the conviction for active bribery of the offender, who promised and offered money to police officials, being aware of their function, to avoid arrest;
- Decision of the Supreme Court No. 1052 of the year 2003: confirms the conviction for passive bribery imposed upon a rural doctor in a Health Centre, who, although she had to offer her services for free as part of her function, requested and obtained the sum of Drachmas 5,000 (EUR 14.67) to examine a patient;
- Decision of the Supreme Court No. 544 of the year 2000: confirms the conviction for passive bribery imposed upon an official of the Ministry of Transports, who requested and received from a candidate the sum of Drachmas 50,000 (EUR 146.74) in exchange for granting her a driving licence; this decision stated that the action of the official was committed intentionally and that granting the licence was part of his duties;
- Decision of the Thessalonica Court of Misdemeanours No.181 of the year 1991: convicted a police official for passive bribery, who as part of his duties was guarding a detainee in a hospital and accepted food in exchange for letting the detainee leave the hospital.

Bribery of members of domestic public assemblies (Article 4 of ETS 173)

33. Active and passive bribery of members of domestic public assemblies is covered by Article 159 of the Penal Code, as amended by Law 3666/2008 ratifying the UNCAC.

Article 159, Penal Code, as amended by the Second Article of Law 3666/2008 – Bribery

1. One who, with respect to a certain election or voting procedure which is carried out by the Parliament or by any committee thereof or by a prefectural, municipal or community local authority council or a committee of anyone of them, proposes, offers or promises to a member of Parliament or to a councillor of the above-mentioned councils or to a member of the committees thereof gifts or any other undue benefits as a consideration so that they will not participate in the election or the voting procedure or so that they will vote in a certain manner, will be punished by imprisonment for not less than one year.

2. With the same punishment shall be punished the members of Parliament or the councillors

or the committee members who in regard to any of the elections or voting procedures referred to in paragraph 1 of this Article accept the offer or the promise of gifts or other undue benefits or demand such gifts or benefits as a consideration for not participating in the election or in the voting procedure or for voting in a certain manner.

3. The perpetrator of the acts referred to in paragraphs 1 and 2 will be punished by confinement in a penitentiary for not more than ten years if the value of the gifts, benefits or considerations exceeds the total amount of seventy three thousand Euro (EUR 73,000).

Elements/concepts of the offence

“Member of domestic public assembly”

34. Article 159 (1) PC contains an exhaustive list of members of domestic public assemblies which covers both assemblies with legislative powers and assemblies with administrative powers.

“Promising, offering or giving” (active bribery)

35. The elements of “*promising*” and “*offering*” are expressly laid down in Article 159 (1) PC on active bribery of members of domestic public assemblies. Instead of the term “*giving*”, however, the article refers to the word “*proposes*”.

“Request or receipt, acceptance of an offer or promise” (passive bribery)

36. Article 159 (2) PC, on passive bribery of members of domestic public assemblies makes reference to the “*request*” – by using the word “*demand*” - and “*acceptance of an offer or promise*” of a gift or other undue benefit. The “*receipt*” element is not expressly mentioned.

“Any undue advantage”; “Directly or indirectly”; “For himself or herself or for anyone else

37. The terms “*gifts or any other undue benefits*” are expressly used in Article 159 PC. However, no provision is made for a bribery offence committed through an intermediary or a gift or advantage being addressed to somebody other than the member of the assembly.

“To act or refrain from acting in the exercise of his or her functions”

38. Article 159 PC, contains a description of the functions of the member of an assembly – “*so that they will not participate in the election or the voting procedure or so that they will vote in a certain manner*” - which is connected to the member’s use of his/her voting powers or to his/her refraining from using them and which is narrower than the concept of exercising the functions of a public official.

“Committed intentionally”

39. The elements on intention described under bribery of domestic public officials are equally applicable to members of domestic public assemblies.

Sanctions

40. Active and passive bribery in respect of members of domestic public assemblies are subject to the same imprisonment sanctions as those applicable to domestic public officials and holders of

judicial office, namely between one and five years' imprisonment if the value of the advantage at stake is of up to EUR 73,000 and between five and ten years' imprisonment if its value exceeds EUR 73,000 (Article 159 PC).

41. As regards other measures, members of domestic public assemblies may be deprived of their civil rights for one to five years by the competent criminal court in the same way as public officials (Article 61 PC).
42. In addition, if a member of a domestic public assembly is convicted of bribery and deprived of his/her civil rights, he/she is *ipso jure* stripped of his/her seat or office (Article 55 of the Constitution, Articles 5 and 29 of Presidential Decree 96/2007 on "Codification of the legislation regarding elections for Members of Parliament", Articles 60 to 63, Penal Code, as regards members of Parliament; Article 72 of Presidential Decree 30/1996 on "Code of Prefectural Government" as regards prefects and members of prefectural councils; Article 146 of Law No. 3463/2006 on "Ratification of the Code for Municipalities and Communities" as regards mayors and members of local assemblies).
43. There are no court decisions/case law regarding bribery of members of domestic public assemblies.

Bribery of foreign public officials (Article 5 of ETS 173)

44. Bribery of foreign public officials, as well as bribery of other categories of foreign and international staff was incriminated in Greece through the successive ratification laws of the international instruments against corruption, namely Law 2656 of 1998 ratifying the OECD Convention on combating bribery of foreign public officials in international business transactions, Law 2803 of 2000 ratifying the Convention for the safeguarding of the economic interests of the European Communities and the Protocols relevant thereto, Law 3560 of 2007 ratifying the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191) and lastly Law 3666 of 2008, which ratified the UNCAC. The provisions contained in each of these texts were not consolidated in one single text, nor incorporated in the Penal Code. Law 3666/2008 does go some way towards consolidation, by amending some of the bribery provisions of the earlier laws of ratification. However, not all relevant provisions are amended and several legal provisions therefore coexist.
45. As regards specifically bribery of foreign public officials, it is dealt with by the Fourth Article, paragraph 1, of Law 3666/2008³. This provision contains the same text⁴ as the Third Article, paragraph 1, of Law 3560/2007, which remains applicable.

³ Law 3666/2008, in its Second Article, also amends the provisions on bribery of foreign public officials of the Second Article of Law 2656/1998 ratifying the OECD Convention, as follows:

1. "One who, during the implementation of international business activities and for the purpose of acquiring or preserving unlawful business or other undue advantage, whether or not it is a pecuniary one, offers, promises or gives, personally or through a third party, gifts or other undue consideration, to a foreign public official, within the meaning of the OECD Convention which is ratified by the First Article of this Law, in his/her favour or in favour of a third party, so that the latter persons will perform an act or commit an omission pertaining to his/her service or being inconsistent with his/her duties, will be punished by imprisonment for not less than one year.
2. If the value of the gifts or of the considerations exceeds the total amount of seventy-three thousand Euro (EUR 73,000), confinement in a penitentiary for not more than ten years will be imposed.
3. The gifts given or their value as well as the crime proceeds which are provided for in the preceding paragraph, or their value, will be confiscated.
4. Article 30 paragraph 2 of the Code of Penal Procedure shall not apply to these cases."

⁴ According to the English versions of the laws provided to the GET.

