

Greece

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Enforcement agencies and corporate liability

1 What government agencies are principally responsible for the enforcement of civil and criminal laws and regulations applicable to businesses?

The Greek Constitution acknowledges the separation of the judiciary from the legislative and executive powers. Courts are classified as administrative courts (dealing with administrative disputes arising from the actions or omissions of the administration), civil courts (handling mainly private disputes between citizens) and criminal courts (dealing with the commission of criminal offences, criminal proceedings against the alleged perpetrator and the imposition of criminal sanctions on the convicted defendant).*

The competent authorities for hearing cases involving serious fraud, bribery, money laundering offences and similar misconduct and imposing the corresponding penalties on businesses or individuals are either the criminal or the administrative authorities.

The enforcement of criminal laws is entrusted to prosecutors, investigating judges and criminal courts. In general, criminal proceedings for serious offences – such as fraud, corruption, money laundering and criminal tax cases – start with a preliminary inquiry ordered by a prosecutor and conducted either by the prosecutor or by magistrates, police officers or special investigating officers (under the prosecutor's supervision).

Depending on the type of offence, the preliminary inquiry may be assigned to anti-corruption prosecutors (who deal with serious crimes involving public officers) or financial crime prosecutors (who deal with financial and criminal tax cases, usually with the assistance of the Financial and Economic Crime Unit, the tax police, or both). Following completion of the preliminary inquiry, the prosecutor either dismisses the case or starts prosecution.

Certain actions (eg, breach of tax, cartel, securities and banking laws) may be punishable as both administrative and criminal offences. Imposing administrative penalties falls under the jurisdiction of administrative authorities, whereas criminal sanctions are imposed by the criminal courts.

The investigation of such offences from an administrative point of view is conducted by special agencies or independent authorities, such as the Anti-Money Laundering Committee, the Hellenic Capital Market Commission (HCMC), the Hellenic Competition Commission (HCC) and tax authorities. After the conclusion of such investigation, a report is usually forwarded to the prosecutor, in order to explore the criminal aspects as well.

2 What is the scope of each agency's enforcement authority? Can the agencies pursue actions against corporate employees as well as the company itself? Do they typically do this?

For the criminal authorities, see question 1.

Administrative authorities

The Anti-Money Laundering Committee (the AML Committee) investigates and evaluates reports on suspicious activities that may be related to money laundering and predicate offences. It has a wide range of powers, including freezing accounts and seizing assets.

The HCMC monitors and controls the behaviour of regulated entities, listed companies and market participants in general, with respect

to compliance with the provisions on market abuse. It has the power to impose fines on companies and individuals, and suspend or revoke licences, among other things.

The HCC is an independent administrative authority responsible for the enforcement of the Competition Act as well as of articles 101 and 102 of the Treaty on the Functioning of the European Union. It has broad enforcement powers in the areas of collusive practices and cartels, abuse of dominance and merger control. In this context, the HCC may, among other things, impose administrative fines, take interim measures in case of suspected infringement of the Competition Act or conduct investigations or dawn raids at the premises of companies or employees (holding an executive position related to the issue under investigation) for the enforcement of antitrust and merger control rules.

The various tax authorities conduct audits on companies and individuals, which may lead to tax assessments, fines, freezing of accounts, confiscation of assets, etc.

All the above agencies have a wide range of powers and can, among other things, conduct investigations at the premises of companies and confiscate documents, computers, electronic data, etc. Most importantly, irrespective of their power to impose administrative sanctions, they can trigger criminal prosecutions, as they are obliged to send their reports to a prosecutor in order to examine whether there are indications of criminal offences perpetrated by individuals.

3 Can multiple government entities simultaneously investigate the same target business? Must they coordinate their investigations? May they share information obtained from the target and on what terms?

The agencies mentioned above can investigate the same target business simultaneously, without being obliged to coordinate their investigations. There is no specific legal framework regarding sharing information between the agencies. If the information received from the target or collected during investigations falls within the competence of another agency, the prosecutor, or both, they can address relevant reports thereto (if criminal offences arise, the report to the prosecutor is obligatory).

4 In what fora can civil charges be brought? In what fora can criminal charges be brought?

Civil charges are brought before the courts (see question 1).

Administrative sanctions are imposed by the administrative authorities (including the agencies mentioned above); an appeal is possible before the administrative courts.

