AVOSETTA MEETING Vienna 2018 - QUESTIONNAIRE

FLEXIBILITIES WITH REGARD TO MEETING EU REGULATORY OBJECTIVES AND REQUIREMENTS

COUNTRY REPORT: GREECE

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I. Policies of prioritising economy and ecology

As it has been demonstrated also in the previous reports, the deep economic crisis that emerged in late 2008 signalized a "paradigm shift" concerning the regulatory approaches and the content of the relevant legislation concerning the authorization of the various economic activities. Since then, certain pieces of legislation are introduced which aimed at the simplification and acceleration of the authorization procedures for various kinds of investments, including the authorization of industrial installations and other kind of projects and activities that may have an impact on the environment. The most significant pieces of legislation that have been introduced towards this direction are the following:

1. The regulatory framework for the environmental authorization, namely Law 4014/2011 and the respective Ministerial Decisions. As positive elements of the regulatory framework introduced by Law 4014/2011[1] can be referred the integration of the various environmental permits into one single permit (except for the water permit), the publication of the environmental permits on the website of the Ministry for Environment and Energy and the digitalization of the authorization procedure, although it has not taken place to a significant extent so far. Certain elements of the current framework may, also, raise issues of compatibility with the EIA Directive and the IED Directive. As such elements can be referred : a) the reduction of the categories of projects subject to EIA procedure from 4 to 3 (Article 1), so that an environmental authorization is required only for projects classified in the Category A b) the provision of a simplified notification procedure concerning the compliance with certain standardized requirements ("Standard Environmental Commitments') determined for each specific group of projects which are classified in the B category. In this way, no assessment of the environmental impacts of the concrete project on a case-by case basis takes place. d) the extension of the validity of the existing environmental permits

[1] For a comprehensive overview see K. *Gogos*, Die umweltrechtliche Vorhabengenehmigung in Griechenland, EurUP 2015, p. 2-11.

up to ten years from the time-point of their issuance and the provision which stipulates that in the case that the renewal request and the relevant documents have been submitted timely, namely 2 months before the expiration of the validity of the permit, the validity of the permit is extended till the completion of the procedure (article 5 para. 4 of the Law 4014/2011).

e) the significant simplification of the renewal procedure, as it is foreseen that an eia authorization procedure has to take place only when a substantial change of the initial facts and regulations took place (Article 5 of the Law 4014/2011). Otherwise, the administration grants the renewal of the permit on the basis of the declaration of the operator that no substantial changes have taken place. The Council of State has set certain limits to this simplified renewal procedure by requiring that *the administrative decision granting the renewal without an EIA procedure must be sufficiently reasoned as regards the fact that no substantial change has taken place* **(**CoS Decisions 1668/2014, 3577/2014, 424/2015). Moreover, *this simplified renewal procedure does not provide any form of public participation, raising thereby issues of incompatibility with Article 6 of the Aarhus Convention and the public participation provisions of the EIA and IED Directive*. It is also worth mentioning that Greece has not transposed so far the Directive 2014/52/EU, which sets stricter standards as regards the quality of the EIA study and establishes a subsequent obligation of the authorities to check the quality of the Study.

2. Specific Legislative provisions or Acts of Legislative Nature (Emergency Acts)[2] **that grant environmental or operation permits or extend the validity of existing permits.** The authorization of large-scale projects by law was a practice that was regularly followed in Greece before the jurisprudence of the CJEU (Joined Cases 128/09-135/09 Boxus and Others) and that of the Council of State (Decisions 26/2014 (Plen.), 376/2014 (Plen.)) under the influence of the former set significant limits to this practice, also by making an extensive judicial review of the relevant legislative process[3]. In spite of the contribution of the jurisprudence of the CJEU and the CoS, this practice is still being applied, as the validity of the Single Operation Permit of the Public Power Corporation (hereinafter PPC) which substitutes the individual permits of the

[2] Article 44 para.1 of the Greek Constitution provides that acts of legislative nature are adopted by the President of the State in the case of emergency and unforeseeable need after a Proposal of the Ministerial Council. These acts become valid after their approval by the Parliament within a short period of time. In accordance with the settled jurisprudence of the Council of State, these acts cannot be subject of judicial review. In spite of its exceptional character, this instrument has been widely used for passing legislation since the emergence of the economic crisis in Greece.

