

<H3>*E. Greece*

<S1>(1) Introduction

This report addresses a number of normative developments from the past year that hold particular significance for the implementation of international and EU environmental law in Greece. Significant progress was made in meeting overdue commitments under EU environmental law, particularly in the areas of marine environmental protection and environmental assessment. The period of reference was also marked by the adoption of a comprehensive legal framework for the management of the country's protected area network. There are, however, some persisting shortcomings, stemming in large part from the socioeconomic crisis that has troubled the country for the past decade and the structural issues that underlie it. For instance, almost two years after the ratification of the Paris Agreement, the decarbonization of the Greek economy remains stagnant due to lack of resources to fund green investments. This is despite the government's efforts to promote renewable energy projects and liberalize the electricity market. The recent renewal of the environmental permits of a number of coal-fired power plants serves as a good indicator that the phase-out of fossil fuels will remain slow, which raises serious concerns about the country's compliance with its international obligations and related EU commitments.

<S1>(2) Marine Environment

In adopting Directive 2014/89 Establishing a Framework for Maritime Spatial Planning (MSP Directive), the EU endorsed maritime spatial planning as a cross-cutting policy tool enabling public authorities and stakeholders to apply a coordinated, integrated and trans-boundary approach to ocean governance. Member states had until September 2016 to bring into force the laws, regulations, and administrative provisions necessary to comply with the MSP Directive. Timely transposition was considered essential in light of the great number of EU policy initiatives having a bearing on marine environmental protection and blue growth that must be implemented by the year 2020, and which the MSP Directive aims to support and complement. Noting Greece's failure to fully transpose the Directive into its national legislation within the required deadline, the European Commission brought an infringement case

before the European Court of Justice (ECJ) (Case C-36/18). While the case was still pending, Greece incorporated the Directive into its domestic legal order via Law 4546/2018.

The past year also saw Greece make considerable progress towards safeguarding the quality of its marine environment. Directive 2008/56 Establishing a Framework for Community Action in the Field of Marine Environmental Policy (Marine Strategy Framework Directive) requires member states to implement measures to achieve the overarching objective of securing the good environmental status of EU marine waters by 2020. Greece adopted its national program of measures in late 2017, nearly two years after the prescribed deadline (Ministerial Decision No 142569/2017). This delay notwithstanding, the program represents a significant step forward for Greece's marine environmental policy. Equally encouraging is the fact that a technical report providing a revised assessment of the quality of Greece's marine environment and an updated definition of what constitutes good environmental status for the marine areas under its jurisdiction was made available for public consultation in late 2018.

Another noteworthy development concerns the prevention and control of marine pollution from ships. Over the years, Greece has taken significant steps to transpose the rules contained in pertinent EU instruments and International Maritime Organization regulations into its domestic legal order. In many cases, the need for a robust legal framework to effectively protect the marine environment from pollution has led to the adoption of stricter rules and standards under Greek law. Law 4504/2017 empowered the Minister for Shipping and Island Policy to grant deviations from such rules and standards for 'special reasons' after having sought a reasoned opinion from the classification society with which the concerned vessel is registered. It could be argued that this case-by-case approach allows for some much-needed flexibility while preventing the executive branch from systematically undermining ambitious legislative initiatives. On the other hand, the stipulation that the exception enshrined in the ministerial decision will apply to 'all comparable situations' creates the possibility of far-reaching exemptions becoming institutionalized, raising questions of legitimacy and constitutionality.

<S1>(3) Climate, Energy, and Air Quality

During the period of reference, Greece took important steps towards the liberalization of the national electricity market, which has, for decades, been monopolized by the country's incumbent power company, the Public Power Corporation (PPC). Law 4512/2018 established

the Hellenic Energy Exchange in the aim of providing access to new liquid energy markets and products, as well as allowing for the effective participation of renewable energy producers in electricity markets. Worth noting in this regard is that, in the past year, Greece organized two rounds of competitive auctions for the production of electricity from renewable energy sources. The aim of these auctions was to determine the market potential of wind and solar installations. More tenders have been scheduled for next year, this time with a view to increasing competition and reducing costs to consumers.

