
Applying the Fast Track Law for Strategic Investments: how fast and for whom?

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Abstract

In Greece, the recent fiscal crisis, which officially began in 2009, has set off the issue of development prospects for the country. In order for Greece to regain its reliability there was the need to provide the international and national investment community with a stable and transparent investment legislative framework. This would help investors to overcome bureaucratic obstacles and significant land use restrictions that have inhibited major investments in Greece. Therefore, a new Law, well known as Fast Track Law (L. 3894/2010) has been enacted in order to make the implementation and licensing procedure of strategic -private interest- investments easier, smoother and more attractive. However, even though the whole Fast Track Process has been designated since 2010, only a few investment projects have evolved.

The paper has a two-fold objective: first, to present the key features of the legislative framework, the required conditions, the tools and the procedure concerning the exploitation of -large scale- private or mixed type (both private and public) estates, and secondly, to examine the type of investment projects which have been put under the umbrella of the Fast Track Law, as well as their degree of feasibility. Emphasis is put on strategic investments concerning tourism and real estate, which are among the most attractive sectors for investment in Greece. In conclusion, the paper evaluates and discusses to what degree the new tools and procedures introduced for strategic investments respond to market requirements, and makes suggestions for the improvement of the current legislative framework.

Keywords: strategic investments, tourism, real estate development, Fast Track, spatial planning

1. The Fast Track Law: key features concerning the exploitation of private large scale estates

1.1. Aim and objective

The legislative framework introduces a set of innovations that are structured upon three axes: (a) the introduction and the documentation of the concept of Strategic Investment, (b) the designation of a new administrative system, whose role is to facilitate the licensing process and accelerate the implementation of the investment project, and (c) the introduction of the new tool “Special Spatial Development Plans of Strategic Investments”, commonly referred to as ESHASE, whose purpose is to receive the investment project and serve as a spatial maturity conditioning process for real estate development.

(a) Introduction and documentation of the concept of Strategic Investment

First of all, the core definition of Strategic Investment is determined, based on the significance and expected beneficial impact of an investment on the National Economy. The quantitative and qualitative criteria for the eligibility of a public and/or private sector investment plan as a Strategic Investment are set and the “Interministerial Committee of Strategic Investments” is designated as the pertinent authority for the examination and determination of eligible investments.

Strategic Investments shall be construed as those productive investments which generate significant quantitative and qualitative results for the overall National Economy as well as facilitate the country’s exit from the economic crisis. Strategic Investments relate specifically to the construction, reconstruction, expansion, restructuring, modernization or maintenance of existing infrastructure, facilities and networks in: a. manufacturing, b. energy sector, c. tourism, d. transport and communications, e. provision of health services, f. waste management, g. projects of high-end technology and innovation, h. education sector, i. culture sector, j. primary sector and the processing of agri-foodstuffs, and k. provision of services of the tertiary sector in general, provided that they meet at least one of the following conditions:

- a) the total investment cost exceeds € 100,000,000, irrespective of the investment sector
- b) the total investment cost exceeds € 15,000,000, in case of investment in manufacturing within industrial areas, or € 3,000,000, in case of investments which constitute approved projects within the framework of the JESSICA portfolio fund
- c) the total investment cost exceeds € 40,000,000, while concurrently the investment in question creates at least 120 new jobs
- d) the investment creates, in a viable and sustainable manner, at least 150 new jobs or at least 600 jobs are maintained in a viable and sustainable manner
- e) the total investment cost exceeds € 5,000,000 for investments concerning the development of Business Parks as set out in Part B of Law 3982/2011 (A 143).

(b) Designation of a new administrative system

A new integrated framework of rules, procedures and obligations of the National Administration, linked to strict and binding deadlines for reviewing, assessing and supporting public or private sector strategic investment plans is introduced, serving as a “high-speed freeway” to their implementation. A new Administrative Structure is formed, charged with the task of coordinating, managing and implementing the new framework. The aforementioned Administrative Structure consists of: a. the *Enterprise Greece* agency, which is upgraded and reinforced, serving as a “one-stop-shop” for the implementation of strategic investments and grand scale projects under a frame of strict deadlines, b. the *Interministerial Committee of Strategic Investments* that determines the eligibility of an investment plan and proposes the entry approval in the Fast Track Law, c. the *Minister of State* who supervises the coordination and management of the implementation. Then, swift and transparent bidding and licensing procedures are outlined, as well as procedures concerning compulsory expropriation and management of legal appeals, in accordance with the European Union legislative frame. Finally, a new approach to Greek bureaucracy and slow reaction times is set: once the deadline an authority’s response has expired, all submitted applications and plans are de jure considered approved.