Criminal charges are brought exclusively by the prosecutor (usually following a preliminary inquiry). As a general rule, misdemeanours are referred to trial by the prosecutor; felonies, on the other hand, go through the stage of a main investigation which ultimately ends with a decision of the judicial council upon acquittal of the defendants or referral to an open trial hearing. For certain felonies, decision upon referral of the case to trial lies with the prosecutor and the presiding judge of the Court of Appeal.

5 Is there a legal concept of corporate criminal liability? How does the government prove that a corporation is criminally liable for the acts of its officers, directors or employees?

Greek law does not attribute criminal liability to legal entities. In case of offences related to a legal entity, charges are brought against the legal representatives of the corporation, such as CEOs, executive directors and members of the board. Thus, criminal liability for business related activities in Greece is linked to specific individuals acting for the company. However, criminal prosecution cannot be based on strict liability. Criminal charges always require an element of intent or negligence (depending on the type of offence).

There are provisions in special criminal statutes (eg, article 51 of Law No. 3691/2008 on money laundering) prescribing that penalties of an administrative nature (such as fines and withdrawal of licensing) can be imposed on legal entities in case of offences perpetrated for their benefit or on their behalf. This provision also dictates that the prosecutors send copies of the criminal case file to the competent administrative authorities to impose administrative penalties on the legal entity. In case of conviction of the individual, criminal courts send a copy of their decision to the competent authorities.

Moreover, administrative proceedings can be initiated against a corporation for breach of administrative provisions.

6 Must the government evaluate any particular factors in deciding whether to bring criminal charges against a corporation?

As explained, it is not possible to bring criminal charges against a corporation.

In terms of administrative proceedings, the corporate history of misconduct and the seriousness and impact of the misconduct are significant factors in imposing administrative penalties on a corporation.

Initiation of an investigation

7 What requirements must be met before a government entity can commence a civil or criminal investigation?

Criminal investigations are initiated ex officio by prosecutors or by the police or special investigating officers belonging to the agencies mentioned in question 2 (in coordination with the prosecutor), following any kind of information (criminal complaints filed by the alleged victim (individual or legal entity), reports of competent authorities, publications in the media, etc) that a criminal offence has been perpetrated. Prosecution is obligatory, unless the allegations are clearly unfounded in law or in substance.

Administrative investigations are carried out following a complaint or on the authorities' own motion.

8 What events commonly trigger a government investigation? Do different enforcement entities have different triggering events?

Investigations by prosecutors, special agencies or independent authorities are triggered by any kind of indication that there is a breach of law that falls under their competence. Depending on the scope of each enforcement agency, triggering events may differ.

9 What protections are whistle-blowers entitled to?

In Greek law there is no general provision for whistle-blowers as an equivalent to the term in common law. Depending on whether they are involved in the alleged misconduct or not, persons providing information of wrongdoing may be entitled to protection, leniency, or both.

In terms of administrative investigations by the HCC, there is the possibility of admission to the Leniency Programme (article 25, paragraph 8 of Law No. 3959/2011), ensuring protection of confidentiality and lenient treatment.

In criminal law, protection of whistle-blowers and lenient provisions are prescribed only with regard to specific offences. The more important provisions are the following:

- leniency: persons who are involved in bribery may not be punishable or may be treated with leniency if they denounce illegal acts to the competent authorities on the basis of article 263B of the Greek Penal Code (PC); and
- protection of witnesses: article 45B of the Greek Code of Penal Procedure (the Greek CPP) (introduced in 2014) prescribes the

protection of 'public interest witnesses' – namely, individuals who report bribery of public servants, politicians or judges – on condition that the witnesses are not involved in the alleged offences. In such cases, witnesses may not be exposed to criminal liability risk related to the content of their testimonies (for the offences of perjury, slander, breach of personal data legislation, professional secrecy, etc).

Article 9 of Law No. 2928/2001 provides for the protection of witnesses in cases of organised crime, human trafficking and bribery of public officials, ensuring police protection, anonymity of testimony, etc.

10 At what stage will a government entity typically publicly acknowledge an investigation? How may a business under investigation seek anonymity or otherwise protect its reputation?

In principle, investigations are not public and are not publicly acknowledged by the competent authorities.

Depending on the procedure, only the parties to the proceedings may have access to the case files.