Be that as it may, lignite continues to represent the lion's share in the Greek energy system. This raises concerns not only for the future of Greece's climate and energy policies but also for the long-term prospects for air quality improvement. Over the past two years, environmental non-governmental organizations (ENGOS) have taken legal action to ensure that coal-fired power plants operate in a manner that complies with national and EU environmental legislation. Public interest law firm ClientEarth and World Wildlife Fund Greece filed a complaint with the Aarhus Convention Compliance Committee (ACCC) regarding the Greek government's long-standing practice of using legislative acts as a vehicle for granting, renewing and extending the permits of coal-fired power plants owned by the PPC (ACCC/C/2017/148). Such acts cannot be the direct object of administrative or judicial review proceedings. Accordingly, the complainants argue that the PPC's permits are the product of a non-transparent, *ad hoc* approach, which, by circumventing established administrative processes, denies the public their right to challenge the legality of decisions, acts or omissions that may endanger the environment and public health. This right is enshrined not only in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) but also in EU Directive 2010/75 on Industrial Emissions (Industrial Emissions Directive). If upheld, the complaint could pave the way for legal challenges against most of PCC's coal-fired power plants. In the meantime, the environmental permits of a number of major plants were renewed until 2028 (Ministerial Decisions No οικ. 8684/27-4-2018 and οικ. 10153/8-6-2018).

An additional complaint before the ACCC relates to the lack of public participation in decision-making processes concerning emissions from coal-fired power plants (ACCC/C/2017/149). The Industrial Emissions Directive sets Union-wide emission limit values for selected pollutants. Although operators of large combustion plants have had to comply with these values since January 2016, the Directive allows some flexibility in the form of temporary derogations. One of the mechanisms through which these derogations may be enacted are transitional national plans (TNPs). TNPs allow certain operators an additional four

and a half years in which to make the necessary investment in emissions abatement technology. The complainants claim that the public was not informed of the preparation and proposed contents of Greece's TNP. Moreover, the Ministry of Environment did not seek the views of the public in preparing the TNP, nor were any drafts of the plan subjected to public review and consultation, despite the fact that the TNP holds major implications for matters pertaining to the public interest, affecting nearly 60 percent of the country's total coal capacity.

<S1>(4) Conservation and Sustainable Use

The last two years have seen Greece make significant advances towards meeting its obligations under EU nature conservation law. The country's Natura 2000 network of protected areas has been expanded, with particular attention being placed on the designation of new marine protected areas. The latter now cover 19 per cent of the country's maritime territory—a percentage that significantly exceeds the quantitative targets set out at the international level (Aichi Biodiversity Target 11).

In addition, Greece has addressed a major obstacle to the effective governance of its protected area network—namely, the lack of a comprehensive legal framework to guide the administration and management of designated sites. This framework is now enshrined in Law 4519/2018, which regulates all issues concerning the organization and operation of protected area management bodies. Of particular note is the advisory function that management bodies are expected to serve. The law requires them to provide evidence and deliver reasoned opinions during the elaboration of management plans. It also requires them to deliver reasoned opinions in the context of environmental assessment procedures concerning projects and activities intended to take place within—or having the capacity to directly or indirectly affect—the protected areas falling under their jurisdiction.

At the same time, management bodies are expected to serve as a vehicle for the involvement of local communities, the private sector and other key stakeholders in the identification, designation and management of protected areas. Crucially, in exercising their duties *vis-à-vis* the implementation, monitoring, evaluation and revision of management plans, management bodies can now be assisted by consultative committees involving representatives of public agencies, local authorities and the private sector. This is an important development, particularly in light of the criticism that Law 4519/2018 has received for placing qualitative and quantitative restrictions upon the actors that may become members of man-

agement bodies' governing councils—a choice deemed to be inconsistent with the desideratum of participatory protected area management.