[3] *V. Karageorgou*, Granting development consent by specific legislative act- Choice to circumvent public participation and judicial control? The European perspective in L.Westra/P.Taylor/A.Michelot (eds), Confronting Ecological and Economic Collapse-Ecological Integrity for Law, Policy and Human Rights, Routledge, London, 2013, p. 92, 96.

lignite power stations and presupposes a valid environmental permit, was extended by an act of legislative nature (Act of legislative nature 24/24.12.2015 validated by Article 9 of Law 4366/2016) and a specific legislative provision (Article 31 of Law 4405/2017) consecutively till 31.12.2019. Furthermore, the validity of the environmental permits of the lignite power stations was extended on the basis of the legislative provision (Article 5 para.4 of the Law 4014/2011) that sets that the expired permit remains valid until the completion of the renewal procedure if the relevant file has been timely submitted. In this way, the expired environmental permit may be used as a basis for the issuance of the Operation permit. *Subsequently, the extension of the validity of the operation and environmental permits of highly polluting installations (lignite power stations) by legislative acts or legislative provisions cannot be subject to public participation and judicial review.* WWF Greece and Clientearth have submitted a communication to the Aarhus Convention Compliance Committee (ACCC/148/2017), challenging the compatibility of these practices with the relevant provisions of the Convention (Articles 6 and 9). Furthermore, certain kinds of activities (athletic installations, skiing resorts, hotel accommodation facilities) can obtain or renew their operation license, even if the respective environmental permit had been expired only under the condition that a request for the renewal of the environmental permit has been timely submitted (Article 66 of the Law 4403/2016, as modified by Law 4487/2017 for hotel accommodation facilities, Article 48 of the Law 4403/2016 for athletic installations).

3. The legislation for the authorization of large-scale investments that are characterized as "Strategic Investments" in a so-called "fast-track procedure" (Law 3894/2010, as modified several times). The Fast-track Legislation provides the possibility for the introduction of Special Planning Regimes that set specific location sites for the reception of Strategic Investments and introduce specific land use regulations and building conditions for these areas in deviation from the existing legislation (Article 24). Furthermore, all the relevant permitting procedures are, to a significant extent, simplified and accelerated, so that permits, including the environmental permit, are granted within a set deadline.[4]

4. The legislative Framework for the protection and management of forests: Law 4280/2014 introduced a series of changes to the then existing legislative framework for the protection and management of the forests (Law 998/79), which, despite its deficiencies relating to the lack of a systematic approach and the existence of "single-case" provisions, provided a rather

[4] V. *Karageorgou* , The Fast-track Authorization of Large-Scale RES Projects: An acceptable Option? in: L. Squintani et al (Eds), Sustainable Energy United in Diversity-Challenges and Approaches in Energy Transition in the European Union, European Environmental Law Forum Series, Volume 1, 2014, p. 65, 74 et.seq.

satisfactory level of protection for the sensitive forest ecosystems. The most significant changes that have been introduced related to the abolition of the absolute protection which land declared for re-forestration after a fire or clearing enjoyed under the previous regime, the allowance for its use under certain conditions, especially for certain infrastructure projects, such as roads, dams and renewable energy installations (Articles 46,48 and 53 of the Law 998/1979, as modified by Law 4280/2014) and the expansion of the already provided uses of protected forest lands under certain conditions for industrial, mining, energy and tourist installations and for infrastructural projects, such as roads, energy and transport networks (Articles 47, 47A, 48, 49, 50 and 53 of the Law 998/1979, as modified by Law 4280/2014). In a series of decisions, the Council of State ruled that *the alteration of the use of forest areas is only exceptionally allowed under the condition that it serves reasons of public interest that have to be balanced with the forest protection which also constitutes a constitutionally recognized reason of public interest* (CoS Decision 2499/2012 (Plen.); 2153/2015).

