

NATIONAL ANALYSIS REPORT

based on the 28 research questions

GREECE

PART I – LEGAL FRAMEWORK AND JUDICIAL PRACTICE ANALYSIS - BACKGROUND AND STATISTICAL DATA (DESK RESEARCH)

1. Legal framework and sanctions applied to legal entities for corruption crimes, money laundering, fraud, and crimes against financial interest of European Union.

i. Criminal liability of legal persons:

Within the Greek legal framework, **legal persons may not be held criminally liable**. According to the principle of individual culpability, only natural persons may be held liable for acts they committed and be criminally punished.¹

In fact, **article 14 paragraph 1 of the Greek Penal Code** defines “crime” as an unjustified act imputable to the perpetrator and punishable by law. As such, only natural persons and not legal ones may be subjects of any criminal offense. Criminal punishment without an individual’s act would also violate the **Greek Constitution** which defines “crime” in **article 7 paragraph 1** as a person’s act constituting a criminal offense by virtue of law prior to its commission.

The lack of criminal sanctions for legal persons in the Greek legal framework does not mean, though, that they cannot be punished effectively. This gap is filled by administrative sanctions and provisions on civil liability, which also apply to corruption related offenses, as discussed below.

ii. Civil liability of legal persons:

Greece has ratified the **Council of Europe Civil Law Convention on Corruption** with Greek Law 2957/2001 (Government Gazette A’ 260/12.11.2001), which provides for compensation for damages, in addition to contract annulment. The **Greek Civil Code** also entails a number of general provisions that could serve as the basis for legal persons’ civil liability in case of corruption, such as compensation for damages, illicit enrichment and annulment of the legal act.²

iii. Administrative liability of legal persons:

In respect to legal persons’ liability, Greek administrative law provides for a wide spectrum of sanctions for corruption-related offenses.

¹ Margaritis, Michail and Anta Margariti, *Penal Code, Interpretation – Application*, p. 43, Dikaio & Oikonomia, P.N. Sakkoulas Publishers (2014, in Greek).

² However, according to the UNODC Country Review Report of Greece for the review cycle 2010-2015 para. 126, page 55, there have been no reported cases where legal persons have been found civilly liable for corrupt acts.

It is worth mentioning **Article 51 of Greek Law 3691/2008** (the main Greek anti-money laundering act, Government Gazette A' 166/05.08.2008), as it covers the administrative liability of legal entities.

In particular, the said article (article 51, paragraph 1 of Greek Law 3691/2008, as amended) provides that in case where **money laundering** offenses, as well as predicate offenses, such as:

- **passive bribery** (article 235 of the Greek Penal Code),
- **active bribery** (article 236 of the Greek Penal Code),
- **bribery and corruption of politicians and judges** (articles 159, 159A and 237 of the Greek Penal Code)

are committed for the benefit of a legal person by a physical person acting either individually or as a part of a body of the legal person and who holds a leading position within the legal person based on a power of representation of the legal person or an authority to take decisions on behalf of the legal person or an authority to exercise control within the legal person, the legal person shall be punished.

The sanctions that will be imposed depend on whether the legal person is an “obligated legal person” or not. “Obligated legal persons” are provided in article 5 of Greek Law 3691/2008 and include among others credit institutions, financial institutions, venture capital companies, companies providing business capital etc.

Hence, according to article 51, paragraph 1, section a’ of Greek Law 3691/2008, as amended, **obligated legal persons** may be punished **cumulatively or alternatively** with:

- An administrative fine of EUR 50.000 up to EUR 5.000.000; the administrative fine shall always apply regardless of the imposition of other sanctions.
- Final or provisional (1 month up to 2 years period) withdrawal or suspension of the permit for the operation of the legal person or prohibition from carrying out its business.
- Prohibition from carrying out specific business activities or from the establishment of branches or capital increase for the same period of time.
- **Final or provisional exclusion from public grants, aids, subsidies, awarding of contracts for public works or services, procurement, advertising and tenders of the public sector or of the legal persons belonging to the public sector.**

According to article 51 paragraph 1, section b’ of Greek Law 3691/2008 (as amended), **non-obligated legal persons** may be punished **cumulatively or alternatively** with:

