



Organisation for Economic Co-operation and Development

DAF/WGB(2017)69

Unclassified

English - Or. English

5 January 2018

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

Cancels & replaces the same document of 28 November 2017

Phase 3 follow-up: Additional written report by Greece

Paris, 12-15 December 2017

JT03425168

PHASE 3BIS EVALUATION OF GREECE: ADDITIONAL WRITTEN FOLLOW-UP REPORT [December 2017]

Instructions

In October 2017, Greece was asked to provide a written report in December 2017 with the expectation that (i) it will have a full regime in force to hold legal persons liable for foreign bribery and (ii) this regime will be in compliance with Article 2 of the Convention and the 2009 Recommendation.

This document seeks to obtain information on the progress Greece has made in these areas.

Please submit completed answers to the Secretariat by 30 November 2017.

Name of country:	Greece
Date of approval of Phase 3Bis evaluation report:	12 March 2015
Date of information:	22 November 2017

I. Greece's compliance with Article 2 of the Convention: expected new regime of corporate liability under Article 51 of the AML legislation.

Please provide a copy of the revised Article 51 of the AML law and a review of the new regime of liability of legal persons.

The draft revised Article 51 of the AML has as follows:

Responsibility of legal persons and entities

1. If any of the punishable acts of money laundering or any of the basic offences under points (c), (d), (e) and (f) of Article 3 is committed to the benefit or on behalf of a legal person or entity by a natural person who acts either single-handed or as a member of a collective body of the legal person or entity and holds a managerial position in such persons or entities, or is an authorized representative thereof, or is authorized to make decisions on their behalf, or for exercising control on them, the following penalties shall be imposed on the legal person or entity, alternatively or cumulatively, by means of a reasoned decision:

- a) an administrative fine ranging between fifty thousand (50,000) and ten million (10,000,000) euro;
- b) a final or temporary, for a period between one month and two years, revocation or suspension of their operation permit or prohibition from exercising their business activities;
- c) prohibition from exercising specific business activities or establishing branches or increasing their capital, for the same time period;
- d) final or temporary, for the same time period, disqualification from public benefits, aid, subsidies, awards of project and service contracts, public procurement, advertising and tenders organised by the State or by legal entities of the public sector.

The administrative fine under point (a) shall be imposed in every case, regardless of the imposition of the other penalties.

2) Where the lack of supervision or control by a natural person referred to in paragraph 1 hereof allowed any lower ranking executive or agent of the legal person or entity to commit the act of money laundering or of the basic offence to the benefit of the legal person or entity, the following penalties shall be imposed on the legal person or entity, alternatively or cumulatively, by means of a reasoned decision:

a) an administrative fine ranging between ten thousand (10,000) and five million (5,000,000) euro;

b) the penalties provided for in points (b), (c) and (d) of the previous paragraph, for a period of up to one year.

3) Where a legal person or entity subject to this law is concerned, the aforementioned penalties shall be imposed by means of a decision by the competent supervisory authority. If another legal person or entity, not subject to this law, is concerned, they shall be imposed by means of a decision by the Head of the competent regional directorate of the Body for the Prosecution of Economic Crimes.

4) In order to determine the cumulative or alternative imposition of the penalties provided for in the previous paragraphs and in order to determine the amount and duration of the said penalties, all relevant circumstances shall be taken into account and in particular:

a) the gravity and the duration of the violation;

b) the level of responsibility of the legal person or entity;

c) the financial standing of the legal person or entity;

d) the amount of the illicit revenue or any benefit obtained;

e) the damage caused to third parties due to the offence;

f) the actions of the legal person or entity after the commission of the violation;

g) any relapse on the part of the legal person or entity.

5) No penalty shall be imposed without a prior summons issued to the legal representatives of the legal person or entity to provide explanations. The summons shall be notified to the interested party at least ten (10) clear days in advance of the hearing. Otherwise, the provisions of Articles 6(1) and 6(2) of Law 2690/1999 (Code of Administrative Procedure) (Government Gazette, Series I, No. 45) shall apply. In order to determine the commission of the violations and the imposition of the foreseen penalties, the competent authorities shall exercise their auditing powers in accordance with the provisions governing their function. Where a penalty is imposed, the respective competent authority shall notify its relevant decision to the competent departments of the Ministry of Economy and Development.

6) The application of the provisions of the previous paragraphs shall be independent from any civil, disciplinary or criminal liability of the natural persons referred to therein.

7) The prosecutorial authorities shall promptly notify, as the case may be, the competent authority for imposing the penalties of any commencement of criminal proceedings with regard to any case where a legal person or entity is involved, within the meaning of paragraphs 1 and 2, and shall send them a copy of the relevant case file. Where a natural person is found guilty of the criminal offences referred to in paragraphs 1 and 2, the court may, respectively, order that a copy of the judgement pronouncing the guilt thereof and of the case file be sent to the authority competent to impose the penalties.

8) The responsibility of the legal persons or entities for the felonies under Article 187A(6) of the Criminal Code is determined in Article 41 of Law 3251/2004."

Action taken to address this concern

The new draft Article 51 of the AML has been severed from the remainder of the AML currently under revision and is now going through the preliminary procedure before being officially submitted to Parliament for discussion and approval. It is expected that it will be adopted before the end of the year 2017.

If no action has been taken, please specify in the space below the measures you intend to take to address this concern:

II. Greece's compliance with Article 2 of the Convention: meeting the requirements under Article 2 and the 2009 Recommendation.

Please indicate how the revised legislation meets all the requirements under Article 2 of the Convention and the 2009 Recommendation.