**Fourth Article, paragraph 1, of Law 3666/2008 - Bribery of foreign public officials
Third Article, paragraph 1, of Law 3560/2007**

1. The provisions of Articles 235, 236, 237 and 238 of the Penal Code shall also apply to the acts of active and passive bribery committed towards or by civil servants, officials and judges in whom jurors and arbitrators of another state party to the Convention, which is ratified by the present Law, will also be included.

46. Consequently, the elements of the offence and the applicable sanctions described under bribery of domestic public officials apply to bribery of foreign public officials of the States that have ratified the Criminal Law Convention and/or UNCAC.
47. As regards officials of other States, the authorities explained that the above provision could also be applied to officials of States having signed the UNCAC. or the Criminal Law Convention. As for the States that have neither signed nor ratified either instrument⁵, it was confirmed during the on-site visit that there was no provisions on bribery applicable to them.
48. There are no court decisions/case law concerning bribery of foreign public officials.

Bribery of members of foreign public assemblies (Article 6 of ETS 173)

49. Bribery of members of foreign public assemblies is criminalised in Greece according to the Fifth Article, paragraph 1 of Law No. 3666/2008⁶ ratifying the UNCAC.

Fifth Article, paragraph 1, of Law 3666/2008 - Bribery of members of foreign public assemblies

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

50. The elements of the offence and the applicable sanctions described under bribery of members of domestic public assemblies apply to bribery of members of public assemblies of the States that have ratified the Criminal Law Convention and/or UNCAC. As regards members of public assemblies of other States, the situation is the same as the one described as regards foreign public officials (see paragraph 47). There are no court decisions/case law concerning bribery of members of foreign public assemblies.

Bribery in the private sector (Articles 7 and 8 of ETS 173)

Definition of the offence

51. *Active and passive bribery* in the private sector have just recently been introduced in the Greek legal system. They are incriminated in the Fifth Article of Law 3560/2007 ratifying the Criminal

⁵ As of 25 February 2010, this was the case for instance of Chad, Congo, the Holy See, North Korea, Oman, Suriname or Taiwan.

⁶ Law 3666/2008, in its Second Article, also amends the Fourth Article, paragraph 1, of Law 3560/2007 ratifying ETS 173 and 191 with the same text as the one quoted in the current paragraph.

Law Convention on Corruption. This Article was amended by the Second Article, paragraph 5 of Law 3666/2008 ratifying the UNCAC, which mirrors closely the wording of Articles 7 and 8 of the Criminal Law Convention on Corruption. The first paragraph contains the elements of both offences, the sanctions and includes a provision on effective regret by way of a reference to Article 236 (3) PC, on active bribery of public officials. The second paragraph provides for a higher sanction when the value of the advantage at stake exceeds EUR 73,000 and the third paragraph refers to Article 238 PC, on confiscation of the advantage.

Fifth Article of Law 3560/2007, as amended by the Second Article, paragraph 5, of Law 3666/2008 - Active and passive bribery in the private sector

1. By imprisonment for not less than one year will be punished one who intentionally in the course of business activity promises, offers or gives, either directly or indirectly, any undue advantage or consideration whatsoever to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties, as such duties are laid down in law, the contract of employment, the by-laws, the instructions or guidelines of their superiors or as such duties arise from the nature of their positions in their employer's business. The act shall not be punished if the conditions referred to in paragraph 3 of Article 236 of the Penal Code concur to the perpetrator's person and then in such a case the gift or advantage, if any, which has been confiscated or has been delivered to the competent authority shall be delivered to the grantor and hence the provision of article 238 of the Penal Code does not apply.

With the same punishment shall also be punished any persons who direct or work for, in any capacity whatsoever, private sector entities and who intentionally in the course of business activity demand or receive, either directly or indirectly, any undue consideration for themselves or for anyone else or accept the promise of such advantage or consideration, so that they will act or refrain from acting in breach of their duties, shall be punished in the same way.

2. To the perpetrator of the acts referred to in paragraph 1 of the Present Article confinement in a penitentiary for not more than ten years will be imposed if the value of the advantages or consideration exceeds the amount of seventy-three thousand Euro (EUR 73,000).

3. The provision of article 238 of the Penal Code shall also apply for the offences provided for by the present Article.

Elements/concepts of the offence

"Persons who direct or work for, in any capacity, private sector entities"

52. With regard to the scope of perpetrators, Greek legislation refers to "One", understood as any person, (active bribery) and to "any persons who direct or work for, in any capacity, private sector entities" (passive bribery). The scope of the provision is thus very broad and the position of the bribe-taker in the business is irrelevant.

"Promising, offering or giving" (active bribery)

53. The elements of "promising", "offering" and "giving" are expressly contained in the Fifth Article of Law 3560/2007, as amended, on bribery in the private sector.

“Request or receipt, acceptance of an offer or promise” (passive bribery)

54. The Fifth Article of Law 3560/2007, as amended, incriminates the actions of “demand”, “receipt” and “acceptance of a promise”.

“Any undue advantage”

55. The relevant provisions cover “any undue advantage or consideration whatsoever” on the active side of the offence and “any undue consideration” on the passive side. As explained above, they are meant to include both material and immaterial advantages and to exclude socially acceptable gifts of minimal value.

“Directly or indirectly”

56. The wording “directly or indirectly” is expressly provided for in both the active and the passive side of the offence.

“For themselves or for anyone else”

57. This element is also included expressly in the relevant provisions.

“To act or refrain from acting”

58. The Fifth Article Law 3560/2007, as amended, specifies that active and passive bribery in the private sector may be committed by action or omission.

“In the course of business activity”; “...in breach of duties”

59. Bribery in the private sector has to occur “in the course of business activities” to fall under the scope of the incrimination (Fifth Article, Law 3560/2007, as amended) and the authorities explained that these terms cover any activity performed with the intention to make profit.
60. A breach of duty is expressly required in both the active and passive sides of the offence and the Fifth Article of Law 3560/2007, as amended, stipulates that duties “are laid down in law, the contract of employment, the by-laws, the instructions or guidelines of their superiors or [...] arise from the nature of their positions in their employer’s business”.

“Committed intentionally”

61. The requirement of intent is specifically mentioned in both active and passive bribery in the private sector.

Sanctions

62. The sanctions applicable to active and passive bribery in the private sector are the same as those applicable to the public sector: between one and five years’ imprisonment when the value of the advantage at stake does not exceed EUR 73,000 and between five and ten years’ imprisonment when it exceeds this amount (Fifth Article, as amended, Law 3560/2007). The competent criminal court may also impose on the convicted offenders a deprivation of civil rights for a specific period of time (Article 60 to 63 PC).

63. Cross references are made to the provisions on confiscation applicable to bribery involving a public official. The same goes for the exemption from liability in case of self-reporting (*"The act shall not be punished if the conditions referred to in paragraph 3 of Article 236 of the Penal Code concur to the perpetrator's person and then in such a case the gift or advantage, if any, which has been confiscated or has been delivered to the competent authority shall be delivered to the grantor and hence the provision of article 238 of the Penal Code does not apply."*)

Court decisions/case law

64. There are no court decisions/case law concerning bribery in the private sector.

Bribery of officials of international organisations (Article 9 of ETS 173)

65. Bribery of officials of international organisations is incriminated in accordance with the Fourth Article, paragraph 2, of Law 3666/2008⁷ ratifying the UNCAC, as well as the Third Article, paragraph 2, of Law 3560/2007 ratifying the Criminal Law Convention and its Additional Protocol, both articles containing the same text.