- An administrative fine of EUR 20.000 up to EUR 2.000.000.
- Final or provisional (1 month up to 2 years period) withdrawal or suspension of the permit for the operation of the legal person or prohibition from carrying out its business.
- Prohibition from carrying out specific business activities or from the establishment of branches or capital increase for the same period of time.
- **Final or provisional exclusion from public grants, aids, subsidies, awarding of contracts for public works or services, procurement, advertising and tenders of the public sector or of the legal persons belonging to the public sector.**

Moreover, it should be noted that according to paragraph 2 of article 51 of Greek Law 3691/2008, when the commission of the crime by a **natural person** for the benefit of a legal person was made possible due to the lack of supervision or control, the following sanctions apply, **cumulatively or alternatively**:

- An administrative fine of EUR 10.000 up to EUR 1.000.000 for **obligated legal persons** and an administrative fine of EUR 5.000 up to EUR 500.000 for **non-obligated legal persons**.

In addition, the **legal person** may be subject to:

- Withdrawal or suspension of the permit for the operation of the legal person or prohibition from carrying out its business.
- Prohibition from carrying out specific business activities or from the establishment of branches or capital increase for the same period of time.
- **Exclusion from public grants, aids, subsidies, awarding of contracts for public works or services, procurement, advertising and tenders of the public sector or of the legal persons belonging to the public sector.**

All the above sanctions can be ruled for a period of up to six months.

Although the said article provides in paragraph 4 that the liability of legal persons shall be independent of any criminal, civil or administrative liability of the natural persons involved, in practice, administrative proceedings against corporations commence once the competent authority or the Minister of Justice, if the case involves a non-obligated legal person, is notified by the Public Prosecutor who has initiated proceedings against the natural persons.³ In fact, Joint Ministerial Decision 1130/2730/04.11.2010 of Ministers of Finance and Justice provides in article 2 that the prosecuting authorities notify the Financial and Economic Crime Unit of the Greek tax authorities (SDOE), once they initiate criminal proceedings against the natural person.⁴ According to article 1 of the said Decision, the Financial and Economic Crime Unit of the Greek tax authorities (SDOE) is responsible for imposing and enforcing the aforementioned administrative sanctions.

Concerning the criminal offences that will lead to the administrative sanction of exclusion from public grants, aids, subsidies, awarding of contracts for public works or services, procurement, advertising and tenders of the public sector or of the legal persons belonging to the public sector, the following table summaries the relevant corruption, money laundering, frauds and frauds against EU offences.

³ UNODC, *Country Review Report of Greece*, para. 132, page 56 (2015).

⁴ UNODC, *Country Report for Greece, Review Cycle 2010-2015*, page 56, para. 132.

Factual data of legal definition		Clusters sorted out according to national legal framework				Research objective
The offence name ⁵	Legislative source ⁶	Corruption crimes	Money laundering	Fraud	Crimes against the financial interest of EU	Exclusion applicable
Bribery of an official	Article 236 Penal Code	✓			✓	✓
Venality of an official	Article 235 Penal Code	✓			✓	✓
Venality and bribery of judges	Article 237 Penal Code	✓			✓	✓
Venality of political functionaries	Article 159 Penal Code	✓			✓	✓
Bribery of political functionaries	Article 159A Penal Code	✓			✓	✓
Venality and bribery in the private sector	Article 237B Penal Code	✓			✓	✓
Infidelity in the discharge of public service	Article 256 Penal Code	✓			✓	
Infidelity	Article 390 Penal Code	✓			✓	
Embezzlement in the discharge of public service	Article 258 Penal Code	✓			✓	
Embezzlement	Article 375 Penal Code	✓			✓	
Exploitation of entrusted assets	Article 257 Penal Code	✓			✓	
Trading in influence - Intermediaries	Article 237A Penal Code	✓			✓	

⁵ Please use the official translation into English of respective offences' name

⁶ Indicate Law title and reference to article. Mention [if part of directive transposal or national specific legislation]

Breach of duty	Article 259 Penal Code	✓			✓	
Fraud	Article 386 Penal Code			✓	✓	
Fraud affecting EU financial interests	Law 2803/2000 ratifying the EU PIF Convention				✓	✓
Money laundering	Law 3691/2008		✓		✓	✓

2. List and briefly describe the legal framework on exclusion from public procurement assembly in your country, and your comments about its synergy in your country's legal system. Please include the motives of exclusion from public procurement according to the national legal framework.

