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**Public**

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**Second Follow-up Report to  
The Ad hoc Report on GREECE  
(Rule 34)**

Adopted by GRECO  
at its 89<sup>th</sup> Plenary Meeting  
(Strasbourg, 29 November – 3 December 2021)

## I. INTRODUCTION AND CONTEXT

1. In June 2019, Greece amended the Criminal Code (CC) and the Criminal Procedure Code (CPC), inter alia, downgrading the criminal offence of bribery of public officials from a “felony” to a “misdemeanour” and, accordingly, softening the sanctions for such offences. Consequently, GRECO requested clarifications from the Greek authorities as these moves could potentially have a negative effect on Greece’s ability to effectively fight corruption as well as in respect of the country’s compliance with the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191), to which Greece is a contracting party.
2. On 21 June 2019, GRECO decided to apply Rule 34 of its Rules of Procedure in respect of Greece. This Rule provides for an *ad hoc* procedure which can be triggered in exceptional circumstances, such as when GRECO receives information concerning institutional reforms, legislative initiatives or procedural changes that may result in serious violations of anti-corruption standards of the Council of Europe.
3. On 6 December 2019, GRECO adopted an [Ad hoc Report on Greece](#) (Greco-AdHocRep(2019)2), containing four recommendations. This Report was made public on 18 December 2019. On 29 October 2020, GRECO adopted the [Follow-up Report](#), which was made public on 27 November 2020. GRECO noted that an expert committee had been established to deal with the recommendations, but no recommendations had been implemented. New information was submitted by the Greek authorities on 18 October and 15 November 2021.
4. GRECO appointed as rapporteurs Ms Alexia KALISPERA, Counsel A’ at the Law Office of the Republic (Cyprus) and Mr Ernst GNAEGI, Head of the International Criminal Law Unit of the Federal Office of Justice (Switzerland). They were assisted by the Secretariat of GRECO, in drawing up the current Second Follow-up Report.

## II. CONTEXT

5. The downgrading in June 2019 of the criminal offence of bribery of public officials from a felony to a misdemeanour resulted in strong criticism in Greece as well as from the international community. GRECO expressed concern in June 2019 in relation to the legislative changes. Also, the OECD Working Group on Bribery (WGB) was concerned about the reform and the two Organisations agreed to apply a joint procedure - based on written information and a joint on-site visit to Greece in October 2019 - to assess the amended anti-corruption provisions of relevance to the respective organisation. (for details on the procedure, see the Ad hoc Report). However, GRECO adopted its own Ad hoc Report, in its particular field of competence.
6. The initial and main reason for GRECO to trigger the current Rule 34 Ad hoc procedure was the amendment of Article 236 CC, thus downgrading the offence of active bribery of public officials from a felony to a misdemeanour and, at the same time, to lower the sanctions for this offence. However, following massive criticism – and after the onsite visit by GRECO and the WGB – the law (Article 236 CC) was again amended (November 2019). As a result, this offence did again become a felony providing for 5 to 8 years’

incarceration. GRECO welcomed this amendment, which entered into force on 18 November 2019.

7. By contrast, in respect of offences under Article 236.2 CC committed before this date and not adjudicated or when the sentence has not been executed, are nevertheless to be considered misdemeanours, in respect of which the more lenient sanctions apply. This was - and is - an inevitable effect of the *lex mitior principle* (the most lenient law applies) which is a basic principle of Greek criminal law enshrined in Article Article 2 of the CC, Article 7 paragraph 1 of the Greek Constitution and Article 49 paragraph 1 of the EU Charter of Fundamental Human Rights. GRECO understands that this is the case also in other jurisdictions but considered it regrettable from the perspective of an effective fight against corruption. Moreover, some other issues remained of concern to GRECO.
  
