
CHAMBERS GLOBAL PRACTICE GUIDES

White-Collar Crime 2022

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Greece: Law & Practice

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POTAMITISVEKRIS

Law and Practice

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1. Legal Framework

1.1 Classification of Criminal Offences

Criminal offences in Greece are distinguished between felonies and misdemeanours. Any act punishable by life imprisonment or temporary imprisonment (five to 15 years) is a felony. Any act punishable by imprisonment (ten days to five years) or confinement in a special youth detention facility or only by monetary penalty or community service is a misdemeanour.

Felonies and misdemeanours are punishable only when committed by deception. Exceptionally, in cases specified by law, misdemeanours are also punishable when committed by negligence.

Crimes (felonies and misdemeanours) are punishable not only when committed but also when attempted; in the latter event, a reduced sentence shall be imposed.

1.2 Statute of Limitations

The statute of limitations for felonies is 20 years if there is a life sentence provision and 15 years in any other case. The statute of limitations for misdemeanours is five years. In cases of financial crimes, the otherwise applicable statute of limitations for felonies (15 years) is extended to 20 years, on condition that the criminal acts are directed against the property of the Greek state.

For both felonies and misdemeanours, the limitation period runs from the day on which the offence was committed.

The limitation period shall be suspended for as long as the criminal proceedings cannot be initiated or continued, or as long as the main proceedings last and until the decision for the conviction becomes irrevocable. In any case, the

suspension cannot last more than five years for felonies and three years for misdemeanours. The limitation period for felonies against a minor is suspended until the victim reaches adulthood.

In repeated offences, the rule is that each act retains its autonomy and is time-barred independently. However, if it turns out that the perpetrator, by the most part of their actions, aimed at the overall result, the limitation period begins with the last individual punishable behaviour.

1.3 Extraterritorial Reach

Greek criminal law applies to an act (felony or misdemeanour) committed (i) by a native abroad or (ii) by a foreigner abroad and directed against a Greek citizen, provided that, in both cases, the act (felony or misdemeanour, according to Greek criminal law), with its specific characteristics, is also punishable according to the laws of the country in which it was committed or if it was committed within a country with no clear constitutional structure.

1.4 Corporate Liability and Personal Liability

Legal entities cannot be held liable. In case the criminal act is committed within a legal entity, the criminal liability is held by the individual who has been the agent of the will of the legal entity and who has actually committed the crime.

The general rule is that criminal liability lies only with those individuals/directors who have been exercising executive powers or representing the legal entity at the time the criminal offence was committed. Exceptionally, in specific criminal offences (eg, in the case of non-payment of overdue debts towards the state), the criminal liability also lies with the future representatives provided that they continue not to pay the said debts.

1.5 Damages and Compensation

Class actions are not admitted in Greek jurisdiction for white-collar matters.

The victim of the criminal offence who is entitled under the Civil Code to compensation or reparation for the crime, or to compensation for moral damage, is entitled to appear before the criminal court and to submit a statement in support of the accusations brought against the defendant.

However, after the latest amendment of the Greek Code of Criminal Procedure (GCCP), civil claims (ie, claim for compensation or moral damage) cannot be brought before the criminal courts but only before the civil courts following a civil lawsuit filed by the injured party.

1.6 Recent Case Law and Latest Developments

There have been the following recent developments in relation to white-collar crime in Greece.

Criminal Law

Law No 4947/2022 introduced significant changes, inter alia, to the Greek Criminal Code (GCC) and the GCCP.

The provisions of Part A of the law seek to address fraud and counterfeiting of payment instruments other than cash by defining the specific criminal offences and penalties relating to these payment instruments, in order to continue unhindered the development of the digital economy and to facilitate the spread of innovation in the field of payment technologies. In addition, the aim is to extend the protection of traditional physical means of payment and the intangible means of payment, related to the digital environment, as well as to facilitate the prevention of these offences and to provide assistance and support to injured parties.

Part B of the law aims to take additional measures to transpose Directive 2013/48 and Framework Decision 2002/584/JHA and their effective implementation, as well as to fully incorporate the provisions of Directive 541/2017, and to strengthen the national legal order with the appropriate legislative tools to combat terrorism. Moreover, as part of an effective response to the phenomenon of revenge pornography, the latter was standardised for the first time as a criminal offence.

Finally, the issue of the unconstitutionality of the provision of Article 405 of the GCC, which concerns the prosecution of breach of trust under Article 390 GCC when directed against bank executives, is still pending before the Supreme Court of Athens.

Criminal Procedure

Law No 4947/2022 introduced the following amendments to the GCCP:

- the existence of a concise reasoning in the prosecutor's order rejecting the victim's criminal complaint;
- an increase in the amount of the fine imposed with respect to defaulting witnesses, ranging from EUR100 to EUR500 (previously they ranged from EUR50 to EUR200);
- the possibility of postponing the trial, only once, due to an impediment of the defence counsel;
- limiting the number of adjournments that can be granted by criminal courts on grounds relating to the defence counsel; and
- amendments to the GCC concerning the establishment of Juvenile Courts.

Recent Case Law

Recent developments in the case law include the following.