It remains to be seen whether the framework put in place by Law 4519/2018 will facilitate the resolution of a long-standing point of contention between the Greek government and ENGOs—namely, the protection of Kyparissia Bay. The latter is the second most important nesting site of the loggerhead turtle in the Mediterranean and one of the most important sand dune systems in Greece. The government's failure to protect Kyparissia Bay, and in particular the 'Thines Kyparissias' Natura 2000 site, has been asserted by the Greek Council of State (Judgments No 32/2015, 175/2017 and 80/2018), the ECJ (Case C-504/14), and the Standing Committee of the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention, Recommendation No 174). Combined with the recent designation of Kyparissia Bay as a 'Nature Protection Area' (Government Gazette D 391/3-10-2018, as corrected by Government Gazette D 414/12-10-2018), the newly clarified mandate of protected area management bodies may serve as a catalyst for the elaboration of a more comprehensive plan of action.

These positive developments are an essential step towards addressing persisting gaps in Greece's compliance with EU nature conservation law. In early 2018, the European Commission sent Greece a reasoned opinion noting its failure to adopt the measures necessary to maintain or restore the habitats and species included in its Natura 2000 network to a favorable condition (http://europa.eu/rapid/press-release_MEMO-18-1444_en.htm). In order to rectify this oversight, the competent authorities have stepped up their efforts towards carrying out Specific Environmental Studies, the purpose of which is to identify significant biodiversity features in a given area and determine the type and degree of protection required. These studies will lay down the groundwork for the official designation of the relevant site as well as the subsequent elaboration of appropriate management schemes.

A final comment relates to the role played by EU infringement proceedings in the implementation of international environmental law. A recent example of the synergistic relationship between the two concerns the Convention on Biological Diversity (CBD) and its Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. Regulation 511/2014, which transposed the Protocol into EU law, requires member states to designate one or more competent authorities to be responsible for its implementation, and to introduce rules on effective, proportionate and dissuasive penalties to sanction infringements. In 2018, the European Commission issued a reasoned

opinion noting Greece's failure to meet these obligations (<http://europa.eu/rapid/press-release_MEMO-18-6247_EN.htm>).

<S1>(5) Environmental Assessment

The most recent amendment to EU Directive 2011/92 on the Assessment of the Effects of Certain Public and Private Projects on the Environment (EIA Directive) adapted and clarified the criteria that member states must take into account in order to determine whether a project ought to be subject to an EIA. These benchmarks refer to the characteristics of the project, the nature of the anticipated effects and the environmental sensitivity of the geographical areas that are likely to be affected. Among the newly introduced screening criteria are the risks that the project raises for human health; the cumulative environmental effects that are likely to result from the project in combination with other existing and/or approved projects; and the extent to which the project's environmental impact may be effectively reduced.

Member states had until May 2017 to incorporate the amendments into their domestic legal systems. Greece's delay in adopting the required measures was noted by the European Commission in a reasoned opinion issued in January (<http://europa.eu/rapid/press-release_MEMO-18-349_en.htm>). Since then, there has been significant progress towards transposition, although certain shortcomings remain, particularly in regard to the new screening criteria. The latter became part of national law in March (Joint Ministerial Decision No οικ. 5688/2018). Immediately prior to the adoption of the relevant instrument, the categories into which projects and activities may be classified on the basis of their anticipated environmental impact were amended without, however, there being any evidence that the new screening criteria were taken into account (Joint Ministerial Decision No οικ. 2307/2018).

Of particular note are the changes enacted in connection to certain types of extractive activities, which have been 'downgraded' and, consequently, are no longer subject to an EIA within the meaning of EU law. Seismic surveys, which constitute the first phase of hydrocarbon exploration, are a case in point, having been excluded from EIA requirements despite their being associated with a broad range of adverse environmental impacts. These impacts appear all the more concerning in light of the great number of protected sites falling within the ambit of areas reserved for hydrocarbon development, including sites designated under EU nature conservation law and the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention).