(c) Introduction of "Special Spatial Development Plans of Strategic Investments"

In addition to the new Administrative Structure, the "Special Spatial Development Plans of Strategic Investments (ESHASE)" planning tool was added later (L. 4146/2013) in order to mature private (or mixed type) estates where existing land use constraints undermined the feasibility of investments. This is an optional, but highly important, tool since it defines the core spatial identity of the estate in accordance with the investment destination and aligns the newly defined land uses and building regulations with the type of the investment.

1.2. Procedure

The overall procedure for the licensing of Strategic Investments includes four basic phases:

- (a) the inclusion of Investment Proposals in the Procedure of "Acceleration and transparency of implementation of Strategic Investments"
- (b) the approval of ESHASE (optional phase, but of high importance for real estate development)
- (c) the approval of a Joint Ministerial Decision for the Strategic Investment's allocation
- (d) the issuing of building and commencement of works permits.

Phase A. Inclusion of Investment Proposals in the Procedure of "Acceleration and transparency of implementation of Strategic Investments"

This phase concerns the entry approval and the administration of the procedure. The first step is the preparation of a detailed investment business plan. Then, the investment proposal, including all the necessary documents, is submitted to Enterprise Greece S.A. along with a 10% of the Management Fee deposit. The Management Fee is set at 0.2% of the total cost of the investment, with a set limit of € 100,000 minimum and € 300,000 maximum (plus VAT). The Management Fee is not refunded in case the investment plan is not approved; this is designed to act as a financial filter that safeguards the credibility of submitted business plans. The second step concerns the evaluation of the investment plan by Enterprise Greece within a 15 working days time frame in order for the plan to be forwarded to the Interministerial Committee of Strategic Investments (I.C.S.I). If there is a positive outcome to the procedure, the Investor has to submit the remainder (90%) of the Management Fee before the last step, that is the approval of the proposal's entry in the Fast Track Law by the I.C.S.I.

Phase B. Approval of Special Spatial Development Plan of Strategic Investments (ESHASE)

This phase is carried out upon the investor's request since it concerns specific types of strategic investments, mainly those related to the tourism-leisure sector that integrate real estate development. Special Spatial Development Plans of Strategic Investments are formed regarding Strategic Investments on private property and mixed property (both public and private estates) and allow the State to intervene in cases where the determination of land use is deemed vital for an investment to proceed, always in accordance with environmental laws and principles.¹ Therefore, according to L.3986/2011 (art. 11, 12), the plan delimits the property and also approves: a. the core spatial identity of the investment, b. the specific land uses and their spatial allocation, c.

¹These plans are formed according to the Special Spatial Development Plans of Public Property, of Law 3986/2011 regarding public property.

special building rules and regulations for future establishments d. specific land protection zones if deemed necessary (archaeological, environmentally protected sites etc.) and e. the environmental terms of the spatial development that is to occur, in accordance with the Strategic Environmental Study that compliments the Plan, after the public consultation procedure. ESHASE Plan is approved as to its legality by the Council of State and then finally issued by Presidential Decree. In some cases, the issuance of Special Spatial Development Plans of Strategic Investments may happen at the same time as the investment's entry to the Fast Track Law (end of Phase A).

Phase C. Approval of Joint Ministerial Decision for the Allocation of Investment Project

The third phase concerns the determination and specialization of buildings and infrastructure necessary to the investment, which may vary depending on its nature, always in accordance with the type nature of the investment and the land uses designated by ESHASE Presidential Decree. The spatial allocation of buildings and infrastructure is proposed by the General Master Plan that is submitted by the investing party (article 13 of L.3986/2011) along with the Environmental Study. The General Master plan undergoes a public consultation procedure during which various authorities relevant to the investment's identity are called to submit their formal opinions and any corrections that might be deemed necessary. After the conclusion of the consultation period, the various authority theses are submitted to the Central Administration Council for the Exploitation of Public Property (KE.SI.DI.A.DI.P.) for the approval of the investment's General Masterplan. The General Masterplan is issued via a Joint Ministerial Decision signed by the Minister of Finance, The Minister of Environment and Energy and other designated Ministries, depending on the investment's identity.

Phase D. Commencement of Works and Building Permits

A special Directorate of Architecture, Building Regulations and Permits (i.e. D.A.O.K.A.) has been formed within the Ministry of Environment in order to issue building permits for all technical infrastructure and buildings. By Law, the state only has a 30 day window for issuing the building license, which in Greek terms is considered a very short time frame.