No 1/2022 judgment of the Supreme Court's Plenary (Penal) established the parallel competence of the Anti-Money Laundering Authority and the Interrogator for the freezing of the defendant's assets. According to this decision, the authority's power to conduct investigations may be exercised in parallel with the regular criminal proceedings and the actions of the prosecutorial and judicial authorities involved in it.

No 2/2022 judgment of the Supreme Court's Plenary (Penal), regarding the mitigating circumstance of prior lawful life, held that: "... for the establishment of a lawful life, the conduct of the declared guilty person until the commission of the criminal act is taken into account, also taking specifically into account the circumstances under which the act was committed and, in addition, the condition of acceptance or not of the relevant independent claim, is that the sentence to be imposed in most cases is in accordance with the principle of proportionality... Thus, a lawful life is not identified with a clean criminal record, but with a conviction-submission to legality in all aspects of daily life, a situation that is not guaranteed by the absence of a conviction for a criminal act..."

No 3/2022 decision of the Supreme Court's Plenary (Penal) held that the Molotov cocktail bomb constitutes an explosive device and is punishable under the provisions of Article 270 GCC (explosion) and Article 272 GCC (manufacture and possession of explosives and incendiary materials).

2. Enforcement

2.1 Enforcement Authorities

The criminal prosecution is brought in the name of the state by the Public Prosecutor of the Court

of Misdemeanours (Article 27 paragraph 1a of the GCCP).

Regarding financial crime, a Department of Financial Crime is established – in the light of Articles 33–36 GCCP – within the Public Prosecutor's office of the Court of Appeals of Athens. The Department consists of four regular and four alternate members with the rank of Prosecutor of the Court of Appeal, who are assisted by at least eight Prosecutors or Deputy Prosecutors of First Instance.

The Prosecutors of Financial Crime have jurisdiction over felonies committed by: ministers; deputy ministers; members of the Parliament; general and special secretaries of ministries; governors; deputy governors or presidents of the board of directors or directors or executives or executive advisers of legal entities governed by public law; employees serving in private entities established by the state, etc, and related to the pursuit of economic benefit to themselves or third parties or to the cause of material damage to the state.

Prosecutors of Financial Crime are also responsible for conducting investigations or preliminary examinations to determine the commission of any kind of tax and financial crimes and any other related crimes, if they are committed against the Greek state, local authorities, and legal entities of public law or if they seriously harm the national economy. The work of the Prosecutors of Financial Crime is supervised by the Head Prosecutor of the Department of Financial Crime, and supported by special scientists serving in the wider public sector, and in exceptional cases also in the private sector.

2.2 Initiating an Investigation

When the Public Prosecutor receives the criminal complaint or report, they initiate the criminal proceedings by ordering an interrogation or by introducing the case directly to the competent criminal court.

In case of felonies or misdemeanours of jurisdiction of a three-judge misdemeanour court, as well as in the misdemeanours of jurisdiction of a three-member court of appeal, the Public Prosecutor initiates the criminal prosecution only if a preliminary investigation has been completed and sufficient evidence is shown for its initiation.

The Head Prosecutor of the Department of Financial Crime is informed of all complaints or information that come to the attention of the Financial Crime Investigation Body (SDOE), the Financial Crime Investigation Directorate (DEOE) and the Directorate of Financial Police with whose employees it co-operates, evaluates and investigates this information, as well as any other relevant news that comes to their attention in any way, prioritising those cases that seriously harm the interests of the Greek state and the European Union.

In order to investigate the cases that fall within their competence, the Prosecutors of the Department of Financial Crime may order a preliminary examination by the employees of the above co-operating services (SDOE, etc) but also by the Prosecutor of First Instance who has procedural authority.

2.3 Powers of Investigation

Provided that the principle of proportionality is respected, the Prosecutors of Financial Crime have access to any element or information useful for the exercise of their work without being subject to the restrictions of the legislation on tax,

banking, stock exchange and any other secrecy (with the exception of legal and – under specified conditions – telecommunications secrecy) as well as to any form of file of a public authority or organisation that keeps and processes personal data.

Moreover, when the Prosecutors of Financial Crime conduct a preliminary investigation to determine the perpetration of crimes within their authority, they have the possibility of proceeding, by reasoned order, to freeze bank accounts, the contents of bank deposit boxes and assets in general (movable and immovable), in order to safeguard the interests of the state.

2.4 Internal Investigations

Internal investigations are not mandatory by their very nature, but can be carried out in order to review the operational activities of the legal entity and to facilitate criminal proceedings. In this type of investigation, the subject matter of the investigation is determined by the directors of the undertaking.

Especially as far as banking institutions are concerned, the operation of an Internal Audit Department is mandatory and is supervised by the Credit System Supervision Division of the Bank of Greece.