8. For comparative reasons, Article 236 CC, as it was before the amendments in June 2019, following the amendments in June 2019 and following the amendments in November 2019 is displayed here:

Article 236 CC before amendments in June 2019	Article 236 CC after the amendments adopted in June 2019	Article 236 CC after the amendments adopted in November 2019
<p>1. Whosoever offers, promises or gives to an official, directly or through a third party, an undue advantage of any nature, for himself/herself or for another person, for an action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by <b>at least one year imprisonment and a fine of EUR 5 000 to 50 000.</b></p> <p>2. If the aforementioned action or omission contravenes the duties of the official, the offender shall be punished by <b>up to ten years' incarceration and a fine of EUR 15 000 to 150 000.</b></p> <p>3. A head of business or any other person who is vested with a decision-making or a control power in business shall be punished by imprisonment, if the act is not punished more severely by another criminal provision, if he/she by negligence failed to prevent a person under his/hers command or subject to his/hers control from committing, to the benefit of the business, any act of the preceding sections.</p>	<p>1. Whosoever offers, promises or gives to an official, directly or through a third party, an undue advantage of any nature, for himself/herself or for another person, for an action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by imprisonment of <b>up to three years (misdemeanour) or a pecuniary penalty.</b></p> <p>2. If the aforementioned action or omission contravenes the duties of the official, the offender shall be punished by imprisonment of <b>at least three years (misdemeanour) and a pecuniary penalty.</b></p> <p>3. A head of business or any other person who is vested with a decision-making or a control power in business shall be punished by imprisonment of up to two years or a pecuniary penalty if the act is not penalized heavier if he/she by negligence failed to prevent a person under his/hers command or subject to his/hers control from committing, to the benefit of the business, any act of the preceding sections.</p> <p>4. The provisions of paragraphs 1, 2 and 3 shall also apply when the actions are committed regarding: (a) officials or other employees of any contractual relationship of an institution or body of the European Union having its headquarters in Greece and of any public</p>	<p>1. Whosoever offers, promises or gives to an official, directly or through a third party, an undue advantage of any nature, for himself/herself or for another person, for an action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by <b>imprisonment of up to three years (misdemeanour) or a pecuniary penalty.</b></p> <p>2. If the aforementioned action or omission contravenes the duties of the official, the offender shall be punished by <b>incarceration five to eight years (felony) and a pecuniary penalty.</b></p> <p>3. A head of business or any other person who is vested with a decision-making or a control power in business shall be punished by imprisonment of up to <b>two years or a pecuniary penalty</b> if the act is not punished more severely if he/she, <b>by infringing a specific obligation of due diligence by negligence</b>, failed to prevent a person under his/hers command or subject to his/hers control from committing, to the benefit of the business, any act of the preceding sections.</p> <p>4. The provisions of paragraphs 1, 2 and 3 shall also apply when the actions are committed towards: (a) officials or other employees of any contractual relationship of an institution or body of the European</p>

Article 236 CC before amendments in June 2019	Article 236 CC after the amendments adopted in June 2019	Article 236 CC after the amendments adopted in November 2019
	international or supranational organization of which Greece is a member and any person, whether detached or not, performing duties corresponding to those performed by the officials or other employees or b) any person exercising a public office or service for a foreign country. In such cases, the Greek criminal laws also apply when the act is performed abroad by a national, even if it is not punishable under the laws of the country where it was committed.	Union having its headquarters in Greece and of any public international or supranational organization of which Greece is a member and any person, whether detached or not, performing duties corresponding to those performed by the officials or other employees or b) any person exercising a public office or service for a foreign country. In such cases, Greek criminal laws also apply when the act is performed abroad by a national, even if it is not punishable under the laws of the country where it was committed <b>and for the prosecution of the misdemeanour of par.1 of this article no application for prosecution or the petition of par.3 art. 6 PC is required.</b>