2. Strategic Investments to be implemented

2.1. General features and degree of feasibility

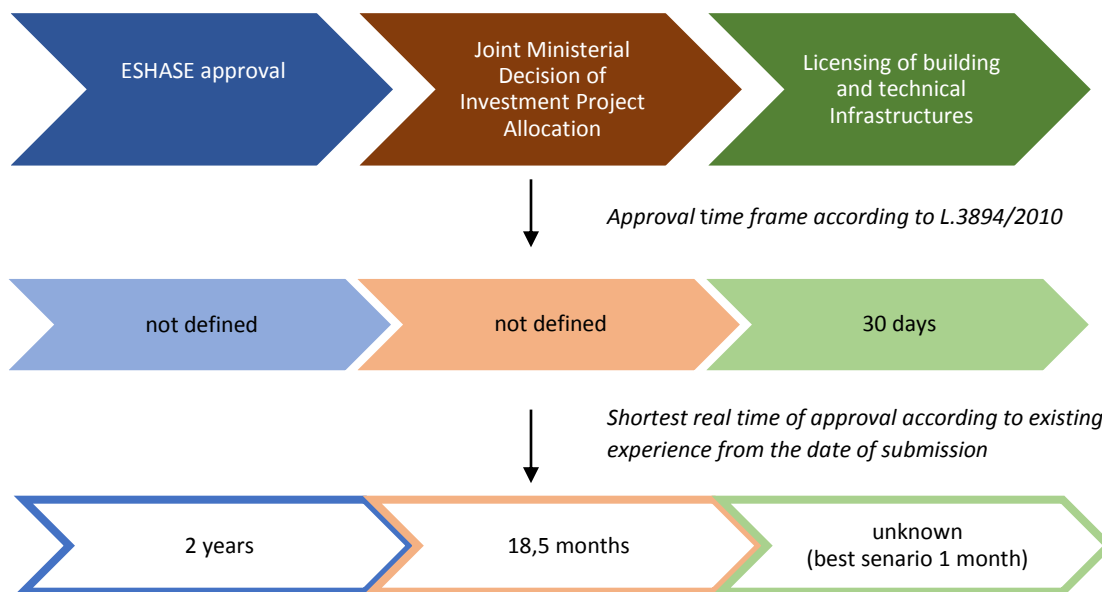
To date, twenty-seven investment proposals have applied for entry (Kathimerini, 28.01.2018) in the Strategic Investments Procedure (L.3894/2010). Out of 20 proposals that have been examined, 17 investments projects have been initially approved and three have been rejected. However, amongst the approved plans, three have been retracted or are in retraction process mainly due to financial shortcomings, more specifically failure to pay the 90% installment of the Management Fees.

Concerning the investments' character, out of the 17 approved the majority concern tourism (42%), whereas investments related to renewable resources energy constitute 38.5%. Only 7.7% concern commerce and leisure, while 7.7% concern excavations and mining procedures. The geographical distribution of Strategic Investments extends almost throughout the whole Greek territory, whilst the island of Crete, a renowned tourist destination, specifically houses three strategic investments.

The time frame for the issuance of the Decision of Strategic Investments' Interministerial Committee concerning the approval of entry to the Fast Track Law varies significantly, depending on the type of investment project. Therefore, strategic investments in tourism present the longest approval time period, sometimes up to 14.5 months. The shortest time period (3 months) applies to strategic investments related to renewable energy resources. The average period for the issuance concerning the entry in L.3894/2010 (Decision of the Strategic Investments Interministerial Committee) is around 6.8 months.

In general, the time period for the entry of tourism investment proposals in the Strategic Investments Procedure (L.3894/2010) is longer than other types of investments and ranges between 4 and 14.5 months. The time frame increases significantly when extra administrative actions are required, such as Decisions of the General Secretary of Decentralized Administration concerning seashore delimitations or forest areas characterization, that usually affect most estates destined for tourism development. The average time required for the entry of tourism investments in L.3894/2010 is 8.6 months. In two out of six strategic Investments in tourism, approval of entry to L. 3894/2010 coincided with the approval for the initialization of the formation of Special Spatial Development Plan of Strategic Investments (ESHASE).

Diagram 1. Main phases for tourism and real estate development according to Fast Track Law, after the approval entry



In short, from the 14 investment proposals that have been approved, currently only 10 of them are in implementation phase since the rest are “frozen” for different reasons. For example, the Thracian Goldmines project will not proceed to an implementation of the investment project in the aftermath of the local communities’ strong objections, and one leisure-commerce investment project is in implementation phase without making use of Fast Track process, despite its entry approval in Strategic Investments.

2.2. Strategic Investments oriented to tourism and real estate development

Out of 10 investment projects that are in implementation process, five concern tourism and are consequently related to real estate development. These high budget complex tourism projects include hotels of very large capacity, tourism villages with a significant number of villas and special tourism infrastructures such as marina, golf and spa or conference centres. In order to make the best of their estate, these projects require the activation of ESHASE spatial planning tool. Two projects have already an approved ESHASE (“Itanos Gaia” and “Killada Hills”), whereas the remaining are currently orchestrating or undergoing the ESHASE plan formation process for their respective real estate (Table 1).