Evidence gathering and investigative techniques

11 Is there a covert phase of the investigation, before the target business is approached by the government? Approximately how long does that phase last?

As a general comment, pretrial proceedings, including investigations, are not public and are not announced to the target from the beginning. At some point, the target business, through its legal representatives, will be approached by the enforcement agencies or prosecutors to provide evidence or explanations regarding the case.

Covert investigations are prescribed exceptionally; under the conditions set out in articles 253A and 253B of the Greek CPP, if there is serious indication that offences of organised crime (eg, articles 187 and 187A of the PC) or corruption (eg, articles 159, 235, 236 and 237 of the PC), or both, are perpetrated and it is impossible, or very difficult, to reveal such offences otherwise, covert investigation can be ordered as a last resort by the prosecutor or the judicial council. Covert investigation of the corruption offences cannot last more than a year.

The tax authorities and the AML Committee may also conduct investigations collecting and cross-checking evidence before approaching the target business. In case there is indication of money laundering, the head of the AML Committee may even freeze the company's accounts without prior notice. There is no provision prescribing the duration of such investigation, provided that the statute of limitations has not elapsed.

12 What investigative techniques are used during the covert phase?

During the covert phase of an investigation, the investigating officer or an individual acting under his or her orders may appear as the person benefiting from the offence (or as an intermediary thereof) and facilitate the perpetrator, provided that the latter has already decided to commit the offence. Such person may alter his or her personal or tax identity details for the purposes of the covert investigation (article 253B of the Greek CPP).

Other techniques that may be used in this phase, under the circumstances prescribed in articles 253A and 253B of the Greek CPP, include the following: surveillance by means of electronic equipment, interception of telecommunications, collection and combination of personal data and controlled deliveries.

13 After a target business becomes aware of the government's investigation, what steps should it take to develop its own understanding of the facts?

Depending on the type of investigation, the target business may request the presence of counsel or an IT expert to monitor the proceedings (such as during an investigation at the company's premises).

If a person is summoned by the prosecutor or the investigating judge as a suspect or defendant, he or she is entitled, among other things, to appoint counsel and request full copies of the case file.

Also, in the course of administrative investigations, the target business is entitled to receive copies of the documents either provided

voluntarily or confiscated. Access to other material (eg, documents provided by other corporations under investigation) may be denied on various grounds such as confidentiality.

14 Must the target business preserve documents, recorded communications and any other materials in connection with a government investigation? At what stage of the investigation does that duty arise?

In general, the target business is obliged to preserve documents and other evidence related to an ongoing investigation. Destroying evidence may be an aggravating circumstance (especially in terms of HCC investigations) or even a criminal offence (article 222 of the PC on concealing documents).

As a matter of principle, an entity may be under the obligation to preserve documents and recorded communications (eg, a record of transactions, accounting books and records) to comply with specific laws.

15 During the course of an investigation, what materials – for example, documents, records, recorded communications – can the government entity require the target business to provide? What limitations do data protection and privacy laws impose and how are those limitations addressed?

The target business may be requested to provide any type of document during an investigation. There are limitations regarding attorney–client confidentiality. If privileged documents are confiscated, although the target business objects, their evaluation as evidence will be decided by the judicial authorities at later stages of the proceedings.

16 On what legal grounds can the target business oppose the government’s demand for materials? Can corporate documents be privileged? Can advice from an in-house attorney be privileged?

See question 15; in-house counsel communications (including in-house counsel correspondence with external counsel) are covered by privilege.

There is an exception for HCC investigations (in accordance with European Court of Justice case law) where in-house counsel correspondence is not considered to be covered by privilege.

17 May the government compel testimony of employees of the target business? What rights against incrimination, if any, do employees have? If testimony cannot be compelled, what other means does the government typically use to obtain information from corporate employees?

Employees may be requested to testify during an investigation. They have the right to refrain from self-incrimination and the right to remain silent.

It is not standard practice for the target business to be requested to provide testimonies of the employees. If such testimonies are provided (eg, in the course of an internal investigation), they will be evaluated as simple documents rather than official testimonies.

18 Under what circumstances should employees obtain their own legal counsel? Under what circumstances can they be represented by counsel for the target business?

If there is no conflict of interest, the employees can be represented by counsel for the target business.