9. While GRECO in the Ad hoc Report was pleased that Article 236.2 CC had been re-qualified as a felony, it also noted that Article 236.1 CC remained weakened; it conveys the message that this offence is considered less serious following the change. GRECO recalled the intentions underlying the Criminal Law Convention according to which corruption may represent an economic offence, sometimes involving considerable value, but not only; it may also threaten the rule of law, the stability of democratic institutions and the moral foundations of society, undermine good governance, security, health, fairness, justice and equal treatment (for details, see the Ad hoc Report, paragraphs 24 and 25).
10. GRECO also noted with concern that a general feature of the amended criminal legislation was contained in Article 48 of the Code of Criminal Procedure (CPC) allowing the prosecutor to abstain from prosecution in respect of misdemeanours punishable with up to 3 years' imprisonment, with or without a pecuniary penalty with the consent of a court appointed magistrate, provided that the offender consents to alternative measures (for details, see the Ad hoc Report, paragraph 26).
11. Further, GRECO stressed that Article 235.5 CC, as amended, does not refer to passive bribery of public officials of a foreign country (whereas it did in the previous law), while the active side of such an offence is clearly referred to in Article 236.4 b CC. GRECO concluded that the amended text was not fully in line with Article 5 of the Criminal Law Convention. Moreover, GRECO noted that the amended Article 237.4c CC, while on the one side covers the offences of active bribery of judges, jurors and arbitrators of other states, on the other side the passive side of these offences did not appear to be covered by the amended provision, whereas it was in the previous law. It also took the view that the same shortcomings had been noted in respect of passive bribery of members of foreign assemblies (Article 6 of the Criminal Law Convention) (for details, see Ad hoc Report, paragraph 30).

12. GRECO also noted that Article 263A CC reintroduces a system of special defence of effective regret in situations of active bribery, where the offender shall remain without punishment if s/he reports the act before being questioned as a suspect. GRECO recalled its view that such systems may be subject to abuse in certain situations and called for caution and monitoring in this respect (for details, see Ad hoc Report, paragraphs 33 and 34).
13. In view of the above, GRECO addressed four recommendations to Greece.
14. On 29 October 2020, GRECO adopted its Follow up Report to the Ad hoc Report on Greece (Rule 34) (Greco-AdHocRep(2020)1). While it noted that none of the recommendations had been implemented satisfactorily, it welcomed the establishment of a “Drafting Committee”, with the objective of dealing with the recommendations. GRECO invited the authorities to submit a report on measures taken to implement the above-mentioned recommendations by 31 October 2021. This information was received on 18 October 2021.

### III. ANALYSIS

15. It is recalled that GRECO addressed four recommendations to Greece in the Ad hoc Report. None of them were implemented satisfactorily in the Follow-up Report. The analysis below focuses on the implementation of these recommendations by the Greek authorities.
16. The Greek authorities now report that a new law (4855/2021) amending several provisions of the Penal Code (PC) and the Code of Criminal Procedure (CCP) was adopted by Parliament on 11 November 2021. It entered into force on 12 November 2021 when it was published in the Government Gazette (No. 215/12 Nov. 2021). The amended law deals with all four recommendations below.

#### **Recommendations i and ii**

17. *GRECO recommended to review Article 236.1 of the Criminal Code with a view to introducing aggravating circumstances decisive for when such an offence can be considered a felony and/or increase the sanctions accordingly (Recommendation i);*
18. *GRECO recommended to strictly limit the scope of corruption offences that can be subject to abstention of prosecution under Article 48 of the Criminal Procedure Code, by ensuring that this Article can be applied only in exceptional, minor cases of corruption offences (Recommendation ii).*
19. The Greek authorities report that according to the amended law, Article 236.1 now reads: *“Whosoever offers, promises or gives to an official, directly or through a third party, an undue advantage of any nature, for himself/herself or for another person, for an action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by imprisonment.”*