2.5 Mutual Legal Assistance Treaties and Cross-Border Co-operation

Legal assistance exists when a multilateral or international convention of international legal co-operation provides for it. For example:

- paragraph 26 of Article 46 of the United Nations Convention against Corruption (ratified by Law 3666/2008, A 105);
- the (identical) paragraph 26 of Article 18 of the United Nations Convention against Trans-

national Organised Crime (ratified by Law 3875/2010, A 158);

- paragraph 1 of Article 7 of the Mutual Legal Assistance Agreement in criminal matters between the Government of the Hellenic Republic and the Government of the United States of America (ratified by Law 2804/2000, A 49); and
- paragraph 4 of Article 3 of the Convention on Mutual Assistance in Criminal Matters between the Government of the Hellenic Republic and the Government of Canada (ratified by Law 2746/1999, A 225).

There are, however, provisions of international conventions that do not allow the conditional provision of legal assistance or, in other cases, provide for a narrower framework of conditions for the conduct of specific actions in the context of legal assistance (eg, Article 51 of the Convention implementing the Schengen Agreement, ratified by Law 2514/1997, A 140). Particular reference should also be made to the specific provisions for the European Investigation Order in criminal cases in accordance with the Directive 2014/41/EU, which has been incorporated into the domestic law by Law 4489/2017, A 140.

The deportation of a foreign person, which is regulated in the provisions of Article 436 (et seq) GCCP, is allowed:

- when they are accused of a crime punished by both the Greek criminal law and the law of the state requesting extradition, with a custodial sentence, the maximum of which is more than two years;
- when the courts of the state that request the deportation have sentenced the requested person irrevocably to a custodial sentence of at least one year for a crime which both Greek criminal laws and the laws of the state

requesting deportation classify as a misdemeanour or a felony; and

- when they expressly consent to surrender to the state requesting their deportation.

Cases of legal assistance are also the applications of the Greek judicial authorities to foreign authorities, as well as the applications of the foreign judicial authorities to the Greek authorities for the conduct of investigative acts, such as the examination of witnesses and defendants abroad, the seizure of evidence, the conduct of an autopsy and expert opinion, etc.

2.6 Prosecution

As in any criminal offence, so in the case of financial crimes, the prosecution is carried out if the preliminary investigation is completed by the Public Prosecutor in charge and it is found that there is sufficient evidence of guilt for its initiation.

After the prosecution has been brought, the person under investigation is granted the status of the defendant and all the rights provided for by the GCCP are granted to them.

The Public Prosecutor's office, as well as the investigating and judicial authorities, must, when treating any person accused of any crime, comply with the requirements of Article 71 GCCP (presumption of innocence), which refers to every suspect and accused person until proven guilty, as well as the rules on the protection of personal data, which allow, by way of exception, the collection, processing and transfer of personal data if necessary for the prosecution of criminal offences.

2.7 Deferred Prosecution

Pursuant to the GCCP, as in force, it is possible for the Public Prosecutor to refrain from bringing

criminal charges under conditions imposed by them, as well as to refrain from prosecuting after the complete satisfaction of the victim.

Regarding the abstention from criminal prosecution under certain conditions (Articles 48 and 49 GCCP), the preconditions of such application are:

- the existence of sufficient evidence of guilt for the appropriation of a misdemeanour or a felony and the clear consent, after being informed, of the person to whom the criminal offence is attributed that they wish to apply the procedure of abstention;
- the perpetrator's consent to fulfil the conditions deemed appropriate to satisfy the public interest in their prosecution and reduce the consequences of the offence.

Such conditions are, *inter alia*, the attempt to reconcile with the victim, the payment of a certain amount of money to a charitable foundation, etc.

Regarding the abstention after the complete satisfaction of the injured party (Article 50 GCCP), if, after the perpetrator's examination and until the prosecution, without illegal harm having been caused to any third party, the person to whom the offence is attributed returns the object of the crime to the injured party or to their heirs and a relevant statement is drawn up that there is no other claim and that the victim has been completely satisfied, the Public Prosecutor of the Court of Misdemeanours abstains definitively from the prosecution by a reasoned act in writing, which is submitted for approval to the Public Prosecutor of the Court of Appeal. In other words, if the perpetrator completely satisfies the injured party after the perpetrator's examination

and before their prosecution, no charges will be pressed against them.

2.8 Plea Agreements

According to the GCCP, as in force, criminal conciliation is possible either until the formal termination of the investigation or after the formal termination of the investigation and until the end of the evidentiary procedure before the Criminal Court of First Instance, provided that the following preconditions are met:

- criminal charges have been brought for certain felonies and misdemeanours (ie, forgery, false declaration, money laundering, tax offences, crimes against property); and
- a record of conciliation has been drawn up within the prescribed period of 15 days, which contains the confession of the defendant regarding the offence for which they are accused and the attribution of the item or the final compensation of the victim.

Within five days of the drafting of the minutes of the negotiation, the case is entered by direct summons to the single-member Court of Appeal for felonies or to the single-member Court of Misdemeanours, which declares the accused guilty and imposes on them a reduced sentence which cannot exceed the one agreed between the Public Prosecutor and the defendant.