I. Techniques aiming at introducing more flexibility to or even diluting regulation

a) Offsetting regulatory directions*EU-ETS*

How was the possibility of using international credits transposed into national legislation?

The Emissions Trading Directive (2003/87/EC) was initially transposed in the Greek Legal Order by the Joint Ministerial Decision (JMD) 54409/2632/2004, which was amended by the JMD 9267/468/2007 that transposed the requirements of the Linking Directive (Directive 2004/101/EC). The initial JMD was further amended by the JMD 57495/2929/E103/2010, by which the requirements of the Directive 2009/29 were transposed. Furthermore, the relevant framework for Emission Trading Scheme, including the possibility of using international credits for ensuring compliance with EU-ETS requirements, was codified and modified by the JMD 181478/965/2017 (Official Gazette Issue 3763/B'/26.10.2017). In the relevant framework, it is stipulated *that the projects that are going to be implemented within the framework of the JIM or the Clean Development Mechanism have to be approved by the Minister for Environment and Energy after the opinion of the competent authority and have to fulfill the relevant requirements that are set within the framework of the UNFCCC and follow the relevant procedures* (Article 18 of JMD 181478/965/2017). Furthermore, it is foreseen that the Emission Reduction Units from projects within the framework of the Joint Implementation Mechanism that are implemented in the Greek territory should not be used for emission reductions of activities fall in the scope of application of the EU-ETS (Article 18 para.4 of JMD 181478/965/2017). Furthermore, a Circular was issued in 2012 about the implementation of

projects within the framework JIM and CDM and the use of international credits by private operators[5].

b) *Has your country used the possibility of using international credits to comply with EU-ETS requirements? If so, to what extent? Are you aware of the reasons for relying on this possibility*?

The relevant regulatory framework provides the possibility only for private operators participating in the EU-ETS system to use international credits from projects within the framework of JI and CDM. The approved National Allocation Plan for the period 2008-2012 provided that the maximum potential for CER and ERU surrender was 9.0 % of the allocated allowances. In accordance with the relevant data, the combustion sector, the glass industry and the refineries sector exploited almost all of their full potential for CER and ERU.[6]**.** It is also worth mentioning that the implementation of the EU-ETS system in Greece in the first two periods (2005-2007 and 2008-2012) was characterized by the excessive allocation of emission rights especially to industrial installations, so that operators did not have incentives for emission reduction and could also transfer rights to the third emission trading period.[7]

c) *How is the change to a domestic emissions reduction target received in your country? Is this change expected to affect your country's abilities to comply with EU-ETS requirements? Are you aware that other possibilities are discussed to compensate the loss of the flexibility through international credits?*

As already indicated, the Greek State does not use international credits for ensuring compliance with the EU-ETS requirements. Subsequently, this specific change is not expected to have a direct impact on the ability of the Greek State to reach the targets set in EU-ETS scheme in the next trading period. One of the critical issues which is widely discussed relates to *whether the obligatory sale of 40% of the Public Power Corporation's lignite capacity, which is foreseen in the Third Economic Adjustment Programme, and the construction of new lignite power stations[8], which are critical components of the current energy strategy[9] based still on*

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[5] Ministry for Environment, Energy and Climate Change, Circular for the approval of projects in accordance with Articles 6 and 12 of the Kyoto Protocol (Joint Implementation and Clean Development Mechanism), 2012, available at: https://ji.unfccc.int/UserManagement/FileStorage/JMEYSGL17XRH34I6KWQZA92PVBOTN0.

[6] *Chatzilau et al*, EU Emissions Trading Scheme Application in Bulgaria, Greece and Romania in T. Erşahin et al (eds), Carbon Management, Technology and Trends in Mediterranean Eco-systems, Springer Verlag 2017, p. 45, 49-51. This estimation is based on the relevant data included in the reports of the EU Commission and EEA and the research of the authors.