Apart from the above mentioned administrative sanction of exclusion provided in article 51 of Greek Law 3691/2008, that and may be imposed on legal persons for money laundering and other corruption-related offenses, **Greek Law 4412/2016 on Public Procurement of Works, Supplies and Services** (Government Gazette A' 147/08.08.2016), which transposed into the national legal framework **Directive 2014/24/EU** on Public Procurement and **Directive 2014/25/EU** on Procurement by Entities Operating in the Water, Energy, Transport and Postal Services Sectors, also provides for the **exclusion of economic operators from procurement procedures, if they are involved in corrupt practices.**

In particular, article 73 of Greek Law 4412/2016 sets out the various grounds for exclusion from public procurement and distinguishes between **mandatory and optional grounds for exclusion.**

More specifically, according to paragraph 1, article 73, of Greek Law 4412/2016, contracting authorities exclude economic operators from public procurement procedures, once they prove, with the relevant verification process provided in the law, or once they become aware that the economic operator has been the subject of a conviction by a final judgment for one of the following reasons:

- participation in a criminal organization**, as defined in Article 2 of Council Framework Decision 2008/841/JHA;
- bribery**, as defined in Article 3 of the Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA on Combating Corruption in the Private Sector as well as it is defined in the national legislation or in the national law of the economic operator;
- fraud** within the meaning of Article 1 of the Convention on the Protection of the European Communities' Financial Interests, which was transposed into the Greek legal framework with Law 2803/2000;
- terrorist offenses** or offenses linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;

- e. **money laundering or terrorist financing**, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council, which was transposed into the Greek legal framework with Law 3691/2008;
- f. **child labor and other forms of trafficking in human beings** as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.

It should be noted that when the economic operator is a **natural person**, the contracting authority shall examine whether the aforementioned grounds for exclusion are met in that person.

If the economic operator is a **legal person**, the contracting authority shall examine whether the aforementioned grounds for exclusion are met in the natural person against whom the final judgment was rendered, when this person is a member of the administrative, management or supervisory body of the economic operator or has powers of representation, decision or control therein, given that the Greek law does not provide for the criminal liability of legal persons.⁷

According to paragraph 2 of the said article, **economic operators shall also be excluded**, if the contracting authority:

- i. is aware that the economic operator is in breach of its obligations relating to the **payment of taxes or social security contributions**, provided that this has been established by a judicial or administrative decision having final and binding effect, in accordance with the legal provisions of the country in which it is established or with the national legislation, or/and
- ii. can demonstrate by appropriate means that the economic operator is in breach of its obligations regarding the **payment of taxes or social security contributions**.

This provision is not applicable when the economic operator has fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

According to paragraph 4 of said article, contracting authorities **may exclude from participation in a procurement procedure any economic operator** in any of the following situations:

- a. where the contracting authority can demonstrate by any appropriate means a **violation of applicable obligations** referred to in Article 18(2) that relate to environmental, social and employment law obligations within the execution of the contract;
- b. where the economic operator is **bankrupt or is the subject of insolvency or winding-up proceedings**, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national laws;
- c. where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into **agreements with other economic operators aimed at distorting competition**;

⁷ Hellenic Single Public Procurement Authority, *Guideline 20 - Grounds for Exclusion from Participation in Public Procurement Procedures*, Athens, 14.06.2017, page 5.

- d. where a **conflict of interest** within the meaning of Article 24 cannot be effectively remedied by other less intrusive measures;
- e. where a **distortion of competition** from the prior involvement of the economic operators in the preparation of the procurement procedure, as referred to in Article 41, cannot be remedied by other less intrusive measures;
- f. where the economic operator has shown significant or persistent **deficiencies in the performance of a substantive requirement** under a prior public contract, a prior contract with a contracting entity or a prior concession contract which led to early termination of that prior contract, damages or other comparable sanctions;
- g. where the economic operator has been found **guilty of serious misrepresentation** in supplying the information required for the verification of the absence of grounds for exclusion or the fulfillment of the selection criteria, has withheld such information or is not able to submit the supporting documents required pursuant to Article 79;
- h. where the economic operator has undertaken to **unduly influence the decision-making process of the contracting authority**, to obtain **confidential information** that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award;
- i. where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of **grave professional misconduct**, which renders its integrity questionable.

In case the contracting authority wishes to include any of the non-mandatory grounds for exclusion in its declaration, then this ground becomes mandatory in the sense that the contracting authority must examine whether such ground is present or not.⁸

According to article 305 of Greek Law 4412/2016, which transposes article 80 of Directive 2014/25/EU, the pre-selection and qualitative selection of economic operators may include the grounds for exclusion listed in article 73.