In cases of *ex officio* prosecuted crimes (felonies and misdemeanours), with the exception of (i) felonies punished with a life sentence, (ii) terrorist acts and the terrorist organisation of Article 187A GCC, and (iii) felonies relating to sexual freedom, the accused is entitled – until the formal termination of the main interrogation or preliminary investigation – to request the commencement of the criminal negotiation procedure (Article 303 GCCP), the object of which may only be

the penalty to be imposed. For this purpose, minutes of negotiation are drafted containing the confession of the accused for the criminal act for which they are accused, the sentence agreed with the Public Prosecutor and the manner in which it will be served. Within five days of the drafting of the minutes of the negotiation, the case is entered by direct summons to the single-member Court of Appeal for felonies or to the single-member Court of Misdemeanours, which declares the accused guilty and imposes on them a reduced sentence that cannot exceed the one agreed between the Public Prosecutor and the defendant.

3. White-Collar Offences

3.1 Criminal Company Law and Corporate Fraud

Fraud

Under Article 386 GCC, the basic rule of fraud is that it consists of intentional misrepresentation or concealment of facts in order to convince somebody to dispose of their property and thereby suffer financial loss for the purposes of the personal gain of the perpetrator. If fraud consists of a misdemeanour (ie, referring to losses below the threshold of EUR120,000), it shall be punished with imprisonment of up to five years and a monetary penalty. (If the damage caused is particularly serious, the act is punishable by at least three months' imprisonment and a fine.) If it consists of a felony (fraud leading to losses exceeding EUR120,000), it shall be punished with imprisonment of up to ten years (or up to 15 years if it is committed against the state) and a monetary penalty.

Breach of Trust

Article 390 GCC punishes every intentional act which is in violation of the duties of a per-

son ("breach of diligent management rules") in charge of the property of a legal entity that results in certain financial damage. Prosecution for this offence refers to the President of the Board of Directors (BoD) and/or the managing director or other officers entrusted with the financial management of a company.

Article 390 GCC provides that if breach of trust is a misdemeanour (ie, referring to losses below the threshold of EUR120,000), it shall be punished with imprisonment of at least three months (up to five years) and a monetary penalty, and prosecuted only following a criminal complaint by the alleged victim. On the contrary, prosecution for felonies (breach of trust leading to losses exceeding EUR120,000) starts ex officio (ie, even if the company decides not to start criminal proceedings, the Public Prosecutor may initiate such proceedings on their own motion), and is punished with imprisonment of up to ten years, or at least ten years if it is committed against the state, and a monetary penalty.

Breach of trust against financial/credit institutions and organisations in the financial sector is prosecuted, even if it is a felony, only upon a criminal complaint by the alleged victim (ie, the credit institution).

Embezzlement

According to Article 375 GCC, anyone is punishable who, knowing that they are in charge of the property of another person or legal entity, acts as the owner of the property by encompassing the property as their own assets. If embezzlement consists of a misdemeanour (ie, referring to losses below the threshold of EUR120,000), it shall be punished with imprisonment of at least two years, up to five years, and a monetary penalty. (If the value of the embezzled object/amount is particularly high, the act is punishable by at

least three months' imprisonment and a fine.) If it consists of a felony (embezzlement leading to losses exceeding EUR120,000), it shall be punished with imprisonment of up to ten years, or at least ten years if it is committed against the state, and a monetary penalty.

Insolvency Crimes

The recent Insolvency Code (Law 4738/2020) stipulates punishment by both imprisonment and monetary penalties for a variety of acts that take place after the official declaration of bankruptcy, or before it and during the "suspicious" period. The criminal acts include:

- the intentional concealment, damage and disposal of the bankrupted business's property;
- the closing of deals that result in financial loss in breach of the rules of diligent management;
- the reduction of the business's property;
- the concealment or the damage of commercial books in order to discourage the creditors from finding the business's property.

Environmental Crimes

Environmental crimes are provided for in Law 1650/1986, Law 4042/2012 and a series of regulations or specific ministerial decisions. The criminal acts range from failure to obtain certain kinds of licence to causing large-scale contamination as a result of violations of specific rules and regulations. Environmental crimes are punished by both imprisonment and monetary penalties even if they are committed by negligence.

3.2 Bribery, Influence Peddling and Related Offences

The main bribery/influence peddling offences in Greece are:

- passive bribery of public officials (Article 235 GCC);

- active bribery of public officials (Article 236 GCC);
- passive and active bribery involving members of the judiciary (Article 237 GCC);
- trading in influence (Article 237A GCC);
- bribery in the private sector (Article 396 GCC);
- passive bribery of political officers (Article 159 GCC);
- active bribery of political officers (Article 159A GCC); and
- campaign finance.

In terms of the last point, campaign finance, private business or a natural person (not connected to the media or press or any type of public entity) may offer money during or before an election campaign to a political party or a candidate. Thus, the donation may be given one time per party or candidate per election and is limited up to certain relatively low amounts of money. Law 3023/2002, as in force, provides punishment by both imprisonment of up to two years and a monetary penalty when these rules are violated.

Articles 235 and 236 GCC stipulate punishment by both imprisonment of up to five years (or up to ten years if the public servant's action or omission lies within the exercise of their duties) and a monetary penalty for anyone who requests or receives directly or indirectly through third persons in favour of oneself or others benefits of any nature, or accepts a promise of such benefits to act or omit to act in the future or for acts that have already been performed or omitted to be performed, with regard to public duties or contrary to these duties.

