

NATIONAL-LEVEL CORPORATE ANTI-ABUSE MEASURES RELEVANT TO THE EU COMPANY LAW PACKAGE

Expert Questionnaire

Greece

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1) Anti-abuse mechanisms - do any of the following mechanisms exist in this country? If so, how do they work?

a. Disqualified Directors

i. Is there an official definition of “disqualified director”? If so, what are the grounds for disqualification? In which law can this be found? (link to legal text(s))

The concept of disqualification of directors, which can be found in jurisdictions such as Ireland and the UK, did not exist in Greece. Traditionally a person without legal capacity such as a minor could not serve as a director of a company. Greek corporate law underwent major reforms with the enactment of Law No. 4548/2018 (reform of the Law on SA) and Law No. 4706/2020 on the Corporate Governance of SA. The prohibition regarding persons without legal capacity remains by virtue of art. 83(1) Law No. 4548/2018. Furthermore, Law No. 4706/2020 introduced the concept of suitability for board of directors. All companies must have a suitability policy established by the board of directors and approved by the shareholders at the General Meeting. The suitability policy includes the conditions for the appointment and removal of board members, the criteria for evaluating the suitability of board members, particularly with regards to their reputation, skills, honor and experience, and the adequate representation of women (at least 25% of members). The Hellenic Capital Markets Commission has already issued guidelines. If one or more of the suitability criteria cease to apply for a director, the company should proceed with his or her replacement within 3 months.

Law No. 4706/2020 introduces the concept of disqualification for directors and executives:
Link to text: <https://www.e-nomothesia.gr/kat-epikheireseis/nomos-4706-2020-phek-136a-17-7-2020.html>

- Art. 3(4) of Law No. 4706/2020 introduces the concept of disqualification for directors in Greek law:

- A person is disqualified from being appointed or continuing acting as a director if there is a final court ruling against the board member within the past year, before or after the appointment respectively, recognising the member’s fault for losses for the company (listed or non-listed) from related party transactions.
- The articles of association of the company can provide for a longer time period than the one mentioned above.
- Every nominee must submit a declaration to the company that there are no grounds for disqualification.
- Directors must immediately notify the company in case a final court ruling is issued.

- Art. 3(5) of Law No. 4706/2020 provides for the disqualification of executives.
 - A person is disqualified from being appointed or continuing serving as an executive if there is a final court ruling against the board member within the past year, before or after the appointment respectively, recognising the member's fault for losses for a company (listed or non-listed) from related party transactions.
 - The articles of association of the company can provide for a longer time period than the one mentioned above.
 - Before appointment as an executive every person must submit a declaration that the grounds for disqualification are not applicable.
 - Any person serving as an executive must immediately inform the company in case a final court ruling is issued.

ii. Is there an official list of (current) disqualified directors? If so, where can this be found? (name of organization maintaining it and link)

Greece has no official list of disqualified directors

iii. If there is an official list, who has access to this list (general public or restricted)?

N/A

b. Beneficial Owners

i. Where is the database of beneficial owners and which organisation maintains it (link)

Greece maintains the Real Beneficiaries Registry. It is maintained by the General Secretariat of Information Systems for Public Administration (GSIS), Ministry of Digital Governance. It is electronically linked with the Tax Identification Number (TIN) of each legal entity. It was introduced by Law No. 4557/2018 transposing the 4th Anti-Money laundering Directive, which was amended to implement the 5th Anti-Money laundering Directive. The implementation of the registry involved additional decisions by the Minister of Finance. It was first activated in September 2019. Due to COVID and operational issues it suspended its operation. The suspension lapsed on 1st October 2020. Obligated persons should have submitted the necessary information by 1st February 2021.

There are three types of registries:

- A Beneficial Ownership Special Registry should be maintained at the headquarters of legal entities with a registered seat in Greece and should be sufficient, accurate and updated under the responsibility of the legal representative or a specially authorized person. The information should include the name and surname, date of birth, nationality and country of residence of the beneficial owners, as well as the type and extent of the rights they hold.
- A Special Registry of Beneficial Ownership of Trusts must be created and maintained by the trustees of any express trusts, exercised in Greece or residing in Greece.
- The Real Beneficiaries Register: link to the register: <https://www.gsis.gr/en/citizens-businesses/businesses/real-beneficiaries-register>

Entities required to submit information to the Real Beneficiaries Register include:

- Any legal person or entity having its registered seat in Greece or exercising taxable business in Greece. Specifically, obliged entities are: nonlisted entities, shipping companies, professional partnerships, non-profit entities, trusts, partnerships, companies under bankruptcy or liquidation
- Companies listed in a regulated market or in a Multilateral Trading Mechanism operating in Greece are automatically reported to the Central Register through the reporting line between the Central Securities Depository and the GSIS.

ii. Are there any checks on the authenticity of beneficial owners, or does the organisation depend on a “statutory declaration” or “affidavit” from the company directors?