Finally, it should be noted that **Greek Law 4413/2016** (Government Gazette A' 148/08.08.2016) on the Award of Concession Contracts, which transposes Directive 2014/23/EU on the award of concession contracts, provides in article 39 paragraph 4, similar grounds for exclusion.

3. Legal framework on exclusion from public procurement assembly in your country, and your comments about its synergy in your country's legal system.

All the above provide the legal framework on exclusion from public procurement.

Hence, conclusively, exclusion may be imposed:

⁸ Hellenic Single Public Procurement Authority, *Guideline 20 - Grounds for Exclusion from Participation in Public Procurement Procedures*, Athens, 14.06.2017, page 8.

- as an administrative sanction by the Financial and Economic Unit of the Greek tax authorities (SDOE) in accordance with the Greek anti-money laundering legislation,
- by a common Ministerial decision by the Ministers of (a) Finance and Growth, (b) Tourism, (c) Justice, Transparency and Human Rights and (d) Infrastructure, Transportation and Networks in public procurement procedures, in accordance with Greek Law 4412/2016 (art. 74 para. 3).

The sanction of exclusion from public procurement cannot be imposed as an additional criminal sanction by criminal courts, as the Greek legal system does not recognize the criminal liability of legal persons.

4. Besides the additional sanction provided by the court, does the law provide any administrative mechanism of exclusion from public procurement for acts that are not of criminal liability?

- ☐ No, and it does not apply in practice
- ☐ Not specifically, but it applies in practice by contracting authorities

✓ Yes, it is provided by law (and applies in practice)

According to **article 73 paragraph 4 of Greek Law 4412/2016**, a contracting authority **may exclude** an economic operator from public procurement proceedings for acts that are not of criminal liability and in situations that do not necessarily raise criminal liability, such as violation of applicable obligations, bankruptcy, insolvency and winding up proceedings, distortion of competition, conflict of interest, deficiencies in the performance of a substantive requirement, undue influence of the decision-making process, grave professional misconduct (see *also* response to question 2 where the exclusion grounds are discussed).

In addition, **article 73 paragraph 2 of Greek Law 4412/2016** provides for the mandatory exclusion of an economic operator in case of breach of its obligations to pay taxes and social security contributions. The latter breach does not necessarily lead to the initiation of criminal proceedings.

5. Acts representing cause of exclusion from public procurement in your country, and their implementation regime.

Acts	Cause of exclusion	By decision of the court	Provided by public procurement legal framework and enforced by contracting authorities with no need of a court's decision
Corruption crimes → Bribery	✓		✓
Money laundering	✓		✓

Fraud	✓		✓
Participation (Establishment) in an organized criminal group	✓		✓
Crimes against financial interests of EU → Fraud against the financial interests of EU	✓		✓
Conflict of interest	✓		✓
Unfair competition	✓		✓
False statements in public procurement procedures	✓		✓
Terrorist offenses	✓		✓
Human traffic and exploit	✓		✓
Non-payment of taxes or social security contributions	✓		✓
Deficient performance in previous public contracts implementation	✓		✓
Serious professional misconduct	✓		✓
Unlawfully influencing contracting authority's decision in order to obtain advantages during public procurement procedure	✓		✓
Unlawfully obtaining confidential information that provides the bidder with private advantages within the public procurement procedure	✓		✓
Others specified at question no 1			
Child labor	✓		✓
Violation of applicable obligations in the areas of environmental, social and employment law	✓		✓
Bankruptcy, insolvency or winding-up proceedings	✓		✓

6. Exceptions leading to suspension of the sanction are or when exclusion from public procurement does not particularly apply, both as additional criminal sanction and administrative sanction in your country.