Article 237 GCC stipulates punishment by both imprisonment and a monetary penalty for judges and/or arbitrators who request or receive gifts or benefits to conduct or decide a case in favour of or against someone.

Articles 159 and 159A GCC punish by both imprisonment and a monetary penalty, bribery offences when they are committed by higher government officials, members of the Parliament, etc.

Article 396 GCC stipulates punishment by both imprisonment of at least one year and up to five years and a monetary penalty for acceptance or receipt directly or indirectly of any benefit during the exercise of a commercial activity in breach of one's duties or the giving or offering of benefits directly or indirectly to a person in the private sector for the purposes of acting or omitting to act in breach of their duties.

3.3 Anti-bribery Regulation

There is no explicit provision for preventing and disclosing of violations of anti-bribery legislation. Such specific provisions exist only in money laundering regulations for certain categories of individuals and legal entities for reporting irregularities related to suspicious transactions.

However, guidelines from supervising and regulating authorities – for example, the Bank of Greece and the Hellenic Capital Market Commission – make special reference to acts of bribery and suggest ways of adjusting compliance programmes to the requirements of anti-corruption legislation. The Ministry of Finance also circulates guidelines on compliance programmes on a regular basis.

3.4 Insider Dealing, Market Abuse and Criminal Banking Law

Capital Markets-Related Crimes

Misrepresentation in connection with sales of securities

Intentional misrepresentation of information and/or making transactions using fraudulent means in order to manipulate market share prices for

purposes of personal gain are punishable by imprisonment under special provisions of Law 4443/2016.

Insider trading

Intentionally using inside information to gain profit from transactions on specific market shares is punishable by imprisonment under special provisions of Law 4443/2016.

Market manipulation in connection with the sale of derivatives

The use of confidential information in transactions connected with the sale of derivatives for the purposes of financial gain, the promotion of transaction under fraudulent or misleading circumstances, and the manipulation of prices, etc, are punishable by imprisonment under special provisions of Law 4443/2016.

Criminal Banking-Related Crimes

The principal legislation for banking regulation in Greece is Law 4261/2014. However, the criminal aspect of banking law refers to the criminal offence of breach of trust which is described in Article 390 GCC (see **3.1 Criminal Company Law and Corporate Fraud**).

3.5 Tax Fraud

Tax evasion is the main criminal tax offence in Greece and it is regulated by Articles 66–67 of Law 4174/2013 as amended by Law 4337/2015.

Under Article 66 of Law 4174/2013, as in force, tax evasion is deemed to have been committed when any person, with the intent of avoiding the payment of income tax, conceals any form of income by either failing to file income tax declarations or by filing inaccurate tax declarations. If convicted, the taxpayer can be sentenced to (i) imprisonment of two to five years if the income tax evaded each year exceeds the amount of

EUR100,000, or to (ii) imprisonment of five to 15 years if the income tax evaded each year exceeds the amount of EUR150,000.

Also under Article 66 of Law 4174/2013, as in force, tax evasion is deemed to have been committed when any person, with the intent of avoiding paying VAT, turnover tax, withholding tax or any other tax, duty or contribution which burdens the other contracting party, either does not pay the tax or pays the incorrect amount to the Greek state. In the event of a conviction, the taxpayer can be sentenced to (i) imprisonment of two to five years if the tax evaded each year exceeds the amount of EUR50,000, or to (ii) imprisonment of five to 15 years if the tax evaded each year exceeds the amount of EUR100,000.

Likewise under Article 66 of Law 4174/2013, as in force, tax evasion is deemed to have been committed when any person issues counterfeit or fictitious tax records, or accepts fictitious tax records or falsifies such records, irrespective of whether the taxpayer avoids the payment of any tax. In such cases, the taxpayer can be sentenced to (i) imprisonment of at least one year to five years if the amount of the fictitious tax records or falsified records exceeds the amount of EUR75,000, or to (ii) imprisonment of five to ten years if the amount of the fictitious tax records or falsified records exceeds the amount of EUR200,000.

There is no explicit provision to prevent tax evasion.

3.6 Financial Record-Keeping

Failure to keep accounting records constitutes an administrative offence and is punishable by fine.

Pursuant to the provision of Article 54E of Law 4174/2013 introduced by Law 4714/2020, if the tax control reveals that the company does not keep the appropriate accounting records, a fine equal to 15% of its income from business activity, as the result from the average of the declared revenues of the last three tax years, is imposed for each year for which the infringement is found. The minimum amount of the fine is EUR10,000 for the person liable to keep simple records and EUR30,000 for the person liable to keep double-entry records.

Under the recent provisions, failure to update the records and not show them on invitation are equated with non-keeping of records.

3.7 Cartels and Criminal Competition Law

Free Competition

Greek competition law provides for sanctions against potential infringers of Law 3959/2011 at two different levels: (i) fines and administrative penalty payments against the undertakings involved, and (ii) genuine criminal penalties against the responsible members of the BoD. As a rule, the stage of the administrative procedure and the investigation of the case – through the extensive investigative powers the competition authority is vested with – precede the possible criminal prosecution for violation of Article 44 of Law 3959/2011.