[7] WWF, Carbon Fatcat Companies in Greece, available at :https://sandbag.org.uk/wp-content/uploads/2016/11/Carbon_Fatcat_Companies_in_Greece_1.pdf

[8] The energy sector is the main source of greenhouse gas emissions (GHG) in Greece, since the average emissions from this sector amount to 75% of the total national emissions. See WWF Greece and National Observatory of Athens, "Long-Term Plan for the Greek Energy System", October 2017, available at: http://www.wwf.gr/images/pdfs/EnergyReportFinal.pdf, p. 27.

lignite dependency, will be economically viable in the context of the reform of the EU-ETS scheme that aims at increasing allowance prices.[10] It is also worth noting that the Greek Government supported by the opposition and Greek Members of EP requested initially the application of the derogation of Article 10c of the EU-ETS Directive to the Greek electricity sector, so that specifically the PPC could receive free emissions rights. As this position was significantly challenged by NGOs and the international press in terms of promoting the construction and operation of highly polluting lignite stations, Greek Government changed its position and requested to have access to the so-called "Modernisation Fund" under Article 10 d of the EU-ETS Directive[11]. Furthermore, the Alternate Minister for Environment and Energy supported the thesis of NGOs and affected municipalities about the establishment of a Fund for fair transition, which would provide support to the lignite dependent communities to move gradually to a low carbon-economy.[12]

b) Effort Sharing (Non-ETS)

As the Effort Sharing Decision No 406/2009 was directly applicable, there was no further transposition in the Greek legal order that would include provisions for the flexibility mechanisms. In accordance with the Effort Sharing Decision, Greece has to reduce the non-ETS emissions by 4% compared to the level of 2005 emissions by 2020. In accordance with the existing data, *the targets for the reduction of the greenhouse gas emissions outside the ETS and for the RES contribution in meeting the heating and cooling needs have been achieved, while the relevant target for the penetration of RES in the gross final energy consumption and the target for RES share in transportation and electricity cannot be achieved by 2020.*[13] The achievement of the emission reduction targets outside the ETS system cannot be attributed to the adoption and implementation of relevant policy measures, but mainly to the decrease in economic activity and the gradual transformation of the Greek economy to a

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[9] To my knowledge, no long-term energy plan has been adopted so far in Greece. An effort for the adoption of such a strategy was initiated in 2012.

[10] WWF Greece, "*Ptolemaida 5 and Meliti 2- Economic viability report of the new lignite units,* July 2013, available at h*ttp*://www.*wwf.gr*/images/pdfs*/Lignite_Study_WWFGreece.pdf;* WWF Greece and National Observatory of Athens, "*Long-Term Plan for the Greek Energy System*", *supra*, note 8, p. 15, where it is argued that on the basis of the relevant data, the cost of electricity production will be increased, if lignite dependency is prolonged and the externalities caused thereof in the form of high prices of emission rights will be included in the relevant prices of electricity. See also *V. Karageorgou*, The Greek experience with the use of market-based instruments in climate policy in M. Rodi/A.Mehling (Eds), Bridging the Divide in Global Climate Policy: Strategies for Enhanced Participation , Lexxion Verlag, Berlin, 2009, p. 177, 184-188.

[11] WWF Environmental Law Annual Review 2017, p.138-139.

[12] Information is available at: http://ecopress.gr/?p=8326.

[13] *WWF Greece and National Observatory of Athens*, *supra*, note 8, p. 28 with reference to a table developed by Eurostat with the relevant data.

service economy[14]. To my knowledge, no flexibility mechanisms have been used for the achievement of the emission reduction targets for the sectors outside the scope of ETS-system. Moreover, there is very limited or no discussion about the use of flexibility mechanisms for reaching the non-ETS emissions targets in the next period, as the discussion is centered on the country's energy system and the transition to a low carbon economy.

2. Exemptions from the regulatory Directives

Water Framework Directive: Establishing less stringent environmental objectives

a)*(How) was the possibility of establishing less stringent environmental objectives transposed into national law? Is the transposing legislation stricter than Art 4.5 by, e.g., adding further requirements for deviating from the environmental objectives?*

Article 4 para. 5 of WFD was transposed into the national legal order by Article 4 para.5 of the Presidential Decree 51/2007 "Measures and Procedures for the protection and management of water sources" (Official Government Gazette 54/A'/2007). The relevant provision (Article 4 para.5 PD 51/2007) transfers literally the relevant provision of the WFD and subsequently does not set any further environmental requirements for the derogations of the environmental quality objectives set in Article 4 of WFD.

b) Have national authorities relied on the option of establishing less stringent environmental objectives in their river management plans? If so, to what extent and for what reasons? If not, why?