According to article 73 paragraph 3 of **Greek Law 4412/2016**, a contracting authority may provide in the contract for a **derogation from the mandatory exclusion** provided in paragraphs 1 and 2 **on an exceptional basis, for**

overriding reasons relating to the public interest, such as public health or protection of the environment, and/or where the mandatory exclusion, in case of paragraph 2, would be clearly disproportionate, in particular where only minor amounts of taxes or social security contributions are unpaid or where the economic operator was informed of the exact amount due following its breach of its obligations relating to the payment of taxes or social security contributions at such time that it did not have the possibility of taking measures, as provided for in the third subparagraph of paragraph 2, before expiration of the deadline for requesting participation or, in open procedures, the deadline for submitting its tender. This is an exception from the mandatory exclusion grounds that applies to exceptional cases for overriding reasons that relate to the protection of the public interest or for reasons that are being mandated by the principle of proportionality.⁹

In addition, according to paragraph 5 of said article, the contracting **authority may not exclude an economic operator that is bankrupt or is the subject of insolvency or winding-up proceedings, or where its assets are being administered by a liquidator or by the court, or where it is in an arrangement with creditors, or where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national laws, if it can establish that the economic operator is able to perform the contract taking into consideration the relevant provisions and the measures on the continuation of its business activities.** In other words, despite the grounds for exclusion mentioned in this section, the contracting authority may not exclude the economic operator, provided the latter is in a position to perform the contract, taking into consideration relevant laws and the measures that it has taken to continue its business activities. This would be the case were the economic operator may participate in procurement proceedings, because it will be sold and will continue to operate as a business entity.¹⁰

Moreover, an economic operator **may not be excluded if it has taken self-reform measures in order to prove its reliability.** In particular, in accordance with paragraph 7 of article 73, any economic operator that is found in one of the situations referred to in paragraphs 1 and 4 (mandatory and non-mandatory grounds for exclusion) may provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. If such evidence is considered as sufficient, the economic operator concerned shall not be excluded from the procurement procedure. Such measures may include the payment or the commitment to pay compensation in respect of any damages caused by the criminal offense or the misconduct, active collaboration with investigative authorities, implementation of technical, organization or personnel measures. Those measures are evaluated in accordance with the severity and the special circumstances of the criminal offense or misconduct. If those measures are considered sufficient, the contracting authority will not exclude the economic operator solely on the basis of those grounds. If those measures are found insufficient, then the contracting authority will exclude the economic operator and inform the latter on its decision.¹¹

⁹ Hellenic Single Public Procurement Authority, *Guideline 20 - Grounds for Exclusion from Participation in Public Procurement Procedures*, Athens, 14.06.2017, page 7.

¹⁰ Hellenic Single Public Procurement Authority, *Guideline 20 - Grounds for Exclusion from Participation in Public Procurement Procedures*, Athens, 14.06.2017, page 11.

¹¹ Hellenic Single Public Procurement Authority, *Guideline 20 - Grounds for Exclusion from Participation in Public Procurement Procedures*, Athens, 14.06.2017, page 27.

7. Have there been any recent changes within the legal framework that affected the conditions of exclusion from public procurement in your country? Briefly describe it in comment section.

☒ YES

☐ NO

There have been several developments in the area of public procurement law in Greece.

Greek Law 4412/2016 on Public Procurement of Works, Supplies and Services (Government Gazette A' 147/08.08.2016) transposed into the Greek legal framework Directives 2014/24/EU and 2014/25/EU repealing presidential decrees 59/2007 and 60/2007 which had introduced into the national framework former Directives 2004/17/EU and 2004/18/EU respectively.

Greek Law 4413/2016 (Government Gazette A' 148/08.08.2016) on the Award of Concession Contracts transposed Directive 2014/23/EU into the Greek legal framework.

8. Have there been any recent changes within the criminal framework that affected the conditions of applying the additional sanction of exclusion from public procurement in your country? Briefly describe it in comment section.

☐ YES

☒ NO

As mentioned above, the Greek criminal law does not provide for the exclusion of legal entities from public procurement procedure as an additional criminal sanction.

9. Statistical data.

Item	2013	2014	2015	2016
1. Total number of legal entities sanctioned for corruption crimes	Greek law does not provide for the criminal liability of legal persons. Hence, these statistics are not available.			
2. Total number of legal entities sanctioned of money laundering				
3. Total number legal entities sanctioned for fraud (domestically incriminated)				
4. Total number of legal entities sectioned for crimes against financial interest of European Union				
5. Number of sanctions of exclusion from public procurement applied to legal entities				

6. Number of sanctions of exclusion from public procurement applied to legal entities which committed corruption crimes	Law 4412/2016 was recently adopted, hence, such data are not available.
7. Number of sanctions of exclusion from public procurement applied to legal entities which committed money laundering crimes	
8. Number of sanctions of exclusion from public procurement applied to legal entities which committed fraud	
9. Number of sanctions of exclusion from public procurement applied to legal entities which committed crimes against financial interest of European Union	

10. In which moment of the public procurement procedure does the exclusion may be applied?

☐ Only during the selection phase if there is evidence¹² that the private legal person was liable for conditions of exclusion

✓ In any moment of the public procurement procedure if the offences have been committed during the public procurement procedure's progress

According to paragraph 6 of article 73 of Greek Law 4412/2016, the exclusion can take place at any time, if the economic operator is found to have committed the acts provided in all exclusion grounds mentioned under question 2.