Under Article 44 paragraph 1 of Law 3959/2011, any person who executes an agreement, takes a decision or applies a concerted practice in breach of Article 1 or Article 101 of the Treaty on the Functioning of the European Union shall be punished by a fine of between EUR15,000 and EUR150,000. If the act referred to in the first sentence pertains to undertakings which are in actual or potential competition with each other,

a term of imprisonment of at least two years and a fine of between EUR100,000 and EUR1 million shall be handed down.

Under Article 44 paragraph 2 of Law 3959/2011, any person who abuses a dominant market position in breach of Article 2 of Law 3959/2011 or Article 102 of the Treaty on the Functioning of the European Union shall be punished by a fine of between EUR30,000 and EUR300,000. In order for a criminal prosecution pertaining to an abuse of a dominant position to be lawful, it should be proved, on the one hand, that the company under investigation holds a dominant position in the relevant market and, on the other hand, that the company in question is abusing its dominant position.

Unfair Competition

All practices in commercial, industrial and agricultural transactions, undertaken for competition purposes, which are contrary to business morals and ethics, such as misleading advertising, defamation, exploitation of other parties' goodwill, infringement of third parties' distinctive marks and leaking of trade secrets/know-how are punishable under Law 146/1914.

3.8 Consumer Criminal Law

The main product liability rules are set out in Article 6 of Law 2251/1994 on Consumers' Protection (Consumers' Protection Law, CPL). CPL has been amended several times and it was extensively revised for the last time in 2018.

Regarding criminal or administrative liability, GCC, the rules regulating the market of products and the provision of services (Law 4177/2013) and the special provisions of Article 13a of the CPL, apply.

More specifically, any person involved in the chain of supply of a defective product is potentially liable. A product is considered defective if it does not provide reasonably expected safety in view of all special circumstances set out in the Product Liability Directive. A product can also be considered defective if its expected performance does not correspond to its specifications. A product is not deemed defective solely because another better product was later circulated in the market. The concept of defectiveness especially related to lack of safety is supplemented by Ministerial Decision on General Product Safety (see Articles 6(5) and 7 of the CPL).

3.9 Cybercrimes, Computer Fraud and Protection of Company Secrets

Cybercrimes

Under Articles 370B, 370C and 370D GCC, it is a crime punishable with imprisonment or monetary penalty to unlawfully gain access to a computer device, whether or not connected to the computer network, by improper breach of a security mechanism for the purpose of obtaining, tampering with or destroying data or information without the express or tacit authorisation of the device holder.

Computer Fraud

Article 386A GCC punishes computer fraud – that is, every intentional influence, interference, false use of information, etc, in a computer system that results in financial loss for the purposes of personal gain. If computer fraud consists of a misdemeanour (ie, referring to losses below the threshold of EUR120,000), it shall be punished with imprisonment of between three months and five years and a monetary penalty. If it consists of a felony (fraud leading to losses exceeding EUR120,000), it shall be punished with imprisonment of up to ten years, or up to 15 years if it

is committed against the state, and a monetary penalty.

Protection of Company Secrets

Pursuant to Articles 22A to 22K added to Law 1733/1987 by Article 1 of Law 4605/2019, the use or disclosure of a trade secret is considered unlawful whenever it is carried out without the consent of the trade secret holder by a person who has demonstrably acquired the trade secret illegally or has violated a confidentiality agreement or other obligation not to disclose the trade secret or has violated a contractual or other obligation to limit the use of the trade secret.

The acquisition, use or disclosure of a trade secret is also considered unlawful when a person, at the time of acquisition, use or disclosure, knew (or ought to have known in the circumstances) that the trade secret had been acquired directly or indirectly by another person who was using or disclosing the trade secret unlawfully.

The production, offer or placing on the market of illegal goods, or the import, export or storage of infringing goods for those purposes shall also be considered to be the unlawful use of a trade secret where the person carrying out those activities knew (or ought to have known in the circumstances) that the trade secret has been used unlawfully.

When an infringement of a trade secret is suspected, the single-member Court of First Instance may, at the request of the trade secret holder, order any of the following injunctions against the alleged infringer:

- the cessation or, as the case may be, the prohibition of the use or disclosure of the trade secret on a temporary basis;

- prohibition of the production, supply, placement on the market or use of the infringing goods, or of the import, export or storage of infringing goods for those purposes;
- the seizure or delivery of goods suspected of being infringing, including imported goods, in order to prevent them from entering or being placed on the market.

3.10 Financial/Trade/Customs Sanctions

Under Greek law, there are no specific criminal offences related to financial, trade or customs sanctions. However, Greece may adopt resolutions of international bodies, such as the UN Security Council, as internal regulations – for example, arms embargo, investment bans, restriction of the importation or exportation of goods to and from certain countries.

3.11 Concealment

Concealment is standardised as an individual form of the criminal offence of receiving and disposing of the proceeds of crime (Article 394 GCC) on the one hand, and money laundering on the other hand (Article 2 paragraph 1b of Law 4557/2018).