Fourth Article, paragraph 2, of Law 3666/2008 - Bribery of officials of international organisations

Third Article, paragraph 2, of Law 3560/2007

2. The provisions of Articles 235, 236, 237 and 238 of the Penal Code shall also apply to the acts of active and passive bribery committed towards and by officials or other employees under any contractual relationship whatsoever, within the meaning of the pertinent rules on personnel, of any public international or supranational organisation or entity of which the Hellenic Republic is a member, as well as (towards and by) any person, whether seconded or not, performing duties that correspond to those being performed by the above-mentioned officials or employees.

66. As regards the scope of perpetrators, this provision transposes almost *verbatim* Article 9 of the Criminal Law Convention on Corruption. The elements of the offence and the sanctions described above in relation to domestic public officials apply to officials of international organisations.
67. There are no court decisions/case law concerning bribery of officials of international organisations.

Bribery of members of international parliamentary assemblies (Article 10 of ETS 173)

68. Bribery of members of international public assemblies is criminalised in Greece according to the Fifth Article, paragraph 2, of Law No. 3666/2008⁸ ratifying the UNCAC.

⁷ Law 3666/2008, in its Second Article, also amends the provisions of the Third Article of Law 2803/2000 as follows:

1. *"The perpetrators of the acts of passive and active bribery of an employee which are provided for in Articles 2 and 3 of the Protocol dated 27.9.1996 to the Convention on the protection of the European Communities' financial interests, which is ratified by the present Law, will be punished by imprisonment for not less than one year.*
2. *With confinement for not more than ten years they will be punished if the value of the gifts exceeds the amount of seventy-three thousand Euro (EUR 73,000).*
3. *In these cases, the Court shall order the confiscation of the gifts that were given or of their value."*

⁸ Law 3666/2008, in its Second Article, also amends the Fourth Article, paragraph 2, of Law 3560/2007 ratifying ETS 173 and 191 with the same text as the one quoted in the current paragraph.

Fifth Article, paragraph 2, of Law 3666/2008 - Bribery of members of international parliamentary assemblies

2. The provisions of paragraphs 1, 2 and 5 of Article 159 of the Penal Code also apply to acts of active and passive bribery committed towards and by members of Parliamentary Assemblies of international or supranational organisations, of which the Hellenic Republic is a member.

69. This provision mirrors Article 10 of the Criminal Law Convention on Corruption as regards the perpetrators of the offence. The elements of the offence and the applicable sanctions detailed under bribery of members of domestic public assemblies apply accordingly to bribery of members of international parliamentary assemblies.
70. There are no court decisions/case law concerning bribery of members of international parliamentary assemblies.

Bribery of judges and officials of international courts (Article 11 of ETS 173)

71. Bribery of judges and officials of international courts is incriminated in accordance with the Fourth Article, paragraph 3, of Law 3666/2008 ratifying the UNCAC, as well as the Third Article, paragraph 3, of Law 3560/2007 ratifying the Criminal Law Convention and its Additional Protocol, both articles containing the same text.

Fourth Article, paragraph 3, of Law 3666/2008 - Bribery of judges, arbitrators, jurors and officials of international courts

Third Article, paragraph 3, of Law 3560/2007

3. The provisions of Articles 237 and 238 of the Penal Code shall also apply to the acts of active and passive bribery that refer to persons who perform judicial duties or arbitrator's or juror's duties in international courts, the jurisdiction of which is acceptable to the Hellenic Republic. As regards the act of active and passive bribery towards and by the other officers of the above-mentioned international courts the provisions of Articles 235, 236 and 238 of the Penal Code shall apply.

72. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of judges and officials of international courts.
73. There are no court decisions/case law concerning bribery of judges and officials of international courts.

Trading in influence (Article 12 of ETS 173)

Definition of the offence

74. Trading in influence is incriminated under Greek law according to two separate provisions. The Sixth Article of Law 3560/2007 which ratified the Criminal Law Convention on Corruption ETS 173 and its Additional Protocol (ETS 191) covers active and passive trading in influence "of the persons referred to in the Articles from the first to the fifth inclusive of the present law", namely foreign public officials, foreign judges, arbitrators and jurors, officials of international

organisations, judges, arbitrators and jurors of international courts, members of foreign and international public assemblies, as well as persons who direct or work for, in any capacity, private sector entities. This provision does not cover trading in influence of domestic public officials.

75. During the on-site visit, the Greek authorities stated that trading in influence of domestic public officials and members of domestic public assemblies is covered by reference to Article 11 of Law 5227 of 26 July 1931 on mediators.

Sixth Article of Law 3560/2007 – Trading in influence of foreign and international staff as well as in the private sector

1. One who offers either directly or indirectly any undue financial consideration to any person who asserts, either truly or falsely, or confirms that he or she is able to exert any illegal or improper influence over the decision-making of, or over the conclusion of any contract by, any of the persons referred to in the Articles from the first to the fifth inclusive of the present law, in consideration of such influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result, shall be punished by imprisonment for not less than three months and a pecuniary punishment..

2. With the same punishment shall also be punished one who demands, receives or accepts an offer or the promise of such an advantage in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result..

Article 11 of Law 5227/1931 on mediators – Trading in influence of domestic public officials

Any person, who falsely or truly claims that due to his relationships or his capacity or in general, his influence and prestige may conclude for a third party and/or himself, but on behalf of a third party, any contract with the State or the other parties mentioned in Article 1 hereof and/or regardless of any contract, causes any act or omission of those persons, of the employees, of the representatives or of the agents of them, takes a fee or other exchange or obtains the promise of a fee or exchange for him or a third party, is punished with at least three months imprisonment and a penalty of ten thousand (10,000) up to one million (1,000,000) drachmas.

Elements/concepts of the offence

“Asserts or confirms that s/he is able to exert an improper influence over the decision-making of [public officials]”

76. The concept is transposed in the Sixth Article of Law 3560/2007 on trading in influence of foreign and international staff with some additional elements, namely that the assertion may be true or false, that the influence may be either improper or illegal and it may occur with respect to decision-making or over the conclusion of any contract. It was explained to the GET that the additional element of influence over the conclusion of any contract is meant to cover the stages prior to the actual signature of the contract. Moreover, the article specifically mentions that, for the offence to be constituted, it is not necessary that the influence is actually exerted and leads to the intended result.
77. As regards Article 11 of Law 5227/1931 which applies to domestic public officials and members of public assemblies, it makes reference to a true or false claim by the influence peddler that *“due to his relationships or his capacity or in general, his influence and prestige may conclude for a*

third party and/or himself, but on behalf of a third party, any contract [...] and/or regardless of any contract, causes any act or omission". The element of the influence being "improper" is not explicitly contained in the text of the article, nor is there any indication as to whether the influence must be actually exerted.