The first round of the River Basin Management Plans (hereafter RBMPs) which were adopted with significant delay, namely between 2012-2014, were characterized by the fact that derogation from the objective of the good environmental quality status was foreseen for a significant percentage of the water bodies, as about 1/5 of the water bodies on average were subject to less stringent requirements.[15]. It is also worth mentioning that due to the lack of relevant data as a consequence of the lack of a national registry of water abstractions, a certain percentage of water bodies could not be subject to characterization in terms of their ecological and chemical quality[16]. Furthermore, no specific justification about the establishment of more lenient environmental quality objectives was foreseen in the RBMPs or the justification provided did not seem to be in harmony with the existing legislation, as it referred mainly to social and economic reasons[17]. Insufficient

[14] Ibid, p. 29.

[15] See WWF Environmental Law Annual Review 2014, p.52-54. The report includes a table according to which 22, 9 percentage of the water bodies included in the approved RBMPs on average were subject to lenient environmental quality objectives.

[16] WWF Environmental Law Annual Review 2014, p. 49

[17] The lack of justification as regards the deviation from the environmental objectives of Article 4 is very obvious in the approved RBMP of the River basin of Western Macedonia, as

was also the justification for the exemptions from the strict quality objectives due to "new modifications" (Article 4 para 7 of the WFD), as it was not given account as regards the non-existence of other technically feasible measures or alternatives or concerning the existence of reasons of overriding public interest which could justify the modifications.[18] Furthermore, the RBMPs did not include any provisions or measures with the aim to ensure that no further deterioration of the quality of the water bodies subject to lenient environmental quality objectives would take place[19]. Finally, it worth referring that an extension of the deadline for the achievement of the environmental quality objectives (article 4 para. 4 of WFD) was foreseen in RBMPs for water bodies which are simultaneously characterized nature protected areas under EU Nature Legislation, such as the Vegoritida and the Kerkini Lake, without any specific justification for the extension of the deadline[20].

c)If national authorities have established less stringent environmental objectives in their river management plans, are these objectives regularly reviewed? Have such less stringent environmental objectives been adapted or even lifted?

Due to the delay in the adoption of the first round of RBMPs[21], the generation of the second round of RBMPs was also significantly delayed and the Commission initiated an infringement procedure against Greece.[22] By the end of 2017, all the reviewed RBMPs were approved. NGOs claimed that no sufficient time-frames for public consultation were provided (e.g. only two

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less stringent environmental quality objectives based on a general justification relating to all water bodies were set for about 46,9 of the water bodies of the critical basin. See Documentation Paper of the RBMP of water bodies of Western Macedonia, Chapter 3.3. Another example of insufficient justification for the application of less stringent environmental objectives concerns the water body of the Preveza Peninsula, which was characterized of having bad chemical and quantitative quality and the application of lenient environmental objectives was justified by socio-economic reasons relating to the problems that could be created for the agricultural production of the region in the case that stringent quality objectives were to be applied. WWF Environmental Law Annual Review 2014, p. 52, footnote 299.

[18] Documentation Paper of the RBMP of water bodies of Western Macedonia, Annex III concerning the achievement of the environmental quality objectives and the relevant exemptions. See also WWF Environmental Law Annual Review 2014, p. 53.

[19] Ibid, p. 55.

[20] Ibid, p. 54.