Pursuant to Article 394 GCC, anyone who, among other things, conceals an object that came from a crime, regardless of whether or not the person responsible for the crime from which the object came is punishable, is punished with imprisonment of up to three years and with imprisonment of between three months and five years and a monetary penalty if it is an object of particular value.

Pursuant to Article 2 paragraph 1b of Law 4557/2018, anyone who conceals the truth as to the nature, origin, disposal, trafficking or use of property or the place where it is located or the ownership thereof, or the rights relating to it,

knowing that such property comes from criminal activity or from an act of participation in such activity, is punishable with imprisonment of up to eight years and a monetary penalty and a prison sentence of up to ten years as well as a monetary penalty if the illegally earned money exceeds the amount of EUR120,000. Criminal liability for the predicate offence does not exclude the punishment for money laundering if the elements of the objective nature of the acts of money laundering are different from those of the predicate offence.

3.12 Aiding and Abetting

According to the GCC there are three types of aiding and abetting, as follows.

Co-perpetrator

If two or more individuals have jointly committed, in whole or in part, the elements of the criminal offence as described in the text of the law, each of them is punished as the perpetrator (thus, with the penalty provided for by law).

Instigator

Anyone who has triggered another person to perpetrate the committed criminal offence is punished as the perpetrator.

Accomplice

Anyone who intentionally offered to another person any assistance before or during the perpetration of the committed criminal offence is punished by a reduced penalty. However, the court may impose the sentence of the perpetrator if the assisting perpetrator offered immediate assistance while committing the offence, placing the object of the crime at the disposal of the natural perpetrator.

3.13 Money Laundering

Law 4557/2018, as in force, is the main law against money laundering. According to Article

2, the act of money laundering is described as follows:

- knowingly converting and transferring property assets that are the proceeds of a crime, or participation in such an act for the purposes of concealing the illegal sources of the assets, or aiding anyone involved in said acts in order to assist in avoiding legal sanctions;
- concealing and covering up the truth, by any means, in relation to the source, movement, disposal, place of acquiring assets or asset-related rights, knowledge that a property is associated with the proceeds of criminal acts or participation in criminal activities;
- acquiring, possessing, managing or using any asset with the knowledge that at the time of possession, management, etc, such property asset was the result of a criminal activity; and
- using the financial sector by depositing or transferring proceeds of criminal activities for the purposes of making it appear as though they have legitimate sources.

It is required that the individual acts in the knowledge of the source of the assets and for the purposes of concealing or covering up their true origin. Therefore, there is no room for negligently committing an act of money laundering.

Article 4 of Law 4557/2018, as in force, contains a list of predicate offences of money laundering such as:

- bribing of domestic public officials;
- bribing of foreign officials or EU officials;
- fraud;
- tax evasion and tax fraud;
- capital market offences, including offences related to insider trading, antiquities trafficking;
- environmental offences;

- drug trafficking;
- people trafficking;
- organised crime; and
- terrorism financing.

Moreover, the list contains a general provision according to which any offence that results in asset or property profits and is punishable by law with a minimum of six months' imprisonment may be considered a predicate offence.

The sanctions are as follows:

- imprisonment of up to eight years and a monetary penalty;
- imprisonment of up to three years if the predicate offence is a misdemeanour and not a felony;
- imprisonment of up to ten years and a monetary penalty if the losses exceed the amount of EUR120,000; and
- imprisonment of up to 15 years and a monetary penalty if the offence is committed systematically for financial gain.

All risk-bearing companies (ie, banks, insurance companies, leasing companies, factoring companies, credit management companies, credit companies, electronic money institutions, payment institutions, postal companies, fund management companies, investment companies, stock brokerage firms, venture capital firms, real estate investment companies) as well as auctioneers, pawnbrokers, notaries and lawyers, have to comply with AML regulations and take necessary precautions.

The minimum elements of an AML compliance programme are related to validating the transaction as much as possible and identifying transacting parties in order to eliminate suspicions of

questionable conduct or unknown, untraceable origins of assets.

All covered institutions and their employees have three basic obligations (Articles 22 and 27 of Law 4557/2018):

- to report immediately to the Hellenic Financial Intelligence Unit (FIU) on suspecting that an act of money laundering has been committed or is about to be committed;
- to offer immediately all information requested by the FIU or other supervising authorities; and
- not to inform the client or any third party either that they have filed a report of suspicious transactions or that they have received a request to give information to any authority.

Breach of the latter prohibitions is punishable by imprisonment of up to two years and a monetary penalty. Breach of confidentiality with regard to the reporting of suspicious transactions is punishable by imprisonment of three months up to five years and a monetary penalty.

Regarding legal entities, failure to comply with anti-money laundering regulations may lead to imposition of the following penalties:

- administrative fine of EUR50,000 up to EUR10 million;
- removal of the directors, the managing director, management officers of the legal entity or other employees for a specific time period and prohibition of assuming other important duties;
- prohibition from carrying out certain activities, establishing new branches in Greece or abroad or increasing its share capital; and
- in case of serious and/or repeated violations, final or provisional withdrawal or suspension

of authorisation of the corporation for a specific time period or prohibition.