Other concepts/elements

78. As regards the elements of "promising, offering or giving", the Sixth Article of Law 3560/2007 only refers to the "offer". Moreover, the active side of the offence of trading in influence is not criminalised as regards domestic public officials and members of domestic public assemblies (Article 11, Law 5227/1931).
79. The elements of "request or receipt, acceptance of an offer or promise" are expressly contained in the Sixth Article of Law 3560/2007. Article 11 of Law 5227/1991 refers to the notion of "taking" and "obtaining a promise". The element of request is therefore missing.
80. The concept of "undue advantage" is not used in either legal provision. Instead, the Sixth Article of Law 3560/2007 refers to "any undue financial consideration" and Article 11 of Law 5227/1931 contains the expression "a fee or other exchange".
81. The elements of "directly or indirectly" are contained in the Sixth Article of Law 3560/2007, but Article 11 of Law 5227/1931 does not mention the possibility of the offence being committed through an intermediary.
82. By contrast, the possibility of a third party beneficiary of the bribe is provided for in Article 11 of Law 5227/1931, but missing in the Sixth Article of Law 3560/2007.

Sanctions

83. The sanctions applicable to trading in influence under both articles are between three months and five years' imprisonment and a fine.

Court decisions/case law

84. Although the authorities made reference on site to numerous convictions under Article 11 of Law 5227/1931, no supporting case-law was provided to the GET. According to the information received, there are no court decisions/case law concerning trading in influence of foreign and international staff, nor in the private sector.

Bribery of domestic arbitrators (Articles 1-3 of ETS 191)

85. Domestic arbitrators are, like judges, subject to the provisions of Article 237 PC (see above). The term "arbitrator" and his/her functions are defined by Articles 867, 868, 871 and 871A of the Code of Civil Procedure. According to these provisions, an arbitrator is a person who, by virtue of an arbitration agreement, is called upon to render a legally binding decision in a dispute submitted to him/her by the parties to the agreement.
86. The elements of the offence and the applicable sanctions detailed under bribery of judges in the section relating to bribery of domestic public officials apply accordingly to bribery of domestic arbitrators. There are no court decisions/case law concerning bribery of domestic arbitrators.

Bribery of foreign arbitrators (Article 4 of ETS 191)

87. Active and passive bribery of foreign arbitrators is incriminated by the Fourth Article, paragraph 1 of Law 3666/2008 ratifying the UNCAC, as well as the Third Article, paragraph 1, of Law 3560/2007 ratifying the Criminal Law Convention (see paragraph 45), which extend the provisions of Articles 235, 236, 237 and 238 of the Penal Code to the arbitrators of the State Parties to these Conventions. There are no provisions applicable to the arbitrators of other foreign States.
88. The term “foreign arbitrator” is defined by reference to the national law on arbitration of the State Party to the Convention where the arbitrator exercises his/her duties.
89. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of foreign arbitrators. There are no court decisions/case law concerning bribery of foreign arbitrators.

Bribery of domestic jurors (Article 1, section 3 and Article 5 of ETS 191)

90. According to Greek legislation, a juror is defined as a lay person acting as a member of one of the two following mixed-composition tribunals: a) a mixed jury tribunal composed of the president of the court of first instance, two judges and four jurors, or b) a mixed jury tribunal of appeal that consists of the president of the court of appeal, two judges and four jurors (Articles 8 and 377, Code of Penal Procedure).
91. Bribery of domestic jurors, being persons called upon by law to perform judicial duties, is criminalised under Article 237 PC (see paragraph 9). The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of domestic jurors. There are no court decisions/case law concerning bribery of domestic jurors.

Bribery of foreign jurors (Article 6 of ETS 191)

92. Active and passive bribery of foreign jurors is incriminated by the Fourth Article, paragraph 1 of Law 3666/2008 ratifying the UNCAC, as well as the Third Article, paragraph 1, of Law 3560/2007 ratifying the Criminal Law Convention (see paragraph 45), which extend the provisions of Articles 235, 236, 237 and 238 of the Penal Code to the jurors of the State Parties to these Conventions. There are no provisions applicable to the jurors of other foreign States.
93. The term “foreign juror” is defined by reference to the national law on jurors of the State Party to the Convention where the juror exercises his/her duties.
94. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of foreign jurors. There are no court decisions/case law concerning bribery of foreign arbitrators.

Other questions

Participatory acts

95. Participatory acts are covered by Articles 46 and 47 of the Penal Code, which deal with aiding and abetting the commission of crimes. These types of participation are punishable with reduced

sanctions – between one and six years' imprisonment if the principal offence is punishable by a maximum of ten years' imprisonment; for offences punishable by a lesser term of imprisonment, the judge may reduce this sanction to the minimum foreseen by law (Article 83 PC). However, if he/she finds that the deterrent effect of the reduced sanction would not be sufficient, he/she may impose the same sanction as the one foreseen for the principal offence (Article 42 (2) PC).

Jurisdiction

96. The rules of Greek criminal jurisdiction are laid down in Articles 5 to 8 of the Penal Code; they apply to all bribery and trading in influence offences. Jurisdiction is established over acts committed within the territory of Greece or aboard Greek vessels or aircrafts (territorial jurisdiction, Article 5 PC), as well as acts committed abroad by Greek citizens or involving Greek citizens (nationality jurisdiction, Article 6 and 7 PC), Greek public officials, members of Greek public assemblies, Greek arbitrators and Greek jurors (Ninth Article, Law 3560/2007). The authorities specified that foreigners may become public officials or arbitrators in Greece and that they would be assimilated to Greek holders of public office (Article 13 PC) for the purposes of establishing jurisdiction over acts of passive bribery committed abroad.
97. Finally, Article 8 PC contains a general clause establishing jurisdiction over offences committed abroad when they are committed *inter alia* "by a civil service employee of the Greek State", "against a Greek civil service employee during the performance of his duty or acts related to it" as well as "over any other offence to which Greek criminal law shall be made applicable by express provision or international agreement signed and ratified by the Greek State", thereby covering all offences foreseen under Laws 3560/2007 and 3666/2008 ratifying the Criminal Law Convention and the UNCAC, respectively. Both laws also contain a provision on *ex-officio* prosecution (Ninth Article, Law 3560/2007, Tenth Article, Law 3666/2008) for all offences they cover, thus removing the requirement of complaint of a victim foreseen under Article 6 (3) of the Penal Code for misdemeanour offences committed abroad by Greek nationals.
98. There are no court decisions/case law in connection with jurisdiction over bribery offences.

Statute of limitations

99. The period of limitation depends on the qualification of the offence and the maximum term of imprisonment which can be imposed for the offence in question (Article 111 PC). The statute of limitations runs in principle from the time of the commission of the offence (Article 112 PC) and it is suspended when prosecution cannot commence or continue (Article 113 PC); however, suspension may not last more than five years for felonies or three years for misdemeanours.
100. The limitation periods for bribery and trading in influence offences are the following (Article 111 PC):
- for bribery offences qualified as felony, in which the value of the advantage at stake exceeds EUR 73,000 and which are punishable by between five and ten years' imprisonment, the limitation period is fifteen years;
 - for bribery offences qualified as misdemeanours, in which the value of the advantage at stake does not exceed EUR 73,000 and which are punishable by between one and five years' imprisonment, the limitation period is five years;