[21] The European Commission noted that the first round of RBMPs were characterized by deficiencies that could create uncertainties as regards the binding nature of the Programmes of Measures, which are a very critical component of the RBMPs in terms of achieving the environmental quality objectives. It was also stressed that the public consultation procedures were insufficient. See European Commission, EU Environmental Implementation Review-Country Report Greece, COM(2017) 63 final, p. 16

[22] European Commission. (2017, 27 April). Formal notice Art. 258 TFEU. Water - Late adoption of the 2nd round of River Basin Management Plans under the Water Framework Directive.

months) and that the provided information was also insufficient, as the relevant documentation papers were not available.[23] A first critical remark as regards the review of the RBMPs is that a new methodology was followed concerning the classification of the environmental quality status of the water bodies and that the establishment of the National Registry of Water Abstractions is critical in terms of providing information concerning the status of the water bodies. A consequence of the new classification method is that in certain instances, the quality status of the water bodies has changed.[24] Furthermore, at a glance no significant changes can be observed as regards the classification of water bodies as "specifically modified", while also extended deadlines (Article 4.4 of WFD) are foreseen for the achievement of the environmental quality objectives for certain water bodies without specific justification.[25] Due to the extended groundwater pollution, a significant percentage of water bodies are characterized as vulnerable to nitrate pollution for which new Action Plans have to be adopted. Finally, the reviewed RBMPs are also criticized for ineffectiveness as regards the adopted Programmes of Measures in the sense that they do not set concrete measures for the achievement of the environmental quality objectives.[26]

d) Are there possibilities for the public to challenge the establishment of less stringent environmental objectives in river management plans? If so, please describe those possibilities briefly.

Due to the significant influence of the French system of judicial review, the Greek system of judicial review of administrative acts and omissions is classified as an objective system of judicial review. Subsequently, citizens claiming having a sufficient interest or environmental NGOs ("public concerned") can challenge the legality of the critical RBMP and the Strategic Environmental Impact Assessment Study accompanying the Plan setting less stringent environmental objectives.

In this context, 4 environmental NGOs have challenged the legality of the RBMP and the accompanying SEA Study of the Epirus Water Basin before the Council of State for various reasons. The Court rejected the relevant pleas of the claimants that *the RBMP and the accompanying SEA Study did not encompass a detailed record of the protected species and habitats and especially those which were in close connectedness with the water bodies in the scope of the RBMP*

[23] WWF Letter to the Specific Secretary of Water Policy of 9.12.2016, available at: http://www.wwf.gr/images/pdfs/WWF-letter-EGY.pdf'; Mesogeios SOS, The missed opportunity of the revision of the RBMPs, 21.12.2017, available at: http://www.ecopress.gr/?p=4382.

[24] WWF Environmental Law Annual Review 2017, p. 157-158.

[25] Ibid, p. 158.

[26] Ibid, p. 158.

and that the adopted Programme of Measures did not include any specific measures for the protection of the wild life, by ruling that there was sufficient documentation of the protected species and habitats and that the measures foreseen in the "Programme of Measures" were sufficient, as at the time of the adoption of the RBMP no Management Plan for the concrete protected areas had been adopted and implemented. Moreover, the Court based its reasoning on the fact that *the Programme of Measures mainly codifies existing Measures and does not adopt new ones* (CoS Decision 2936/2017, paras. 13-18). Furthermore, the Court rejected another plea of the claimants, *according to which the water utilization project, such as the hydroelectiric project foreseen in the RBMP as a new project, had, in accordance with the water and SEA legislation, to be assessed with regard to its expected impact on the water bodies and its compatibility with the sustainable use of water bodies of the larger project area mainly within the framework of the SEA Study and that such an assessment did not take place*. The reasoning for the rejection of the relevant plea was based on the assumption that the SEA Study accompanying the RBMP mainly examines the possible impact of the RBMP and of the projects included in the Programmes of Measures on the environment and that it is also examined within the framework of the RBMP, if an exemption from the environmental quality objectives should be granted in the case that this is necessary for the realization of projects that were made known to the competent authority during the elaboration of the RBMP(para. 23). Departing from this thesis, the Court ruled that *as the critical authorized project, which was made known to the competent authority during the elaboration of the RBMP, was examined concerning its possible impact on the water bodies and especially as regards the need for the application of the exemption of Article 4 para 7 of the PD 51/2007 and the administration came to the conclusion that it could not affect the achievement of the environmental quality objectives, the relevant plea should be rejected (paras. 24-25).The Court placed also emphasis on the fact that the claimants did not challenge the legality of the thesis of the administration as regards the application of the exemption.*