11. Is the length of the sanction of exclusion from public procurement provided by legal framework?

Please present in the comment section the general length of exclusion from public procurement as provided by criminal framework or judicial practice.

✓ The length of exclusion from public procurement is fixed and established by law

☐ The length of exclusion from public procurement is decided by the court in respect to the gravity of the offences committed.

According to article 74 paragraph 2 of Law 4412/2016, the length of exclusion is governed by the principle of proportionality taking into consideration the gravity of the offense or misconduct, the time that has passed from

¹² Please also highlight in the comment section what may represent baseline evidence in order to determine the exclusion from public procurement

its commission, the duration, recidivism, the intention or negligence and the measures that it has taken to prevent similar offenses or misconduct in the future.

If the exclusion period has not been determined with a final court decision, the maximum exclusion period **cannot exceed 5 years** from the conviction date with a final judgment in cases of paragraph 1 of article 73 and **3 years** from the date of the incident in cases mentioned in paragraph 4 of article 73.

12. Do the judges have a level of discretion in ruling the additional sanction of exclusion from public procurement, besides the common financial and criminal sanctions?

☐ YES

☐ NO

N/A, since the sanction of exclusion is imposed by administrative authorities.

13. Does the legal framework specifically provide exclusion from public procurement for subcontractors under the same criteria as for the contractors?

☒ YES

☐ NO

Under article 131 paragraph 5 of Law 4412/2016, contracting authorities may verify whether there are grounds for exclusion for subcontractors according to articles 73 and 74. In such cases, the contracting authority i) may require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion, ii) may require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion.

If the economic operator declares a sub-contractor in accordance with article 58 of Law 4412/2016 and the share of the contract it intends to sub-contract does not exceed the 30% of the total amount of contract, the contracting authority has the discretion to verify whether there are any grounds for exclusion. If the share of the contract it intends to sub-contract exceeds 30%, then the contracting authority has the obligation to verify whether any exclusion grounds are present.¹³

14. Does the administrative framework provide the possibility for contracting authority to exclude from public procurement legal persons if they are subject of judicial proceedings?

☐ YES

☐ Only under specific circumstances

¹³ Hellenic Single Public Procurement Authority, *Guideline 20 - Grounds for Exclusion from Participation in Public Procurement Procedures*, Athens, 14.06.2017, p. 32

✓ NO

According to article 73 paragraph 4 of Law 4412/2016, the compulsory grounds for exclusion require a final conviction.

- 15. What is the maximum period of exclusion provided by the national framework for situations provided by Directive 2014/24/EU of The European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC¹⁴, at art. 57(7)? Please explain how these lengths have been established if different from the ones in the directive. (maximum 1000 words)**

See response to question 11 – same with Directive .

- 16. Is there any public database of legal persons convicted for criminal offences available in your country?
If something similar is available, please specify.**

☐ YES

✓ NO

N/A, as according to the Greek legal system, legal persons may not be held criminally liable.

- 17. Is there any public database of legal persons that are subject of debarring from public procurement?
If something similar is available, please specify.**

☐ YES

☐ NO

Article 74 paragraph 6 of Law 4412/2016 provides for the establishment of a National Database of Public Contracts which shall maintain a list of economic operators which have been debarred and shall include their data and the period of exclusion.

However, such Database remains to be established with a relevant ministerial decision.

¹⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&from=EN>

PART II –OPINION AND INPUT FROM JUDICIAL EXPERTS AND OTHER STAKEHOLDERS (ONLINE OR FACE TO FACE QUESTIONNAIRES APPLICATION - INTERVIEW AND/ OR FOCUS - GROUPS)

General Comment: Law 4412/2016 which introduced Directive 2014/24/EU into the Greek legal framework, entered into force on August 8th, 2016. Hence, some experts underlined that it is too early to evaluate its efficiency and its implementation and refrained from providing answers.