- for trading in influence offences, which are always qualified as misdemeanours, the limitation period is five years.
101. In their written submission, the authorities made reference to two decisions of the Supreme Court to illustrate how the provisions on statutes of limitations are implemented:
- in decision No. 688 of 30 March 2007, the Supreme Court quashed a decision issued by the Council of the Appeal Judges of Athens ordering that the accused be taken to court for misdemeanour offences of active and passive bribery allegedly committed on 4 March 2002 (bribery of an official serving in a prison, who received a car for services given to the briber) and ordered a permanent bar on prosecution for these offences: the reasoning stated that the time period between the commission of the offence and the decision of the Supreme Court, during which judicial proceedings on the substance of the case had not started and therefore could not be suspended, was longer than five years and therefore exceeded the period of limitation foreseen for such misdemeanour offences;
 - in decision No. 227 of 2008, the Supreme Court stated that statutes of limitation of the concrete case should be examined by relevant courts at every level of the proceedings, including by the Supreme Court. The case concerned a surgeon, member of the National Health System, accused of a misdemeanour of passive bribery for requesting money from a patient in order to give him the best care possible during his surgery. The act was allegedly committed on 24 May 1999. The case had then been adjudicated by the Court of Appeal of Athens and then submitted to the Supreme Court for insufficient motivation. The Supreme Court stated that in this case, as the period between the facts and its decision was longer than eight years (five years limitation period, plus three years suspension period for misdemeanours), and there was a reason for quashing the decision of the lower court, the prosecution was barred permanently.
102. Different rules apply to the prosecution of offences committed by ministers in the exercise of their functions, according to Law 3126 of 2003 on the penal liability of ministers, and these rules also apply to their accomplices. According to this law, the statute of limitation for “*punishable actions*” – the expression covers both misdemeanours and felonies – is five years from the day of commitment of the offence (Article 3(1) Law 3126/2003). Investigation or prosecution regarding such offences can commence only after the Parliament, in plenary session, has taken a resolution to that end by an absolute majority, following a request by at least 30 members of Parliament and an investigation by a special parliamentary committee. Parliament may revoke or suspend any ongoing procedure at any time by an absolute majority vote (Articles 4 to 6 Law 3126/2003). In any event, the absolute statute of limitation for offences committed by ministers is “*the completion of the second regular Parliamentary session commencing after the commitment of the punishable action*” (Article 3(2) Law 3126/2003), *ie* at most 10 years.

Defences

103. The Penal Code provides for the special defence of effective regret of the briber in cases of active bribery of public officials and judges (Articles 236 (3) and 237 (3) PC). The application of this special defence is subject to the appreciation of the courts. If it is successfully invoked, the perpetrator is considered innocent.

Articles 236 (3) and 237 (3), Penal Code: effective regret

The above mentioned act [of active bribery] shall not be punished when the person committing

the act, from his/her own will and before the investigation about this act, reports it either to the competent prosecuting authorities or to any investigation official or any other competent authority, either in writing or orally, in which case a report is being written. In this case, the undue advantage or gift, which may have been seized or submitted to the investigating officer, is (are) returned to the person who gave them and the provisions of Article 238 [on confiscation of the advantage] are not applicable.

104. The following court decisions were reported by the authorities to illustrate the fact that the application of this special defence was subject to the appreciation of the courts:

- Decision of the Supreme Court No. 349 of 1981: the case concerned active and passive bribery by a school owner who offered a bribe to the official responsible for selecting the questions of the national high school exam, in exchange for the chosen questions. Once revealed by the press, these facts caused a scandal throughout the country. The school owner reported the facts to the prosecuting authorities, but only after the scandal had been revealed and the investigation had started. The lower court found that the school owner had not reported the facts in good faith but rather because he was expecting to be arrested, therefore the provision on effective regret was not applicable in this case. The Supreme Court confirmed this decision;
- Decision No. 2273/1993 of the Council of the Thessalonica Court of Misdemeanours, taking a police officer to court for receiving money from a cafeteria manager in exchange for allowing him to run his business without a licence; the cafeteria manager had reported the facts to the police before the investigation had started and was therefore found by the court to have acted in good faith; the decision discharged him of the offence of active bribery.

105. As foreign and international public officials and judges are incriminated in the Greek legal system by way of reference to the articles of the Penal Code applicable to domestic public officials and judges, the special defence of effective regret also applies to acts of active bribery involving them. Effective regret is also provided for in cases of active bribery in the private sector (Fifth Article, Law 3560/2007, as amended by the Second Article, paragraph 5, of Law 3666/2008).

106. In addition to the defence of effective regret, the authorities also made reference to the provision on the use of threat (Article 385 PC), according to which, if the bribery is committed under threat, the bribe taker may be prosecuted for blackmail and the bribe giver becomes a victim of the blackmail offence.

“Cessation of prosecution”

107. Article 30, paragraph 2 of the Code of Penal Procedure provides that “*political offences*” and “*offences through which the international relations of the State may be disturbed*” may be exempted from prosecution by a decision of the Minister of Justice, following a concurring opinion of the Council of Ministers. As a result of a recommendation by the OECD, Law 3666/2008 made this provision inapplicable to the bribery of foreign public officials under the OECD Convention on combating bribery of foreign public officials in international business transactions (Second Article, Law 3666/2008, amending the Second Article of Law 2656/1998 ratifying the OECD Convention). During the on-site visit, it was confirmed to the GET that Article 30 (2) of the Code of Penal Procedure remained applicable to all other bribery offences, both in the domestic and international context.

III. ANALYSIS

108. Greek criminal legislation deals with all forms of corruption and trading in influence offences incriminated by the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). Greece has also ratified all international instruments on corruption and incriminated bribery of the foreign and international categories of persons referred to in the Convention and its Protocol by reference to the relevant articles of the Penal Code governing domestic officials. For those offences that did not exist in domestic legislation prior to the ratification of these instruments, such as bribery in the private sector, the relevant provisions closely mirror the wording of international instruments. Moreover, all bribery and trading in influence offences, whether they involve domestic or foreign categories of persons, the public or the private sector, are subject to the same sanctions. The legal framework for fighting corruption thus appears to be fairly comprehensive. In spite of this, corruption is widely perceived as a pervasive phenomenon in Greece, a reality recently acknowledged by the Greek authorities at the highest level of the State⁹ and which prompted the announcement in December 2009 of a “road map” towards economic recovery, which contains measures aimed *inter alia* at tackling corruption.
109. The necessary adjustment of Greek legislation to the requirements stemming from the international instruments on corruption was effected by means of successive laws of ratification of those instruments. The ratification laws contain not only substantive and procedural articles but also amend related articles contained either in earlier ratification laws or other domestic laws, including the Penal Code. The outdated versions of the relevant provisions have however not been repealed. The impression given by the legal framework resulting from these successive layers of ratification laws co-existing in parallel with the Penal Code and other relevant national laws is one of excessive complexity. If no actual gap in incriminations was detected by the GET, several significant inconsistencies and legal uncertainties were identified. For instance, the fact that several competing provisions with different scopes of incrimination are applicable to the bribery of foreign officials of the States that have ratified both the OECD Convention, the Criminal Law Convention and the UNCAC, may create uncertainties in the prosecution of these offences. Other uncertainties stem from the use of different terms in different provisions to qualify the same actions. For example, as regards bribery of domestic public officials, only two words, “*promises*” or “*provides*”, are used in Article 236 PC on active bribery, instead of the three elements of “promising, offering and giving” required by the Convention. The authorities stated that in Greek the two terms used do convey all three elements required by the Convention. However, the GET cannot but note that in all other legal provisions on domestic bribery¹⁰, three words are used for the incrimination of the active side of the offence, even if these three words are not always the same. Moreover, the GET is of the opinion that this legal framework is most certainly not user-friendly, even for specialised practitioners. This was particularly obvious when the GET sometimes received inaccurate or incomplete information, either in writing before the visit or during the discussions on site. The GET also had the impression that several practitioners were not aware of those provisions that were not contained in the Penal Code. The GET is convinced that the legal framework on bribery and trading in influence would greatly benefit from a simplification, in order to ensure consistency and facilitate its implementation. It therefore recommends **to consolidate all relevant provisions on bribery and trading in influence, preferably within the Penal Code.**
110. Articles 235 and 236 PC rightly cover both actions and omissions by public officials, but only if they “*pertain to [their] duties or [are] contrary to them*”. The interpretation of this provision was