4. Defences/Exceptions

4.1 Defences

There are no specific defences regarding white-collar offences. In practice, the basic defence arguments of a legal entity's manager would mainly refer to either the legal entity's full compliance with all applicable laws, or facts supporting the exclusion of individual criminal liability (eg, the undertaking of specific management duties within the company).

4.2 Exceptions

There are no exceptions or de minimis exceptions for white-collar crimes, excluding tax offences where, according to Article 66 of Law 4174/2013, if the amount of taxes owed together with related fines does not exceed the amount of (i) EUR50,000 regarding VAT, and (ii) EUR100,000 regarding income tax, such tax evasion does not amount to a criminal offence.

There are no exempt industries or sectors for white-collar criminal offences.

4.3 Co-operation, Self-Disclosure and Leniency

Regarding co-operation with investigators or prosecuting authorities, see 2.7 **Deferred Prosecution** and 2.8 **Plea Agreements**.

Self-disclosure and co-operation with the authorities leading to the identification of others involved in the offences and to documents that prove such illicit conduct are mitigating factors in specific criminal offences.

Regarding antitrust law, leniency agreements are negotiated with the Hellenic Competition Commission (HCC). In that case, if the legal entity self-discloses and co-operates with HCC, and the result of such co-operation leads to the identification of others involved in the offences and to documents that prove such illicit conduct, the legal entity may enter into a leniency agreement that may result in the termination of the administrative and criminal proceedings.

Moreover, the person responsible remains unpunished if, by their own will and before being examined for their action, they announce it to the Public Prosecutor or the HCC or to any other competent authority, while at the same time providing evidence. In any other case, the essential contribution of the person responsible for the disclosure of the participation in those acts, by providing evidence to the authorities, is considered to be a mitigating circumstance and a reduced penalty is imposed.

Finally, charges for the offences of embezzlement, fraud and breach of trust are eliminated if the perpetrator, of their own will and before their first examination as a suspect or defendant, completely satisfies the injured party without unlawfully harming a third party. Only partial satisfaction eliminates the criminality in the corresponding part.

4.4 Whistle-Blower Protection

There are no incentives for whistle-blowers to report white-collar offences.

However, the GCC introduces a comprehensive framework of protective measures for the main witnesses who assist with uncovering corruption offences (ie, active and passive bribery of public officials, active and passive bribery of civil servants, bribery of a judge, trading in influence).

Article 218 GCCP states that during the prosecution of these crimes, all measures may be taken in order to effectively protect the main witnesses or their relatives from possible revenge actions or intimidation. The list of measures ranges from extrajudicial protection, starting with police protection and audio and video surveillance in order to ensure that witnesses and their relatives remain physically unharmed, to relocation within and outside the country, including the possibility of transferring a civil servant to another unit and anonymity of the witness in the testimony report.

The protective regime is granted by ministerial decision upon a proposal by the Public Prosecutor who must specify the measures requested. Protective measures may be removed when the protected person requests in writing or when they do not co-operate effectively with the authorities.

5. Burden of Proof and Assessment of Penalties

5.1 Burden of Proof

The burden of proving the guilt of the defendant lies on the prosecution, which must prove the particulars of the offence beyond reasonable doubt. Defendants have the right to be presumed innocent until the hearing of their case and the issuance of a final judgment by the competent criminal tribunal.

Reasonable doubts on guilt result in an acquittal (in dubio pro reo principle).

5.2 Assessment of Penalties

Regarding the guidelines in the event of a plea agreement, etc, see **2.8 Plea Agreements**.

Article 79 GCC refers to a number of criteria to be taken into account when determining sentences upon individuals. Factors to be considered by the court include, inter alia, the nature of the offence committed, the special circumstances under which the perpetrator acted, the personality, the motives of the criminal act, etc.

Article 84 GCC contains a number of generally applicable leniency factors to be taken into consideration before sentencing – for example, the fact that the defendant led a lawful life prior to the offence or for long after the offence, or that they showed remorse and seriously tried to minimise the consequences of their criminal acts.

POTAMITISVEKRIS prides itself on having a leading market position and expertise on complex issues of white-collar crime. The firm is structured as a genuine partnership and therefore the specialisation is fundamental to its model. **POTAMITISVEKRIS'** white-collar crime practice sets it apart from the competition since its full-line service attribute enables it to advise and represent high-profile clients with customised approaches based on industry knowledge and the many years' experience of its court-assigned attorneys. The dynamic and agile team

of white-collar crime focuses on cases of breach of trust, fraud, anti-money laundering practices, tax offences, violations of the legislation regarding the protection of personal data (breach of privacy) as well as on criminal law aspects of regulated activities (competition – antitrust law, capital markets), etc. The practice's market footprint has been further expanded during the last years by the expansion of its international and domestic clientele, such as AstraZeneca Greece, Alpha Bank, Folli Follie and Fais Group.

Authors



Konstantinos P. Papadiamantis has more than 25 years of experience in representing parties in white-collar criminal cases. Since 2009 – when he joined PV to develop its litigation

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