No checks are done on the authenticity of the beneficial owners. Information regarding the beneficial owners is submitted by the legal entities via their legal representatives or authorized representatives. The representative is liable for the accuracy and completeness of the information provided. Information submitted includes name of the company, form of the company, tax identification number, name, address of beneficial owners, date of birth, nationality, nature and extent of rights, such as ownership percentage, voting rights.

iii. How quickly must the company give notice when ownership has changed (updating of lists/databases)?

Changes to ownership and any other information provided regarding beneficial owners must be submitted within 60 days of the circumstances giving rise to the change.

iv. Who has access to the beneficial ownership database? Does the general public have unrestricted access, restricted access or no access?

Several authorities have access to the Registry, including the Anti-Money Laundering, Counter-Terrorist Financing and Source of Funds Investigation Authority, prosecuting authorities or other authorities with investigative or controlling powers.

The Anti-Money Laundering, Counter-Terrorist Financing and Source of Funds Investigation Authority have unrestricted access.

The public has restricted access only to certain information, such as name, date of birth, country of residence, nationality of the beneficial owner, nature and extent of the rights. Disclosure of further information requires proof of legal interest. However, in practice, public access to the database is not yet possible.

c. Electronic identity (eID) scheme – is there a scheme registered with the European Commission, and if so, what eIDAS level of assurance does it have?

Greece has no EU-notified eID Scheme

2) Company registry – transparency, access, cost

a. Which organization maintains the company registry? (name and link)

The General Commercial Registry (GEMI) (<http://www.businessportal.gr/>)
It is maintained by the Union of Hellenic Chambers of Commerce.

b. To what extent is the registry digitalized? Can company foundations/registrations and reporting be carried out fully online/digitally?

The registry is fully digitalized. Company registration and reporting can be done electronically. Electronic services allow for the electronic issuance of certificates which are electronically signed.

c. Are bulk downloads of the entire list of registered companies possible?

No.

d. Does the registry have search features beyond the name of the company or person (e.g. by sector or employee size)

There are four search features: General Commercial Registry Number, Company Name, Trading Name and Tax Identification Number

e. What is the typical cost of downloading a document from the registry?

The documents available in the Registry can be downloaded for free.

f. Is there information on employment levels beyond what is contained in annual accounts?

No additional information on employment levels beyond what is contained in annual accounts

g. Information on European company forms and EU reorganizations (CBM) - is a search possible for companies with the SE legal form or companies reorganized through a CBM?

There is no separate registry regarding cross-border mergers or European company forms. Searches can be done using the four search features. For instance, in case of a company involved in a CBM, documents relating to the CBM, such as the draft terms of the merger, approval of the cross-border merger, are available along with all the other company filings

3) Firm foundations

a. What authority or organization is responsible for registering new companies (with link)?

In 2018 Greece set up a one-stop shop service where companies can be founded in a short period of time. The establishment of the company must occur within 2 days of receipt of the complete application.

One-stop shops are:

- A) The electronic one-stop shop (<https://eyms.businessportal.gr>) .
- B) Notaries acting as one-stop shops.
- C) General Commercial Registry Services (namely the GEMI) of the regional Chambers of Commerce.

When model articles of association are used, any of the three types of one stop shop service can be used for any form of company. In case model articles of association are not used, the one stop service for the Company Limited by Shares (Société Anonyme) and the Limited Liability Company (E.P.E.) is a Notary public, while for Personal Companies (O.E. and E.E.) and Private Capital Companies (IKE) the one-stop shop service is either the General Commercial Registry of the competent Chamber of Commerce or a Notary public. In cases involving specific provisions, a notarial deed is required for a specific activity or for the transfer of contributions in kind; therefore, the establishment must be done by a notary public for all company legal forms.

b. What are the steps needed to found and register a new company? To what extent can these happen digitally?

Parties interested in setting up a company must submit all the necessary documentation, including the articles of association, tax identification number, passport or ID, proof of contribution of shareholder capital etc. They must also authorize the one stop shop service to proceed with all the necessary actions to complete the setting up of the company. Parties must also pay a fee for setting up the company. The one-stop shop service proceeds with all the necessary requirements in order to complete the foundation of the company.

a) corporate name and distinctive title control;

(b) registration with the General Electronic Commercial Registry (GE.MI);

(c) registration with the Greek tax registry and the grant of a Tax Identification Number (AFM) to the company after its formation;

(d) grant of a temporary authenticator key for the integrated information system of the Greek tax authorities (TAXISnet);

and (e) grant of access codes for the GE.MI. and notification of the incorporation of company to the Unified Social Insurance Body.