⁹ <http://www.ft.com/cms/s/0/b35ee240-e8de-11de-a756-00144feab49a.html?SID=google>

¹⁰ Article 237(3) PC on bribery of judges, Article 159(1) PC on bribery of members of public assemblies and Fifth Article of Law 3560/2007 on bribery in the private sector.

discussed at length during the on-site visit. While it would appear at first reading to incriminate possible action/inaction in a sufficiently broad manner, it leaves aside the possibility for an official to ask or receive a bribe in return for an act which is entirely outside of the scope of his/her duties, but that he/she has the opportunity to commit because of the function he/she occupies. For example, a doctor in a public hospital could ask for, or receive, a bribe for prioritising one of his colleague's patients or a court clerk could be bribed for adding or removing documents in a judicial file that is not assigned to him/her. The authorities explained that the courts interpret the notion by linking it to the competences of the public official, but that such cases could be prosecuted under other offences, such as fraud or abuse of office. However, the GET doubts that all cases of bribery within the meaning of Articles 2 and 3 of the Criminal Law Convention would indeed be covered by the aforementioned offences (e.g. cases where a person unsuccessfully asks a public official to act outside his/her formal competences). Moreover, the narrow notion of "*pertaining to the duties or being contrary to them*" adds an – excessively restrictive – additional element to the criminalisation of bribery which is clearly at variance with the wording and the spirit of the Criminal Law Convention. This element may make prosecution of the offence more difficult by requiring proof that the official was expected to act within his/her competences. The GET therefore recommends **to ensure that the offences of active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competences.**

111. It also emerged from the discussions on site that, even if active and passive bribery are incriminated as stand-alone offences, prosecution seems to require in practice the existence of an agreement between the briber and the bribee, because of the level of evidence required by the courts. There were diverging views among practitioners on whether it would be possible to prosecute a turned-down offer of a bribe under Article 236 PC. Some practitioners thought that this would be possible in theory, while others were of the opinion that the offence was complete only when the wills of the briber and the bribee coincided. Besides, practitioners were unanimous in stating that successful cases in court usually involved evidence of the money or gift having changed hands. If such evidence could not be brought, the facts would generally be prosecuted as attempted active or passive bribery, resulting in the maximum penalties being reduced by one third. The GET wishes to stress that the existence of an agreement is not an automatic element of the offence, since under Articles 2 and 3 of the Criminal Law Convention, a bribe may be proposed or requested unilaterally. As a consequence, bribery as understood by the Convention must be prosecutable as such, where no agreement has taken place or where such an agreement cannot be substantiated by the prosecution authorities. The GET consequently recommends **to take the appropriate measures, such as circulars or training, to make it clear to or to remind those concerned that the offences of active and passive bribery are autonomous and do not necessarily require an agreement between the parties.**
112. Article 237 PC on bribery of judges and arbitrators was amended by Law 3666/2008 along with Articles 235 and 236 PC, but it is worded differently. The GET regrets that the occasion of this legislative reform was not used by the Greek legislator to align the wording of these closely related provisions. As a result, there are several gaps in Article 237 PC: it refers to the possible involvement of an intermediary only for active bribery; it incriminates only the giving of a bribe to or receiving of a bribe by the judge or arbitrator him/herself or by his/her "*relatives*" and not by "any person" as required by the Criminal Law Convention; moreover, the range of the bribe-taker's actions/omissions covered by the provision is strictly connected to the powers of the judge or arbitrator by the use of the expression "*so that a case assigned to them will be heard or ruled on in favour or against a certain person*". The authorities indicated that bribery cases connected to other possible actions/omissions of judges and in particular those of an administrative nature like the drawing up of procedural acts, would not be left unpunished; in the performance of such

acts, judges and arbitrators would be regarded, in application of Article 13 PC, as “*persons duly entrusted, even temporarily, with the execution of a duty*” and therefore prosecuted as public officials under Articles 235 and 236 PC. However, this still leaves uncovered cases in which a judge would act entirely outside the scope of his/her competence, as discussed above (see paragraph 110). As Article 237 PC is also applicable to foreign and international judges and arbitrators, as well as to domestic and foreign jurors, the shortcomings described are also relevant to these categories of persons. In view of the above, the GET recommends **to incriminate more broadly bribery of domestic, foreign and international judges, arbitrators and jurors, in accordance with Articles 2, 3, 5, 11 of the Criminal Law Convention (ETS 173), as well as Articles 2 to 6 of its Additional Protocol (ETS 191), in particular as regards intermediaries, third party beneficiaries and the scope of the bribe-taker’s actions/omissions.**

113. The situation as regards Article 159 PC on bribery of members of domestic public assemblies, which also applies to members of foreign and international public assemblies, is similar to the one just described as regards judges. This Article was also amended by Law 3666/2008 and there also, its wording was not harmonised with those of related articles on bribery contained in the same law. Consequently, this provision contains several inconsistencies and shortcomings. The active side of the offence is criminalised by using the words “*proposes, offers or promises*”. Although three words are used, they appear – at least in the English versions that were provided to the GET – to be different to the ones used in other bribery offences and the concept of “giving” appears to be missing. As regards the passive side of the offence, the concepts used are those of “*demanding*” an undue benefit and “*accepting an offer or promise*” of such a benefit. The receipt element appears therefore to be missing. Also missing are the possibility for the benefit to be given indirectly, through an intermediary, and the possibility for it to be intended, not for the bribee him/herself, but for another person, such as one of his/her relatives, friends or colleagues or his political party. Moreover, as is the case with the provision on bribery of judges, Article 159 PC only incriminates the fact for an assembly member not to “*participate in the election or the voting procedure*” or to “*vote in a certain manner*”. Even if in the performance of other functions, members of public assemblies are to be regarded as “*persons duly assigned, even temporarily, with the execution of a duty*” under Article 13 PC and may therefore be liable for other possible actions under Articles 235 and 236 PC on bribery of public officials, there again, cases in which members of public assemblies act entirely outside the scope of their competence are left uncovered. The GET therefore recommends **to incriminate more broadly bribery of domestic, foreign and international members of public assemblies, in accordance with Articles 4, 6 and 10 of the Criminal Law Convention (ETS 173), in particular as regards the “giving” and “receipt” of an undue advantage, intermediaries, third party beneficiaries and the scope of the bribe-taker’s actions/omissions.**