Table 1. Current tourism and real estate strategic investments projects in implementation phase

Project	Geographic Area	Submission date for entry in Fast Track Law	Decision of Entry Approval in Fast Track Law	Required time frame	Estimated budget (€)	Date of ESHASE Approval	Current Implementation phase
Killada Hills	Peloponnisos Region, Argolida, Porto Heli	24.7.2013	GAZ 2931/B/20.11.2013	4 months	418 million (€)	16.12.2015	Approved ESHASE Environmental Licensing study under consultation procedures.
Elounda Hills	Crete Region, Lasithion, St. Nikolaos	29.9.2015	GAZ 3083/B/27.9.2016	12months	321,5 million (€)	-	Approved Strategic Environmental Study
Itanos Gaia	Crete Region, Lasithion, Siteia	3294/B/10.12.2012	GAZ 10.6.2011 /1.8.2012 (approval of entry in art. 24, L.3894.10)	4months / 16 months	267,7 million (€)	11.3.2016 after formal rejection of two appeals to the Council of State	Approved ESHASE
RSR Eagle Resorts	Stereia Ellada Region, Evoia, Karistos	11.11.2015	GAZ 3083/B/27.9.2016	10 months	191 million (€)	-	Submission of Strategic Environmental Study
Kerameia Chiou	North Aegean Region, Chios, Kerameia	3.12.2014	GAZ 463/B/24.2.2016	14 months	100 million (€)	-	Submission of Strategic Environmental Study

In short, the time frame for the approval of ESHASE ranges from two to four years according to experience provided by recent examples (Table 1). The time span is long mainly because the approval of the plan requires the

approval of a Strategic Environmental Study and that of Hellenic Council of State. Each one of these procedural steps of the plan's approval requires, by law, more than six months to be completed. In addition, depending on any special spatial features of the estate, such as the presence or even absence of sylvan areas, culturally protected archaeological sites and coastline delimitating decisions, all of which are very common if not the rule, extra time-consuming administrative processes are required. Lastly, it is underlined that the typical final step of the ESHASE plan, which concerns the final approval of the estate's Topographical Diagram by the Directorate of Topographical Applications and Geospatial Information of the Ministry of Environment and Energy, takes approximately four to five months.

To sum up, as none of the investment projects oriented to tourism and real estate development has yet completed the required steps for the start of licensing and construction phase, an estimation cannot be made of the total time required for the implementation of the investment project via ESHASE tool application. Based on existing experience, the total time for the start of construction phase cannot be shorter than 3.5 to 4 years (see also Diagram 1).

3. Evaluation and discussion

After seven years from its enactment, the Fast Track Law has proven to be ineffective and unattractive since only 14 investments are in the implementation phase. The only investment projects that have been completely licensed and established concern the energy sector. However, the renewable energy resource parks are not yet in an operating phase, despite the completion of their infrastructure (Kathimerini, 28.01.2018). On the other hand, strategic Investments that are oriented to tourism are still far from the completion of the licensing process. They all use the innovative, but time-consuming, ESHASE spatial planning tool in order to make the best of the hosting estate since it serves as a spatial maturity conditioning process for real estate development, beneficial land uses and building regulations. Lastly, it is notable that none of the investment projects concerns the industry sector.

In particular, the fast track process concerning real estate development cannot be considered truly fast, contrary to other types of investments that do not require special spatial maturity conditions. The approval of ESHASE requires quite a long period as it has to be aligned with the Greek spatial –and environmental - planning legislation. The existing experience has proved that the time frame for ESHASE approval cannot be shorter than two years. Concerning the time frame for the total licensing, it is estimated that it cannot be shorter than four years. However, since the experience of administrative bodies is getting better, improved licensing and approval time frames may be achieved for real estate development. Accordingly, the ratification of forest maps and the definition of seashore and seaside boundaries in the whole country may accelerate the approval of the different steps required for investment implementation.

The bottom line is that there is a need for the reformation of the Fast Track Law in order to become more attractive and contribute to the increased feasibility of investment projects. With reference to real estate development, the law seems currently to respond better to specific investing requirements that are related to tourism, whereas the industry sector seems to be left out. Undoubtedly, ESHASE is a positive innovative tool, which in practice, is applied to tourism-oriented investment. However, its application in investments concerning industry is crucial. In parallel, a new administrative structure has to be designated within the Ministry of Economy and Development in order to guide investors and contribute to the fast licensing of industry investments, always in accordance with the Ministry of Environment and Energy. Finally, more action should be taken so that the ESHASE

approval is integrated within the investment project entry approval in Fast Track Law. This will accelerate the whole process.

References

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