18. Is the legal framework on exclusion from public procurement considered adequate by practitioners?

☐ Perfectly adequate

X There are spaces for improvement

X It needs major adjustments

☐ Consensus has not been reached on this topic

The majority of experts argue that it is too early to assess the legal framework on exclusion from public procurement since it was only recently adopted. There is agreement among them as they consider it adequate in general, yet they recognize that there are spaces for improvement. One expert suggested the need to introduce integrity pacts.

19. Is the criminal framework on exclusion from public procurement as an additional sanction considered adequate by practitioners?

☐ Perfectly adequate

☐ There are spaces for improvement

☐ It needs major adjustments

☐ Consensus has not been reached on this topic

N/A in the Greek legal framework.

20. Do the experts consider the lengths of exclusion from public procurement being adequate?

☐ Perfectly adequate

X There are spaces for improvement

X It needs major adjustments

☐ Consensus has not been reached on this topic

☐ NA

One expert argued that the length of exclusion is quite strict and that a long period of exclusion would seriously damage small and medium enterprises.

Another expert suggested that the criteria provided in the law regarding the length of exclusion need to be more clear.

21. If there is no length of exclusion being provided by law, do experts consider appropriate to have fixed lengths for the sanctions establish?

☒ YES

☐ NO

☐ Consensus has not been reached on this topic

☐ NA

The Greek legal framework provides for a specific length of exclusion.

22. Do differences in the legal framework of exclusion from public procurement among countries make it difficult, in your country, to carry out public procurement that have cross border dimension?

☒ It frequently happens

☒ It rarely happens

☐ Other

An expert argued that this could only happen if the national legal framework is stricter than the EU Directives. It has also been argued that this is a matter of interpretation and that it is too early to assess relevant issues.

23. Do experts consider appropriate to have national public databases containing companies convicted for criminal offences, including those that make subject of exclusion from public procurement?

☒ YES

☐ NO

☒ Other

Experts generally agree that it is necessary. An expert also mentioned the need to connect those databases with other databases such as the ones held by Tax Authorities.

24. Do experts consider that exclusion from public procurement as an administrative sanction applied for other offences, that are not criminal, breaks the free competition principle? (maximum 1000 words)

There is apparently some disagreement among experts. Some argue that exclusion from public procurement as an administrative sanction applied for other offences, that are not criminal, breaks the free competition

principle, while others disagree. An expert argued that free and fair competition is actually harmed by those who engage in corrupt and fraudulent activities.

25. Do experts consider that exclusion from public procurement as an administrative sanction applied to a legal person, who is under judicial proceedings in respect to criminal acts, breaks the presumption of innocence principle? (maximum 1000 words)

N/A, as no corporate criminal liability is recognized in the Greek legal system.

PART III – CASE STUDIES ANALYSIS (DESK RESEARCH AND/OR INTERVIEW)

- 26. Please provide two case studies where private legal persons were convicted for corruption, money laundering, fraud or crimes against the interest of European Union, and additional sanction of exclusion from public procurement were applied by the court. If no such cases are available, please provide any 2 case studies where additional sanction of excluding from public procurement would have been necessary but not applied or where it has a major role.**

The Greek legal system does not provide for corporate criminal liability; thus, the criminal conviction of a legal person is not possible.

The below-stated cases of criminal conviction of merely natural persons highlight the deficiency of the system, which fails to produce adequate ramifications for the legal persons involved, be it legal persons of private or public nature.

A. CASE STUDY 1: PRIVATE SECTOR

In June 2017¹⁵, the Greek press published the case of penalty sentences of three to five years having been imposed by the Court of Appeal of Thessaloniki (Greece) against five people accused of making fraudulent declarations of quantities of industrial tomatoes in the framework of EU subsidies, during the years 2000-2002 in Serres (Greece), damaging the financial interests of the European Union.

Among those convicted for fraud, there are tomato producers/manufacturers and heads of agricultural associations and of producers of that period.

No convicted person was jailed, as the court decided to suspend the sentences or to turn them into pecuniary sanctions.

According to the indictment, the total amount of fraud exceeded € 900,000.

For the same case, a total of 34 people were acquitted by the first-instance tribunal, among them producers, agronomists, agricultural-union employees and others.

B. CASE STUDY 2: PUBLIC SECTOR

In May 2017¹⁶, the Greek press published the case of prosecution against the Mayor of Neapoli – Sykies (Greece) and another member of the municipality for fraud at nurseries with regard to EU funds, ordered by Prosecutor of Corruption.