Two remarks should be made concerning the reasoning of the ruling. *The first one is that the Court adopted a rather restrictive approach as regards the content of the SEA Study and the examination of the compatibility of the projects foreseen in the RBMP with the environmental quality objectives that have to be achieved. Such an approach does not seem to be in harmony with the objective of both the SEA Directive and WFD in terms of assessing the impacts of the designed projects at a strategic level.* The second one is that the Court is reluctant to apply the *ex-officio* principle, in order to ensure a "complete" review of the implementation of the EU originated environmental legislation, as it required by the CJEU jurisprudence (CJEU Ruling C-71/14, Earl Sussex).

b) Industrial Emissions Directive: Setting less strict emission limit values

1. *(How) was the option of setting less strict emission limit values as permit conditions transposed into national law? Is the transposing legislation stricter than Art 15.4 by, e.g., adding further requirements for deviating from the emission limit values?*

The relevant provision of the IED Directive was transposed in the Greek legal order by Article 12 of the Joint Ministerial Decision 36060/1155 /E.103 (Official Government Gazette Issue 1450/B'/2013), which constitutes a literal transposition of the relevant provision of the IED Directive. Subsequently, it does not set any further requirements for the application of the derogation provision.

2. *Have national authorities relied on the option of setting less strict emission limit values in permitting industrial installations? If so, to what extent, for what reasons and for which types of industrial installations? If not, why?*

First of all, it should be mentioned that no specific Guidance for the application of the derogations of Article 15 para. 4 of the IED Directive has been issued by the Ministry for Environment and Energy. The competent authorities can grant the derogation by applying the relevant criteria set in the provision of the JMD (Article 12) and examining the relevant situation on a case by case basis. Furthermore, magnitude and time-limits can be foreseen in the provisions of the permits that grant the derogations.[27] It is also worth noting that the request of the Greek Government for the inclusion of the Unit II of the Ptolemaida lignite power station, which was closed after an accident, in the list of Article 33 of the IED Directive for a limited life-time derogation was rejected by the European Commission[28].

3. *If national authorities have set less strict emission limit values in permitting industrial installations, is there a requirement to review these permit conditions regularly?*

In accordance with Article 12 para. 4.3 of the JMD 36060/1155 /E103, the competent authority has to review the granted derogation within the framework of the review of the environmental permit (Article 17 of the JMD). Therefore, no specific obligation for review is provided in the case of the application of the derogation provisions.

4. *Are there possibilities for the public to challenge the setting of less strict emission limit values as part of permit conditions, the lack of review of such less strict emission limit values respectively? If so, please describe those possibilities briefly.*

As already indicated concerning the review opportunities in the case of the application of exemptions set in the RBMPs, the affected citizens and the

[27] Assessment and Summary of the Member States Implementation Reports for the IED, IPPCD, SED and WID, March 2016, p. 35,38.

[28] European Commission, DG Environment. (2015, November). Application of Article 33 of Directive 2010/75/EU on industrial emissions (IED) -Ptolemais power plant._letter

environmental NGOs ("public concerned") can challenge the legality of the relevant administrative act (e.g. permit) setting more lenient emission standards. So far, mainly environmental NGOs have challenged the legality of environmental permits that do not apply BAT standards.

3. Exemptions and offsetting combined: the case of NATURA 2000

1. *How was the obligation to take compensatory measures in view of the coherence of the network as part of the appropriate assessment transposed into national law? Do the national rules go beyond the requirements of the Directive by, e.g. adding further requirements for compensatory measures?*