114. The same sanctions, ranging from one to ten years’ imprisonment, as well as monetary fines, are available for all bribery and trading in influence offences, whether they involve the public or the private sector, domestic, foreign or international officials. They are also the same as those applicable to other comparable offences, such as fraud or embezzlement. They appear on paper to conform to the requirements established by Article 19 (1) of the Criminal Law Convention as regards their proportionate and dissuasive character and, as mentioned in the introductory part of this analysis, this consistency is welcomed by the GET. That said, in the absence of any centrally available data or statistics on cases involving bribery or other related offences, the GET could not form an opinion on the penalties as applied in practice. This problem had already been highlighted by GRECO in the framework of the First Round evaluation on Greece¹¹ and it had

¹¹ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1\(2001\)15_Greece_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2001)15_Greece_EN.pdf)

recommended “to organise the gathering of information, including as a priority the computerisation of data at the Ministry of Justice, to draft appropriate statistics and to develop official research into and studies on this phenomenon”. However, it would appear that five years later, the relevant data and statistics are still lacking despite previous announcements. During the on-site visit, the Ministry of Justice mentioned that new measures to increase transparency and fight corruption had been decided by the Prime Minister in his “road map”, among which the establishment of a special unit in the Ministry of Justice to collect and review data about all pending judicial cases and decisions. This unit had been set up but had not yet started to carry out its tasks.

115. In this context, the GET understood from the interviews held during the on-site visit that the effective application of the law remained a matter of concern, with prosecution and adjudication of corruption offences suffering long delays and generally remaining passive, leading to the widespread impression that such offences often go unpunished. An illustration of this are the so-called “speed stamps” which appear to be a part of citizens’ lives, even on a daily basis: citizens pay small bribes, some even at known-beforehand fixed prices, to have their case dealt with and obtain services to which they are entitled, like the issuance of a driver’s licence, construction permit or admission to public hospitals. A variety of factors were highlighted to the GET, including the absence of effective control mechanisms on public administration, the lack of sufficient evidence and the excessive slowness of the justice system, which deters citizens from taking cases to court and sometimes results in the limitation periods expiring. Moreover, the division of competences and tasks between the two law enforcement authorities that have competence to investigate corruption offences, namely the Division of Internal Affairs (IAD) of the Ministry of Citizen Protection and the Special Investigative Service (YPEE) under the Ministry of Economy and Finance, is still unclear and there may be gaps and overlaps. The GET noted with concern that the YPEE had not investigated any bribery case since it received a mandate to do so under Laws 3560/2007 and 3666/2008. Against this background, the GET stresses that even the most comprehensive laws do not assist combating corruption if they are not effectively applied in practice; legislation must be coupled with follow-up measures, including effective sanctions, to promote its enforcement. The GET therefore recommends **to carry out a proper assessment of the effectiveness of the provisions concerning bribery and trading in influence**. Completing the planned collection and analysis of statistical data at central level will certainly contribute to this end.
116. Bribery of foreign public officials and judges, members of foreign public assemblies, foreign arbitrators and foreign jurors is covered by the laws of ratification of relevant international instruments, namely Law 2656/1998 ratifying the OECD Convention, Law 3560/1997 ratifying the Criminal Law Convention and its Additional Protocol and Law 3666/2008 ratifying the UNCAC. The GET notes that the Fourth Article of Law 3560/1997 ratifying the Criminal Law Convention and its Additional Protocol addresses active and passive bribery of foreign public officials, judges, members of foreign public assemblies, foreign arbitrators and foreign jurors of other state parties to the Convention. This is clearly not in conformity with the Convention, which requires State Parties to incriminate bribery of public officials, members of public assemblies, arbitrators and jurors of “any other States” (Articles 5 and 6 of the Convention, Articles 4 and 6 of the Protocol), even those that have not ratified these instruments. As explained in the explanatory report of the Convention, the reason for such a broad scope is to show the common interest of all States in ensuring the respect for democratic institutions and the rule of law and their commitment in fighting corruption, wherever it occurs. Consequently, the GET recommends **to ensure that bribery of foreign public officials, judges, members of public assemblies, arbitrators and jurors is criminalised in respect of bribe-takers from any foreign State, in line with Articles**

5 and 6 of the Criminal Law Convention (ETS 173) and Articles 4 and 6 of its Additional Protocol (ETS 191).

117. As explained in the descriptive part of the report, trading in influence is addressed in two different legal provisions, one – Article 11 of Law 5227/1931 on mediators, *i.e* intermediaries – applying to domestic public officials and members of domestic public assemblies, and the other – the Sixth Article of Law 3560/2007 – applying only to the categories of persons covered under that law, that is, to the foreign and international categories of persons referred to in the Criminal Law Convention and its Additional Protocol. Each of these provisions falls short of the requirements of Article 12 of the Convention, albeit for different reasons. The provision of the 1931 law on intermediaries applying to domestic public officials and members of domestic public assemblies lacks, perhaps inevitably, quite a number of elements required by Article 12 of the Convention. Article 11 of Law 5227/1931 does not incriminate active trading in influence, that is the actions of “promising, offering or giving” an undue benefit to the influence peddler in exchange for his/her intervention. Even in respect of passive trading in influence, only the elements of “*taking*” and “*obtaining a promise*” of a bribe are criminalised. The element of “request” is therefore absent. As to the advantage itself, Article 11, Law 5227/1931 refers to “*a fee or other exchange*”. It does therefore not state unambiguously that immaterial advantages, such as a honorific title or better career prospects, are covered. The possibility of the fee or the benefit being promised or taken by an intermediary on behalf of the influence peddler, is not covered. The element of the influence being “improper” is also missing, as is any indication as to whether the influence must actually be exerted. Turning to the Sixth Article of Law 3560/2007, the GET notes that it is directly inspired by Article 12 of the Criminal Law Convention and that it is therefore closer to the requirements of the Convention. Still, some elements are missing, namely the incrimination of immaterial advantages – reference is made only to “*any undue financial consideration*” – and the possibility of this undue financial consideration being intended for a third party beneficiary, such as a relative, friend or colleague of the influence peddler. Besides these various shortcomings of Article 11, Law 5227/1931 and of the Sixth Article of Law 3560/2007, the GET takes the view that the mere fact that two different provisions apply to different categories of persons is conducive to a lack of equality before the law, all the more since, as has been shown, each provision does not contain the same elements. To take only one example, active trading in influence is incriminated only as regards foreign and international public officials and members of foreign and international public assemblies and not as regards domestic public officials and members of domestic assemblies. The GET therefore recommends **to incriminate trading in influence in a consolidated manner, making sure that all the requirements of Article 12 of the Criminal Law Convention on Corruption (ETS 173) are met, in particular as regards the elements of improper influence, the active side of trading in influence, the requesting of an undue advantage, immaterial advantages, intermediaries and third party beneficiaries.**
118. The GET is concerned about the special defence of “effective regret”, which exempts bribe-givers from punishment in cases of active bribery in the public and the private sectors when they report the bribe. According to the information and the limited case-law provided to the GET, the application of this provision is not automatic, but subject to the appreciation of the courts, which reportedly have not applied it very frequently. There is however no requirement that the bribe-giver was forced to pay a bribe or answered a solicitation from the bribe-taker. This provision may therefore also be used by a bribe-taker who took the initiative to give, offer or promise a bribe and who realised that his/her acts were about to be exposed. The GET explored with the interlocutors interviewed both the advantages of provisions on effective regret (detection of bribery cases) and the potential risks of misuse (e.g. blackmailing the bribed persons, abuse of a false defence). From these discussions, including those with the practitioners who are to apply the law, it was not made unambiguously clear to the GET what would be the added value of this

provision in the fight against corruption. Moreover, the GET is of the opinion that the elements of the provisions in Articles 236 (3), 237 (4) PC, as well as in the Fifth Article, paragraph 1, of Law 3560/2007, which provide for the return of confiscated benefits to the briber are inherently questionable in that, contrary to the rest of the provisions, this return is automatic and not subject to the appreciation of the courts. Consequently, the GET recommends **(i) to keep the application of the provisions on the special defence of effective regret under review in order to ascertain the potential use and misuse of this defence in the investigation and prosecution of corruption and, if need be, to take appropriate measures; (ii) to abolish the provisions relating to the automatic return of the bribe to the briber.**