¹⁵ <http://www.voria.gr/article/defterovathmia-katadiki-gia-ikoniki-paragogi-ntomatas-sto-nomo-serron>; <http://www.newsit.gr/egklhma/megali-apati-me-ntomates-stis-serres-pano-apo-900-000-eyro-i-zimia-stin-e-e-apo-tis-epidotiseis/1525321/>; <http://www.tanea.gr/news/world/article/5455355/katadikh-pente-atomwn-gia-apath-me-epidothseis-ntomatas/>

¹⁶ <http://www.aftodioikisi.gr/ota/dimoi/nea-poiniki-dioxi-gia-kakourgima-kata-tou-dimarxou-neapolis-sikeon/>; <http://www.newsit.gr/topikes-eidhseis/thessaloniki-dioksi-se-varos-toy-dimarxoy-neapolis-sykeon/1026497/>; <http://www.voria.gr/article/dioxi-se-daniilidi-gia-kakodiachirisi-se-vrefonipiakous-stathmous>

The case file is in the hands of a Special Interrogator who carries out investigation and is expected to address the accused in the next period.

In particular, the Mayor of Neapoli – Sykies (Greece) is accused of "fraud against the financial interests of European communities" for his term as President of a Municipal Enterprise. The same category is faced also by another former President of a similar municipal enterprise of the municipality.

The above entity is said to have received a total grant of around € 300,000 for the operation of nurseries for the period 2011-2013, but did not pay the money where it should – instead, it used it for other municipal structures. Moreover, the competent municipal authorities were not informing the competent state and EU authorities about the exact number of children to be hosted each month at the nurseries of the Municipality.

As a result, the European Social Fund (ESF), has asked for the return of the funds.

Investigation goes on also for the period 2014-2016.

PART IV – CONCLUSION AND RECOMMENDATIONS

27. Conclusion

As this study has shown, Greece has made several efforts to transpose into the national legal framework Directive 2014/24/EU on public procurement. However, since Law 4412/2016 is very recent and has not even completed one year into force, conclusions cannot be easily drawn. The effectiveness of its implementation remains to be seen in the near future. It is, thus, recommended to follow up the present study in the next five years, so as to allow for safer conclusions and comparative points on the basis of data, statistics and case-law.

28. Recommendations on how to improve national legal framework and practice in the matter of the application of exclusion from public procurement as an additional sanction to the one for corruption, money laundering, fraud or related criminal offenses

Given the recent enactment of the relevant provision into the Greek legal system in conjunction with the non-recognition of corporate criminal liability by the Greek legal system, only the following recommendations can be made for the time being:

I. For judicial officials, judiciary and anti-fraud entities:

1. **Enact into the Greek legal system the notion of corporate criminal liability**, so as to be able to apply the exclusion from public procurement as an additional sanction in cases of criminal conviction of a legal entity for corruption, money laundering, fraud or related criminal offenses.
2. **Publish debarment lists**. Consider international debarment lists as a basis for exclusion.
3. Carry out **checks on the ownership** of bidders and subcontractors.
4. **Introduce integrity pacts** in public contracting monitored by civil society groups.
5. **Codify and unify the complex national legal framework** on public procurement; avoid duplicative provisions.
6. Provide **effective legal remedies** to bidders.
7. **Train personnel** in identifying red flags; **hire personnel** with expertise in anti-corruption and procurement law.
8. Consider the adoption of measures addressed to **specific sectors prone to corruption** such as the health sector¹⁰. Ensure the **effective cooperation** between the following co-competent authorities:
 - Hellenic Single Public Procurement Authority, an independent administrative authority, whose mission is to monitor and coordinate public contracts, develop and support a national strategy in the field of public contracts;
 - Central Contracting Authorities, having as their goal the modernization of the public contracts system;
 - General Secretariat Against Corruption, aiming at coordinating national anti-corruption efforts;
 - Inspectors-Controllers' Body for Public Administration;

- Inspectors' Body for Public Contracts, aiming at strengthening transparency and accountability in the public sector.

9. Address the issue of delays in the application of justice that might delay the entire procurement process.

II. For legal persons:

1. Strengthen internal anti-corruption measures.
2. Ensure transparency in the company's ownership and structure.

III. For other stakeholders that may be interested or targeted by the application of exclusion from public procurement as an additional sanction to the one for corruption, money laundering, fraud or related criminal offenses.