20. The authorities explain that “imprisonment” means a range between 10 days to 5 years. The offence is still a misdemeanour but if the court imposes imprisonment from 3-5 years this is to be served in prison. Following that change the possibility of the public prosecutor as provided for in article 48 of the Code of Criminal Procedure (CCP) to abstain from the prosecution in corruption offenses will not be an issue anymore since article 48 CCP grants this possibility only for misdemeanours which are punishable by law with imprisonment of up to three years.
21. GRECO takes note of the information provided and welcomes the amendments to Article 236.1 PC according to which this offence could only lead to imprisonment. According to the authorities this means up to 5 years imprisonment, which would be a significant increase of the sanctions as compared with the previous law (three years maximum). Even though the offence remains a misdemeanour, GRECO accepts that such an amendment meets the concerns of recommendation i. It also follows that the amendment to Article 236.1 PC rules out the use of Article 48 CCP in respect of offences under Article 236.1 and 2, which goes in the direction of recommendation ii.
22. GRECO concludes that recommendations i and ii have been dealt with in a satisfactory manner.

#### **Recommendation iii**

23. *GRECO recommended ensuring that passive bribery of foreign public officials, including judges, members of assemblies, jurors and arbitrators is criminalised in accordance with Articles 5 and 6 of the Criminal Law Convention on Corruption and its Additional Protocol.*
24. The authorities report that amendments have been made to Article 235 (passive bribery of an official) paragraph 5 PC, by adding a sentence that reads: “*Paragraphs 1 and 2 shall also apply where the acts are committed by an official of a foreign country*” and in respect of Article 159 (passive bribery of political persons), paragraph 4 by inter alia adding: “*members of the parliament or a local government council of another State*”. They add that this provision also includes judges since they all fall under the notion of “official”, albeit they are not punishable with the aggravated sentences which articles 237 foresees for domestic judges.
25. GRECO takes note of the information provided. It welcomes the amendments to Article 235, paragraph 5 and Article 159, paragraph 4 PC, by which the scope of domestic officials has been extended also to cover *officials of a foreign country and members of assemblies*. On the other hand, GRECO has strong doubts that this would also clearly cover foreign judges, jurors and arbitrators as their domestic counterparts are explicitly dealt with by Articles 237 of the PC. It would appear appropriate to also to amend Articles 237 to such an end. GRECO therefore concludes that the legal amendments comply partly with the requirements of the recommendation.
26. GRECO concludes that recommendation iii has been partly implemented.

#### **Recommendation iv**

27. *GRECO recommended that the authorities carefully monitor the use of the provisions on the special defence of effective regret in order to ascertain the possible misuse of this instrument and, if need be, reduce or abolish its application in respect of corruption offences.*
28. The Greek authorities now submit that the law, as amended, abolishes the “*leniency measures*” provided for in Article 263A, paragraph 1 PC, in order to comply with this recommendation.
29. GRECO notes that the amendment to Article 263 A PC simply deletes the text in paragraph 1. GRECO is pleased that the legislative measure taken actually abolishes the possibility of “effective regret”, as was ultimately recommended.
30. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

#### **IV. CONCLUSION**

31. **In view of the above, GRECO concludes that three out of the four recommendations contained in the Ad hoc Report have now been dealt with in a satisfactory manner.** The remaining recommendation has been implemented partly.
32. GRECO welcomes that legislative measures have been taken that to a large extent comply with the recommendations addressed by GRECO in this Rule 34 (ad hoc) procedure. It notes, in particular, that sanctions for active bribery of public officials have been strengthened and that this offence can no longer be subject to abstention from prosecution. GRECO is also pleased that the range of foreign public officials which are covered by the passive bribery offence has been widened, but notes at the same time that it appears doubtful to what extent this offence would cover foreign judges, jurors and arbitrators. Further, it is to be welcomed that the system of “effective regret” in respect of corruption offences has now been abolished.
33. The adoption of this Second Follow-up Report terminates the Rule 34 procedure in respect of Greece. The authorities may, however, wish to inform GRECO of further developments with regard to the implementation of the partly outstanding recommendation iii.
34. GRECO invites the Greek authorities to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.