As explained, in criminal investigations, the target business will not be represented in criminal proceedings by counsel, as it will not have the capacity of a defendant.

19 Where the government is investigating multiple target businesses, may the targets share information to assist in their defence? Can shared materials remain privileged? What are the potential negative consequences of sharing information?

In general, sharing information between multiple target businesses is not prohibited under the limitations of personal data protection and confidentiality. Shared materials are not considered privileged. In the context of HCC investigations, although there is no strict prohibition, sharing information between multiple target businesses may be evaluated as an aggravating circumstance.

Update and trends

In general, several serious anti-corruption cases are ongoing at this time and it is certain that this trend will be apparent in the future. This includes also tax evasion. There is a trend for focusing on foreign multinationals from a tax evasion point of view. The tax law environment is very complicated and the authorities tend to be quite expansive in applying the law. Criminal procedures have multiplied against directors and legal representatives of foreign companies (as companies themselves are not criminally liable) and this will probably hold true for the foreseeable future.

20 At what stage must the target notify investors about the investigation? What should be considered in developing the content of those disclosures?

In reference to listed companies, there is no specific stage at which the target must notify investors. When a target is under investigation by the HCC, it is common practice to issue a press release.

In case of criminal investigations, which necessarily refer to individuals, the company’s disclosure of the initiation of criminal proceedings could raise personal data issues.

Cooperation

21 Is there a mechanism by which a target business can cooperate with the investigation? Can a target notify the government of potential wrongdoing before a government investigation has started?

In Greek law there is no general formal mechanism for cooperation. Voluntary disclosure and reconstitution of damages are forms of cooperation provided for in specific provisions (see questions 22 and 28).

In any event, it is always possible for the target to notify the authorities of potential wrongdoing. The impact of such notification (if any) is analysed below (see questions 22 and 28).

22 Do the principal government enforcement entities have formal voluntary disclosure programmes that can qualify a business for amnesty or reduced sanctions?

As already noted, corporations cannot be held criminally liable or be subject to criminal sanctions; however, in terms of administrative proceedings, voluntary disclosure may qualify a business for amnesty or reduced sanctions.

For example, there is a formal voluntary disclosure programme in investigations conducted by the HCC, ensuring more lenient fines and potentially exclusion of criminal prosecution of individuals for specific offences related to competition.

Filing a corrective tax return for previous fiscal periods may reduce the administrative sanctions to be imposed on a corporation for tax offences and may prevent criminal charges being brought against individuals (legal representatives of the company).

The above examples show that voluntary disclosure on behalf of a corporation may have a positive impact on the relevant criminal proceedings against individuals.

23 Can a target business commence cooperation at any stage of the investigation?

As a general rule, it may be in the best interests of the target business to cooperate with the authorities sooner rather than later.

24 What is a target business generally required to do to fulfil its obligation to cooperate?

The target business is expected not to destroy evidence and not to prevent the authorities from conducting the investigation. In the course of criminal proceedings, the target business is obliged to provide all evidence and information requested by the authorities.

25 When a target business is cooperating, what can it require of its employees? Can it pay attorneys' fees for its employees? Can the government entity consider whether a business is paying employees' (or former employees') attorneys' fees in evaluating a target's cooperation?

A corporation's decision to cooperate with the authorities is not binding on its employees, provided that they do not destroy evidence and do not prevent the authorities from conducting the investigation.

The company may ask its employees to testify as witnesses or request reports, which may later be produced as evidence.

On the other hand, the employees' position toward the authorities may depend on whether they are involved in the acts under investigation, since they have the right not to incriminate themselves and to remain silent.

It is common practice for the target business to cover the attorneys' fees for its employees, provided that the actions under investigation are related to corporate activities. The company usually has a contractual obligation to cover such fees; it may decide to pay before or after the final decision on the proceedings and perhaps seek compensation if the employees are convicted of an offence perpetrated with intent.

If the employees' actions are against the company, it would appear contradictory for the company to pay for their attorneys' fees.

26 What considerations are relevant to an individual employee's decision whether to cooperate with a government investigation in this context? What legal protections, if any, does an employee have?

The employee is obliged to pursue the goals of the corporation and to avoid actions that may endanger its interests. Refusal to provide evidence and information in the context of an internal investigation might be considered as failure to comply with such obligation. This could be a valid argument for dismissal. Of course, if by refusing the employee is exercising his or her right against self-incrimination, this will be a defence.

