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A Summary of Financial Crime Law in Greece

Following the adoption of the new Criminal Code and the new Criminal Procedure Code in June 2019, a number of legislative changes have been introduced in recent years in the field of both substantive and procedural Criminal Law, some of which, in fact, to be found in the area of Financial Criminal Law, either at a purely national or at a pan-European level.

Amendments to the Criminal Tax Law

At the level of Substantive Criminal Law, the generally more lenient penal frameworks adopted in the new Criminal Code have also resulted in less severe penalties for crimes provided for in special laws, such as the offences provided for in the Tax Procedure Code. Therefore, in specific laws where a prison sentence is imposed, a pecuniary penalty is added as an alternative (art. 463 § 2 CC). In the Tax Criminal Law, the provision of Art. 469 CC of the new Criminal Code plays in important role in court proceedings. According to this article, confirmed tax-evasion incurred debts (Art. 66 of the Tax Procedure Code) may no longer be included in debt tables based on which criminal prosecution is sought for non-payment of debts to the State (art. 25 of Law 1882/1990). This is, without doubt, a successful and commendable legislative initiative, as the risk of double criminal assessment and punishment for the same tax loss could no longer be tolerated by the legal system and case law.

Amendments to the Prevention and Suppression of Money Laundering and Terrorist Financing Law

Based on Law 4816/2021, passed in July 2021, certain articles of the Prevention and Suppression of Money Laundering Law (L. 4557/2018) were amended. The most important changes concern the list of predicate offences relating to money laundering, which has been further specified (for example, theft, embezzlement, breach of trust, usury, etc. are now explicitly provided for as "predicate offences"), while any crime punishable by a custodial sentence, the minimum of which is more than three (3) months, resulting to a pecuniary benefit, is now considered a "predicate offence" relating to money laundering. In addition, amendments are made to Art. 39 of L. 4557/2018, concerning the criminal sanctions imposed in case of money laundering offences, which are now generally more favorable (e.g. in the case of professionally committing offences relating to money laundering, an imprisonment sentence of 5-15 years and a pecuniary penalty of two thousand (2,000) to ten thousand (10,000) daily units is now imposed, as opposed to Law 4557/2018, which provided for an imprisonment sentence of 10-20 years and a penalty ranging from fifty thousand (50,000) euros to two million (2,000,000) euros).

Expanding the role of the Financial Prosecutor

At procedural level, a noteworthy provision is that of Art. 53 of Law 4745/2020, through which the institution of the Corruption Prosecutor was abolished, and its powers were assigned to the Financial Prosecutor. Despite the general prohibition to use such evidence, the Financial Prosecutor has now legal access to any information or evidence concerning telecommunications privacy, provided that the constituent elements of felony are established and documented (L. 3640/2019). Also, in order to achieve faster administration of criminal justice, the following sentence was added to Art. 35 § 4 CCP (concerning prosecutors of economic crime) by art. 98 of Law 4855/2021: *"Prosecutors must complete the preliminary examination within six months after receiving the case file, unless the nature of the case or the acts to be investigated requires exceeding this time limit. The Head of the Economic Crime Division shall be competent to decide whether the above time limit is justified and, if it is exceeded without justification, shall examine whether another prosecutor should be appointed to handle the case*. According to the Explanatory Memorandum of the Law, this amendment *"aims to accelerate the investigation of serious criminal imputation, such as financial, tax and other related crimes against the Greek State, local regional authorities, legal persons under public law and the European Union or which seriously compromise the national economy."*

In Greece, of course, the scope of the Financial Prosecutor is not only limited to purely financial crimes, but also to related crimes, while all financial crimes that do not seriously affect the national economy do not fall under their jurisdiction. Contrary to foreign legal systems, the establishment of this special category of prosecutors in Greek criminal law is not so much based on the need for special training and coordinated action, but on the increased interest in protecting the State.

Establishment of the European Public Prosecutor's Office

At a European Criminal Law level, the establishment of the European Public Prosecutor's Office (EPPO) by Regulation (EU) 2017/1939, whose provisions were incorporated into the Greek legal system with the adoption of Law 4786/2021, is also of major importance. This original European Union institution was established to combat large-scale, transboundary and organized fraud crimes against the Community budget, while its duties in the courts of the Member States extend to the conclusion of the respective cases. It is in fact a complex system of European prosecution and referral, which consists of both unifying and intergovernmental elements. The crimes falling within the competence of the European Public Prosecutor's Office are, inter alia, the following:

- Corruption of an official concerning the financial interests of the EU
- Transboundary VAT fraud (over EUR 10 million)
- Euro fraud concerning grants
- Euro fraud concerning expenditure and fees
- Euro fraud concerning revenue
- Poor management of EU financial interests

The European Public Prosecutor's operative powers are exercised both at 'central' (College, Permanent Chambers, European Public Prosecutor and Deputies, European Prosecutors, Administrative Director) and 'decentralized' level (European Delegated Prosecutors), while EU criminal law coexists and interacts with that of the Member States.

While the concern of Member States about the partial assignments of judicial matters to European institutions is understandable, it is clear that for this new institution to be successful, national legislative and judicial bodies must cooperate with the European Public Prosecutor and the CJEU. It is the only way to prevent issues of legal certainty and consistent exercise of procedural rights of persons involved in criminal proceedings from arising.

Further developments, trends and changes in National Criminal Law

Regarding the objectives set by the adoption of the new Criminal Code and the new Code of Criminal Procedure, judicial practice raises doubts as to whether these objectives have been achieved.

From July 2019 onwards, the generally more favorable treatment of the defendant in terms of the penal framework imposed has led to disapproval in many cases from a large part of society, which was, for many crime cases, in favor of imposing harsh sentences. Therefore Law 4855/2021 was adopted, significantly strengthening the penalty framework for a number of crimes (see, for example, Articles 299 § 1 CC, 380 § 2, 404 § 2 CC). In the General Criminal Code, this legislation reintroduced the punishment of impossible attempt or crime, which had been abolished in 2019 because it constituted a "significant deviation from the principles of what constitutes an offence". The new stiff penalties enacted by this law are based on the extremely naive notion that higher penalties lead to a lower crime rate.

In the Criminal Procedure Code, while the rights of the defendant have indeed been extended and strengthened, speeding up the administration of criminal justice has not been achieved to a proper extent. Undoubtedly, the recent change of certain misdemeanors to felonies will further impede the administration of criminal justice, placing an excessive burden on investigative magistrates, judicial councils and felony courts. The recent trends in alternative justice, namely criminal conciliation and negotiation, have also not yet been incorporated in practice. Their limited application is mainly due to the reluctance of both defense lawyers and prosecutors to exploit them.

In conclusion, with the adoption of the new Codes, as well as with the numerous subsequent legislative changes that have been introduced, a distinctive set of regulations at substantive criminal law level has formed, which, to a great extent, creates problems to the temporal application of the law. In view of this, the role of the defense lawyers becomes crucial, as they are the only ones who, with their specialized knowledge, training, experience, constant vigilance in identifying legislative amendments and their passion for the process of defense, can ensure the best possible handling of the case for their client, either at the pre-trial stage or at the hearing.