Perhaps unsurprisingly, Greece's hydrocarbon boom shows no signs of slowing down. The past year was marked by the signing of four lease agreements between the Greek State (lessor) and private investors (lessees), pursuant to which the latter have the exclusive right to carry out activities relating to the exploration and exploitation of hydrocarbons within areas specially demarcated for this purpose. The agreements stipulate that, in the case of activities such as seismic surveys, for which an EIA is not mandatory but which may, nevertheless, give rise to some 'minor' environmental impacts, the lessee shall prepare an Environmental Action Plan (EAP) in order to determine, assess and mitigate the anticipated effects. Unlike the ordinary licensing procedure envisaged by national law, whereby the issuance of an environmental permit is preceded by extensive public consultation, the EAP is submitted to the lessor for review and must be observed by the lessee as a contractual obligation. ENGOs have challenged the ambiguous legal status of the EAP, which finds no basis in Greece's legal framework on EIAs.

Another development worth documenting is the launch of Greece's Digital Environmental Registry (DER). The information stored on this online portal will cover all stages of the EIA process—namely, the submission of an application for development consent; the publication of the relevant EIA report and the convening of a public consultation; and, finally, the issuance of the decision approving the environmental terms of the project or activity under evaluation. The establishment and operationalization of this portal is a critical step towards aligning Greece's EIA framework with the revamped EIA Directive, which requires that information relating to its implementation be made electronically available to the public in an effective and timely manner, with a view to enhancing transparency and participation. The DER will also serve as a repository of a wide range of information relating to the environmental performance of licensed projects and activities throughout their life cycle, in accordance with the national legal framework on EIA (Law 4014/2011). This is expected to facilitate the undertaking of environmental monitoring and inspections by the competent administrative authorities.

At this point, some brief mention must be made in regard to a request for a preliminary ruling submitted to the ECJ by the Greek Council of State in regard to the compatibility of national legal provisions relating to the publicity of EIA processes with EU law (Case C-280/18). The primary addressees of these provisions are regions—that is, a higher-level administrative unit that may not be as readily accessible to the full range of interested citizens and potentially affected stakeholders as lower-level units, such as municipalities. In light of this fact, the Council of State inquired whether posting the final product of the EIA process—

that is, the decision approving the environmental terms of a project or activity—to the DER can create a presumption of full knowledge on the part of all interested parties for the purposes of exercising the legal remedies available under Greek law. In particular, the Council of State asked whether such a presumption is compatible with the EIA Directive read in combination with Article 47 of the EU Charter of Fundamental Rights on the right to an effective remedy and to a fair trial. The case is currently pending.

In addition to this request for a preliminary ruling, the past year saw the Greek Council of State deliver a number of seminal judgments in cases concerning environmental assessment. In Judgment No 1358/2018, for instance, the court ruled that EU nature conservation law does not introduce an absolute prohibition against the siting of wind farms within Natura 2000 sites. To the contrary, the licensing of such projects must take place on an *ad hoc* basis, taking into account the environmental impact of each individual installation. Consequently, it is possible to designate Natura 2000 sites as priority areas for wind energy development. Along similar lines, the court held that the national legal framework on the protection of forests does not prohibit the siting of wind farms within areas reserved for reforestation (Judgment No 2579/2018). The court observed that such intervention may be justified by reasons of public interest, of which the production of electricity from renewable energy sources is one example. The court did, however, specify that the decision approving the environmental terms of the relevant project must clearly set out the conditions for its sustainable operation.

Another landmark ruling concerns the construction of the Greek leg of the Trans Adriatic Pipeline, a transboundary pipeline project for the transportation of natural gas from Azerbaijan to Europe (Judgment No 1362/2018). A group of municipalities lodged an application for the annulment of the decision approving the project's environmental terms. In substantiating their legitimate interest in the case, the claimants suggested that they have a mandate to protect not only the health and well-being of their constituents, but also the environment as a collective good. They further argued that this mandate empowered them to request the annulment of the decision *in toto*. The court rejected this claim. Making reference to the narrow constitutional mandate of local and regional authorities, it held that they can request the annulment of a decision of this nature only partially—that is, only in regard to the part of the project that falls within their jurisdiction.

As a final note, it is worth mentioning that Greece ratified the second amendment to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) by virtue of Law 4562/2018. The *ratio* of the amendment was to align the Espoo

Convention with the EIA Directive, and introduce a non-adversarial and assistance-oriented mechanism for promoting compliance.

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