If the employee refuses to testify before the authorities, he or she may be criminally liable (article 169 of the Greek CPP).

27 How does cooperation affect the target business's ability to assert that certain documents and communications are privileged in other contexts, such as related civil litigation?

If, in the course of HCC investigations, the target business characterises documents as privileged, these are expected to be treated as well in other contexts as well. In criminal investigations, the documents that are part of the case file (including documents covered by privilege) are available to the parties to the proceedings.

Resolution

28 What mechanisms are available to resolve a government investigation?

As a general rule, compensation for the alleged damage ensures a more lenient treatment in criminal proceedings.

Depending on the seriousness of the offence (whether it is a misdemeanour or a felony), the type of property damaged (whether private or public) and the stage of the proceedings (before investigation or after the case is referred to trial), there are certain mechanisms for plea bargaining or settlement based on the compensation for damage, which may lead to exclusion of criminal proceedings (ie, criminal proceedings can be stopped or may never be started if some form of settlement is reached), non-punishment or leniency.

For example, article 406 of the PC states that (among others) the offences of fraud and breach of trust or misappropriation are not punishable if the perpetrator fully compensates for the damage incurred before being investigated by the competent authorities. Compensation for damage at later stages (before prosecution starts) may lead to dismissal of the case. After prosecution, the above provision is applicable only for misdemeanours. Breach of trust or misappropriation incurring damage to the property of the state or of public sector companies is not covered by the above provisions.

Article 308B of the Greek CPP provides that if the defendant compensates for all damage resulting from the felonies of embezzlement, fraud and misappropriation, the court will treat the defendants with leniency (maximum penalty: three years' imprisonment) and also has the discretion to deem the act non-punishable. This provision is not applicable if the above felonies incurred damage to the property of the state or of public sector companies.

For offences allegedly committed against the public sector, compensation for damage ensures a more lenient treatment under the conditions prescribed in Law No. 4312/2014.

In HCC proceedings there are mechanisms for leniency (article 25, paragraph 8 and article 44 of Law No. 3959/2011) or settlement (article 25A of Law No. 3959/2011) on the conditions prescribed in Law No. 3959/2011. These mechanisms may lead to the exclusion of criminal and administrative sanctions for offences related to competition. Criminal prosecution for other related offences may still be possible.

Also, in case of breach of tax and security insurance laws, payment of the authorities' assessment may lead (on certain conditions, mainly related to the time of payment) to more lenient treatment or even exclusion of criminal penalties.

29 Is an admission of wrongdoing by the target business required? Can that admission be used against the target in other contexts, such as related civil litigation?

Although there is no general requirement for admission of wrongdoing (eg, payment of the tax assessment does not exclude an appeal against the assessment before the competent administrative authorities), such admission is a prerequisite in certain proceedings - for example, in case of settlement in HCC investigations. That admission will not be used



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against individuals in criminal proceedings given that, in case of such settlement, criminal prosecution will also be excluded (but only for the specific offence). In terms of civil litigation, however, it may be possible for competitors or alleged victims to seek compensation from the corporation on the basis of antitrust actions.

30 What civil penalties can be imposed on businesses?

Only administrative penalties can be imposed on businesses as a result of an investigation (eg, fines and suspension or withdrawal of licences).

31 What criminal penalties can be imposed on businesses?

No criminal penalties can be imposed on businesses, as legal entities cannot be held criminally liable.

32 What is the applicable sentencing regime for businesses?

For criminal penalties, see question 31.

Administrative penalties vary depending on the competent authorities and the type of misconduct. Fines, withdrawal of licences and exclusion from public tenders are some of the sanctions that may be imposed under certain circumstances, taking into consideration various factors (seriousness and impact of the misconduct, history of misconduct, etc).

33 What does an admission of wrongdoing mean for the business's future participation in particular ventures or industries?

Admission of wrongdoing in HCC proceedings may prevent the company from participating in public tenders. Participation in public tenders requires a statement from the company to the effect that it has not been involved in uncompetitive behaviour in the past.

* *To answer from a Greek criminal law perspective, the authors have described the legal framework and the common practice in Greece, without direct reference to the terminology used (eg, government investigations, government entities) insofar as it does not reflect the Greek legal system.*