It is possible to set up a company online through the electronic one stop shop service (e-YMS). The establishment is done exclusively online through the specialized digital platform available at <https://eyms.businessportal.gr>

c. What checks (if any) are done on the authenticity of documents, identity of founders, record of founders (e.g. disqualification as directors) and beneficial owners

i. By registration authority

No checks are done on the record of founders (such as disqualification) and beneficial owners. The checks concern only identity of founders and authenticity of documents. Checks must be completed during the same day or the next day, at the latest, after the application of the interested parties. The one stop shop service examines the articles of association and whether they are duly signed and comply with mandatory regulations. In case the foundation is done via a notary public, then a notarial deed is required for the articles of association. If the persons submitting the application are the founders, then the one stop shop service cross-checks their ID and Passport with the information provided in the articles of association. If the person submitting the application is an authorized representative, then the service checks whether the person has authorization. The service will also check the completeness of all the other documents, certificates and information submitted by the applicant. Provided that the certificates, documents and information that the applicant is required to submit are complete, the service cannot request any additional information, documents and certificates.

ii. By notaries

Notaries acting as one-stop shop service check the identity of founders and authenticity of documents. Checks must be completed during the same day or the next day, at the latest, after the application of the interested parties. The notary acting as a one stop shop service examines the articles of association and whether they are duly signed and comply with mandatory regulations. In case the foundation is done via a notary, then a notarial deed is required for the articles of association. If the persons submitting the application are the founders, then the notary acting as a one stop shop service cross-checks their ID and Passport with the information provided in the articles of association. If the person submitting the application is an authorized representative, then the service checks whether the person has authorization. The notary will also check the completeness of all the other documents, certificates and information submitted by the applicant. Provided that the certificates, documents and information that the applicant is required to submit are complete, the service cannot request any additional information, documents and certificates.

iii. By “facilitator” companies (foundation agents)

The facilitator companies do not have any legal obligation to conduct checks on the authenticity of documents, identity of founders, record of founders (e.g. disqualification as directors) and beneficial owners.

4) Cross-border Mergers (CBMs)

a. Which authority is responsible for the pre-merger certificate (outbound CBMs), which authority is responsible for approving the merger (inbound CBMs)? (name and link)

Law 3777/2009 transposed the Cross-Border Mergers Directive into Greek law. The competent authority to scrutinize the legality of the cross-border merger as regards that part of the procedure which concerns merging companies subject to national law is the Department of Companies and Credit of the General Secretariat of Commerce of the Ministry of Development. The authority referred to in paragraph 1 shall issue, without delay, to the merging companies subject to national law, a certificate conclusively attesting to the proper completion of the pre-merger acts and formalities. The competent authority to scrutinize the

legality of the cross-border merger and approve it as regards that part of the procedure which concerns the completion of the cross-border merger and, where appropriate, the formation of a new company resulting from the cross-border merger is the Department of Companies and Credit of the General Secretariat of Commerce of the Ministry of Development.

After a reorganization of the Greek public administration, the Ministry of Development has been replaced by the Ministry of Development and Investment. The Directorate of Companies of the General Secretariat of Commerce and Consumer Protection of the Ministry of Development and Investments is responsible now (<http://www.mindev.gov.gr/?lang=en>).

b. What personnel capacity/qualifications does the authority/ies listed above (organization(s) granting the pre-merger certificate + approving merger) have?

The Directorate of Companies of the General Secretariat of Commerce and Consumer Protection of the Ministry of Development and Investments has 3 departments:

a) Department of Company Law and Gemi, responsible among others for monitoring legislation in the field of European company law, proposing legislative initiatives in the field of company, issuing guidelines (3 employees).

b) Department of Supervision of Listed SAs, responsible for approving CBMs (6 employees). Other tasks including supervision of listed SAs

c) Department of Insurance Companies and Financial Institutions responsible for approving CMBs involving insurance companies and financial institutions. Other tasks including the supervision of these type of companies (4 employees).

c. What (if any) anti-abuse checks are made?

i. Purpose of reorganization

ii. Background check on directors

iii. Identity of beneficial owners

iv. Worker I/C/P arrangements

No anti-abuse checks are done regarding the purpose of the reorganization, identity of directors and beneficial owners. The authority scrutinizing the legality of the CBM shall in particular ensure that the merging companies have approved the common draft terms of cross-border merger in the same terms and, where appropriate, that arrangements for employee participation have been determined in accordance with article 14 of Law 3777/2009, which sets out the rules regarding employee participation. Greece gold-plated the provisions of the CBMD including the relevant provision for employee participation. Greece did not transpose the optional provision of Art. 4(1)(b) of the CBMD enabling national authorities to oppose a cross-border merger on public interest grounds by exercising veto rights. Greece opts for and adopts veto rights over cross-border mergers as a method of setting up a European Company.