According to the 2009 Recommendation, Member countries' systems for the liability of legal persons for the bribery of foreign public officials in international business transactions should take one of the following approaches:

- a. the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons; or
- b. the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level managerial authority, because the following cases are covered:
 - A person with the highest level managerial authority offers, promises or gives a bribe to a foreign public official;
 - A person with the highest level managerial authority directs or authorises a lower level person to offer, promise or give a bribe to a foreign public official; and
 - A person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance programmes or measures.

In particular, please indicate:

1. Whether under the new legislation, a legal person would be held liable if an individual in a senior position in the legal person “directs” or “authorises” a lower level individual to commit foreign bribery.
2. Whether under the new legislation, a legal person would be held liable if the lack of supervision or control by the individual has made possible the commission, by a physical person under its authority to engage in corrupt activities.

Responses from Greece

1. The new draft legislation ensures that the liability of legal persons is triggered by the acts of omissions of natural persons exercising managerial authority in the widest possible terms, thus providing a flexible reflection of the corporate decision-making process. In effect, the draft provides for four different levels of managerial authority, acting in concentric circles:

- i. a person holding a managerial position in the relevant legal person;
- ii. a person is an authorized representative of the relevant legal person;
- iii. a person is authorized to make decisions on behalf of the relevant legal person; or
- iv. a person controls in any way the actions of the relevant legal person.

Liability of legal persons is triggered both when the person concerned has acted on his/her own volition single-handed and when s/he acted as a member of a collective body of the legal person or entity.

We believe that the proposed provision covers all and any mode of exercising managerial authority and thus fully conforms to the requirements of the 2009 Recommendation.

2. The legal person would be held liable, if the lack of supervision or control by the individual has made possible the commission of a corrupt act by a person in a hierarchically lower position within the organisation. Indeed, paragraph 2 of the proposed draft expressly provides for such an eventuality and, furthermore, stipulates both a fine and other administrative penalties for the legal person, including disqualification.

Again, we are confident that the proposed provision fully conforms to the requirements of the 2009 Recommendation.

Annex

Article [...]

Article 51 of Law 3691/2008, as in force, shall be replaced as follows:

“Article 51

Responsibility of legal persons and entities

1. If any of the punishable acts of money laundering or any of the basic offences under points (c), (d), (e) and (f) of Article 3 is committed to the benefit or on behalf of a legal person or entity by a natural person who acts either independently or as a member of a collective body of the legal person or entity and holds a managerial position in such persons or entities, or is an authorized representative thereof, or is authorized to make decisions on their behalf, or for exercising control over them, the following penalties shall be imposed on the legal person or entity, alternatively or cumulatively, by means of a reasoned decision:

a) an administrative fine ranging between fifty thousand (50,000) and ten million (10,000,000) euro;

b) a final or temporary, for a period between one month and two years, revocation or suspension of their operation permit or prohibition from exercising their business activities;

c) prohibition from exercising specific business activities or establishing branches or increasing their capital, for the same time period;

d) final or temporary, for the same time period, disqualification from public benefits, aid, subsidies, awards of project and service contracts, public procurement, advertising and tenders organised by the State or by legal entities of the public sector.

The administrative fine under point (a) shall be imposed in every case, regardless of the imposition of the other penalties.

2) Where the lack of supervision or control by a natural person referred to in paragraph 1 hereof allowed any lower ranking executive or agent of the legal person or entity to commit the act of money laundering or of the basic offence to the benefit of the legal person or entity, the following penalties shall be imposed on the legal person or entity, alternatively or cumulatively, by means of a reasoned decision:

a) an administrative fine ranging between ten thousand (10,000) and five million (5,000,000) euro;

b) the penalties provided for in points (b), (c) and (d) of the previous paragraph, for a period of up to one year.

3) Where a legal person or entity subject to this law is concerned, the aforementioned penalties shall be imposed by means of a decision by the competent supervisory authority. If another legal person or entity, not subject to this law, is concerned, they shall be imposed by means of a decision by the Head of the competent regional directorate of the Body for the Prosecution of Economic Crimes.

4) In order to determine the cumulative or alternative imposition of the penalties provided for in the previous paragraphs and in order to determine the amount and duration of the said penalties, all relevant circumstances shall be taken into account and in particular:

- a) the gravity and the duration of the violation;
- b) the level of responsibility of the legal person or entity;
- c) the financial standing of the legal person or entity;
- d) the amount of the illicit revenue or any benefit obtained;
- e) the damage caused to third parties due to the offence;
- f) the actions of the legal person or entity after the commission of the violation;
- g) any relapse on the part of the legal person or entity.

5) No penalty shall be imposed without a prior summons issued to the legal representatives of the legal person or entity to provide explanations. The summons shall be notified to the interested party at least ten (10) clear days in advance of the hearing. Otherwise, the provisions of Articles 6(1) and 6(2) of Law 2690/1999 (Code of Administrative Procedure) (Government Gazette, Series I, No. 45) shall apply. In order to determine the commission of the violations and the imposition of the foreseen penalties, the competent authorities shall exercise their auditing powers in accordance with the provisions governing their function. Where a penalty is imposed, the respective competent authority shall notify its relevant decision to the competent departments of the Ministry of Economy and Development.

6) The application of the provisions of the previous paragraphs shall be independent from any civil, disciplinary or criminal liability of the natural persons referred to therein.

7) The prosecutorial authorities shall promptly notify, as the case may be, the competent authority for imposing the penalties of any commencement of criminal proceedings with regard to any case where a legal person or entity is involved, within the meaning of paragraphs 1 and 2, and shall send them a copy of the relevant case file. Where a natural person is found guilty of the criminal offences referred to in paragraphs 1 and 2, the court may, respectively, order that a

copy of the judgement pronouncing the guilt thereof and of the case file be sent to the authority competent to impose the penalties.

8) The responsibility of the legal persons or entities for the felonies under Article 187A(6) of the Criminal Code is determined in Article 41 of Law 3251/2004.”