119. Several of the interlocutors met on-site pointed at the derogatory regime established under Law 3126/2003 on the penal liability of members and former members of government as a potential obstacle to the effective prosecution of bribery offences involving them. Several of the issues raised by this law are relevant to Theme II of the current evaluation and are therefore addressed in the report on Theme II – Transparency of party funding (see Greco Eval III Rep (2009) 9E, Theme II). For the purposes of the current report, the GET will restrict its remarks to the statute of limitations under this law, which is five years from the commitment of the offence, both for misdemeanours and felonies, as opposed to five and fifteen years respectively in the common regime. The GET takes the view that such a widely derogatory limitation period for felonies is not justified, all the more since felonies are by definition more serious offences, which are more likely to undermine the public's trust in government institutions. The GET therefore recommends **to abolish the special statute of limitation for the prosecution of members of government and former members of government.**
120. Finally, the GET is concerned about the exception under Article 30 (2) of the Code of Penal Procedure according to which the Minister of Justice, following a concurring opinion of the Council of Ministers, may decide to postpone or suspend prosecution of “political acts” and “offences through which international relations of the State may be disturbed”. Following a recommendation by the OECD in its Phase 2 report on the application by Greece of the Convention on combating bribery of foreign public officials in international business transactions¹², Article 30 (2) of the Code of Penal Procedure was made inapplicable by Law 3666/2008 to bribery offences of foreign officials falling under the scope of the OECD Convention and, as confirmed during the on-site visit, only to those. However, because of its inherently political nature and the absence of a review mechanism, the operation of this Article will almost certainly also hamper prosecution of other bribery offences in the international context, as well as at domestic level. The GET also believes that this tailor-made exception conveys the wrong message as regards Greece's commitment to tackle corruption with determination. Therefore, the GET recommends **to amend current legislation to expressly exclude the operation of Article 30 (2) of the Code of Penal Procedure concerning the postponement or suspension of prosecution of “political acts” and “offences through which international relations of the State may be disturbed” in the context of all domestic and foreign bribery offences.**

IV. CONCLUSIONS

121. Greek criminal legislation covers all forms of corruption and trading in influence offences incriminated by the Criminal Law Convention (ETS 173) and its Additional Protocol (ETS 191). However, the legal framework is excessively complex, scattered among the Penal Code, other domestic laws and the various laws ratifying international instruments on corruption, and this

¹² <http://www.oecd.org/dataoecd/51/13/35140946.pdf>

unnecessary complexity cannot but affect its implementation. The different provisions criminalising bribery and trading in influence do not use the same terminology nor cover the same elements. The sanctions appear to be proportionate and dissuasive on paper but in the absence of any exploitable data on cases, it is impossible to assess their effectiveness. As to the international dimension of bribery, the relevant provisions do not cover officials from all foreign States, only those of States having signed or ratified the United Nations Convention against Corruption. Some obstacles to an effective fight of corruption are also of a procedural nature. Ministers and former ministers enjoy a derogatory regime of prosecution under Law 3126/2003 on the penal liability of ministers, which affects the efficiency of prosecution of bribery offences involving them. The possibility given by Article 30 (2) of the Code of Penal Procedure to the Minister of Justice to postpone or suspend prosecution of “*political acts*” and of “*offences through which international relations of the State may be disturbed*” also conveys the wrong message as regards Greece’s commitment to tackle corruption with determination. Finally, the application of the provision on “effective regret” needs reviewing, especially with respect to the return of the confiscated bribe to the briber.

122. In view of the above, GRECO addresses the following recommendations to Greece:

- i. **to consolidate all relevant provisions on bribery and trading in influence, preferably within the Penal Code** (paragraph 109);
- ii. **to ensure that the offences of active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official’s competences** (paragraph 110);
- iii. **to take the appropriate measures, such as circulars or training, to make it clear to or to remind those concerned that the offences of active and passive bribery are autonomous and do not necessarily require an agreement between the parties** (paragraph 111);
- iv. **to incriminate more broadly bribery of domestic, foreign and international judges, arbitrators and jurors, in accordance with Articles 2, 3, 5, 11 of the Criminal Law Convention (ETS 173), as well as Articles 2 to 6 of its Additional Protocol (ETS 191), in particular as regards intermediaries, third party beneficiaries and the scope of the bribe-taker’s actions/omissions** (paragraph 112);
- v. **to incriminate more broadly bribery of domestic, foreign and international members of public assemblies, in accordance with Articles 4, 6 and 10 of the Criminal Law Convention (ETS 173), in particular as regards the “giving” and “receipt” of an undue advantage, intermediaries, third party beneficiaries and the scope of the bribe-taker’s actions/omissions** (paragraph 113);
- vi. **to carry out a proper assessment of the effectiveness of the provisions concerning bribery and trading in influence** (paragraph 115);
- vii. **to ensure that bribery of foreign public officials, judges, members of public assemblies, arbitrators and jurors is criminalised in respect of bribe-takers from any foreign State, in line with Articles 5 and 6 of the Criminal Law Convention (ETS 173) and Articles 4 and 6 of its Additional Protocol (ETS 191)** (paragraph 116);

- viii. **to incriminate trading in influence in a consolidated manner, making sure that all the requirements of Article 12 of the Criminal Law Convention on Corruption (ETS 173) are met, in particular as regards the elements of improper influence, the active side of trading in influence, the requesting of an undue advantage, immaterial advantages, intermediaries and third party beneficiaries (paragraph 117);**
 - ix. **(i) to keep the application of the provisions on the special defence of effective regret under review in order to ascertain the potential use and misuse of this defence in the investigation and prosecution of corruption and, if need be, to take appropriate measures; (ii) to abolish the provisions relating to the automatic return of the bribe to the briber (paragraph 118);**
 - x. **to abolish the special statute of limitation for the prosecution of members of government and former members of government (paragraph 119);**
 - xi. **to amend current legislation to expressly exclude the operation of Article 30 (2) of the Code of Penal Procedure concerning the postponement or suspension of prosecution of “*political acts*” and “*offences through which international relations of the State may be disturbed*” in the context of all domestic and foreign bribery offences (paragraph 120).**
123. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Greek authorities to present a report on the implementation of the above-mentioned recommendations by 31 December 2011.
124. Finally, GRECO invites the authorities of Greece to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.