Article 6 para. 3 of the Habitats Directive was transposed into the national legal system by Article 6 of the JMD 33318/3028/1998, which is complemented by Article 10 of the Law 4014/2011. The relevant transposition of Article 6 of the Habitats Directive in the Greek legal order is rather problematic first because the Appropriate Impact Assessment Procedure is not clearly distinguished from the EIA procedure. but mainly viewed as a part of it and secondarily because there is distinction as regards the relevant requirements of the AIA Study in accordance with the classification of the project under the EIA Legislation (Article 11 para. 8, 9 and 10 of the Law 4014/2011)[29], a distinction, which is not foreseen in the Habitats Directive.[30] Furthermore, Article 10 para. 4 of the Law 4014/2011 stipulates that in the case that the AIA demonstrates that the relevant project may have an impact on the integrity of the protected site, the Minister for the Environment can still authorize the project if it serves reasons of overriding public interest, including also economic and social reasons, no feasible alternatives exist and the necessary compensatory measures are foreseen, in order to ensure the total integrity of the NATURE 2000 network of protected areas. This provision is applied to projects that are going be implemented in protected areas in which non priority habitats and species exist[31]. Furthermore, it is foreseen that within 2 months after the issuance of the environmental permit the Minister for the Environment has to inform European Commission about the approved project and the compensatory measures foreseen. *This provision does not seem, though, to be in harmony with Article 6 para. 4 of the Habitats*

[29] Ministerial Decision 52983/1952/2013 sets the requirements for the Appropriate Impact Assessment (Special Ecologic Assessment in the greek legislation) for the projects classified in Category B under the EIA Legislation

[30] *G.Balias*, The Appropriate Impact Assessment for Projects and Plans in areas of the network NATURA 2000, Environment and Law, 2014, Issue 4., p. 577-594.

[31] Projects that are going to be implemented in protected areas in which priority habitats or species exist, can be authorized only if they serve purposes relating to public health or public safety, or if they are of primary importance for the protection of the envirionment.

Directive, which requires a favourable Opinion of the European Commission before the approval of the project under Article 6 para.4.[32] Subsequently, national law does not set any further requirements as regards the compensatory measures in relation to the EU law. It is also worth noting that the European Commission has not expressed so far an Opinion for a Greek project approved under Article 6 para. 4 of the Habitats Directive[33] and the provision for taking compensatory measures is rarely being implemented[34]. Furthermore, the CJEU on the Acheloos Case (C 43/10) ruled that the compensation obligation of Article 6 para. 4, interpreted in the light of the principle of sustainable development enshrined in Article 6 EC, allows the conversion of a natural fluvial eco-system into a man-made fluvial lacustrine eco-system provided that the conditions of Article 6 para. 4 of the Habitats Directive are satisfied (para. 139).

2.Does your national law allow for 'mitigating measures' or 'protective measures' to be considered under the rules transposing the appropriate assessment of the Habitats Directive? If so, to what effect? Can such 'mitigating measures' or 'protective measures' allow a developer not to undergo the test set out in Art 6(4) Habitats Directive?

National law does not include any provision about protective or mitigating measures. In practice relevant EIA Studies, encompassing also the AIA Study include proposals for protective or mitigation measures and the relevant environmental permits include also terms establishing the obligation for the operator to take those kinds of measures. This is mainly used as a means for avoiding the compatibility test with the requirements of Article 6 para.4 of the Habitats Directive, as transposed into the national law.

3. Are you aware of any other options, in law or in court practice, that allow for the offsetting of negative environmental impacts within the context of the Natura 2000 framework? If so, please describe these options. If not, are you aware of discussions on this subject pushing for a change of the law?

To my knowledge, no other options that allow for the offsetting of the negative impacts are being discussed.

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[32] *N. de Sadeleer, T*he Appropriate Impact Assessment and Authorization Requirements of Plans and Programmes likely to have Significant Impacts on Natura 2000 Sites, elni Review, 1+2/2013, p. 7, 20.

[33] http://ec.europa.eu/environment/nature/natura2000/management/opinion_en.htm.

[34] *Ioli Christopoulou*, WWF Hellas, Legislation for nature protection: State of Implementation of the Euroepan Directives for nature protection-Proposals for better Implementation, Sptember 2017, available at : http://www.lifethemis.eu/sites/default/files/2017Sep7_EUNatureImplementation_Crete_ChristopoulouIoli.pdf

4. Does ecological economics provide an answer? Is there any debate in your country suggesting that we should better factor in the socio-economic services of natural resources? 4. There has been no recent and major debate on this issue?

There is no relevant debate on this issue.