Questionnaire for the national report of Greece on Access to Environmental Information
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Answer to Question 1:
The Greek Constitution does not contain a specific right on access to environmental information. Instead of that, the right of access to information is guaranteed at two instances in the Greek Constitution. In particular, Article 10 para. 3 stipulates that the competent authority is obliged to reply to requests for information and to issue documents within a set deadline not exceeding 60 days, as specified by law. It is also provided that in the case that the deadline elapses without action or in case of unlawful refusal, in addition to other sanctions and consequences stipulated in law, the applicant can also be compensated in accordance with the conditions set in Law. Furthermore, Article 5A establishes two distinct but interrelated rights : a) the **right to information** in the sense that everyone has the right to get informed on the exchange of ideas and all other relevant sources of information and b) **the right to participation in the information society, which is recognized as a manifold participatory right that relates to the possibilities and capacities of everyone to participate in the various aspects of the "information society" as well as to co-define them [Mitrou, 2006, p. 35ff].** The right to information and the right to participation in the information society are inextricably linked with the principle of democracy in the sense that only informed citizens can hold public authorities accountable for their actions. Moreover, it is widely accepted in the legal theory that a specific aspect of the constitutionally established right to information is the right of access to administrative documents [Chrysogonos, 2006, p. 41].
Answer to Question 2: The Administrative Procedure Code (Law 2690/1999, Hellenic Government Gazette Issue A/45/9.03.1999) contains a significant provision as regards access to administrative documents (Article 5). Furthermore, the EU legislation on the re-use of the public sector information (Directive 2003/98/EC as amended by the Directive 2013/37/EU) was transposed in the national legal system by Law 3448/2006, which is amended by Law 4305/2014. It is worth noting that **all the relevant legislative provisions on access to public documents, including, *inter alia*, those of the Administrative Procedure Code, the Law of the Re-use of the public sector information, the Law 3979/2011 on access to electronic public documents, the Law 2472/1997 on the protection of personal data and the Joint Ministerial Decision on access to environmental information, were codified in the Presidential Decree 28/2015 "Codification of the provisions regarding access to public documents and information**[1]" (Hellenic Government Gazette Issue A/34/23.03.2015). In this context, Article 1 of the First Chapter ("Access to Public Documents") of the Presidential Decree 28/2015, which incorporates the provision of Article 5 of the Administrative Procedure Code stipulates that *everyone who has a reasonable interest, can request by a written application to have access to administrative documents* (para. 1). The term "administrative documents" is defined in a quite restrictive way including expressively all those documents which are drawn

[1] The Presidential Decree codifies also the majority of the provisions of the Law 3882/2010 (Hellenic Government Gazette Issue A/166/22.09.2010), by which the INSPIRE Directive was transposed into the national legal system and certain rules, measures and procedures for the management and access to geospatial information were introduced.

by public authorities (reports, studies, minutes), while the documents which are in the possession of the administration and have been taken into consideration for the administrative action, are included in the scope of application of this provision by means of interpretation [Taxos, 2003, p.173, State Legal Service Opinions 665/1998, 37/2004, 389/2008]. Furthermore, Article 1 para.3 of the Presidential Decree (Article 5 para. 3 of the Administrative Procedure Code) introduces two kinds of exceptions which limit the exercise of the right of access to documents: a) the absolute exceptions[2] which relate to the protection of the private and family life of a person and the confidentially of a certain document stipulated in a specific legislative provision and b) the relative exceptions relating to the protection of the purpose of the investigation of judicial, military and police authorities and the protection of intellectual property rights. Furthermore, the relevant legislative provisions on the re-use of the public sector information (Second Chapter of the First Part of the Presidential Decree incorporating the provisions of the Law 3448/2006, as modified) is underpinned by the broad definition of the term "document", the subsequent wider scope of application of the right of the re-use of the information resources of the public sector in relation to the right of access to administrative documents and the introduction of open data mechanisms as a means to ensure free data availability. The linkage between the two legislative frameworks is not clearly defined, as even the codification effort was not extended to the harmonization of the relevant provisions and the clarification of their relationship.

Finally, a significant legislative initiative, which aims at promoting transparency of the public sector's decisions and actions and facilitating citizen's to exercise the right of access to information and the right to participation in the Information Society, was introduced by Law 3861/2010 (Hellenic Government Gazette Issue A/112/2010), modified by Laws 4210/2013 and 4305/2014 respectively. It is the so-called "Diavgeia project" (Diavgeia means clarity in Greek). According to the provisions of the relevant legislative framework all public institutions, regulatory authorities and local governments have the obligation to publish all their decisions (Presidential Decrees, Ministerial Decisions, Circulars, Decisions on the commitment of funds and financial decisions) on the internet in order to be valid for execution. Only decisions which contain sensitive personal data and information on national security are exempted from publication [Tsakiridou, 2011, p. 283; OECD, 2011, p. 124-125].

Answer to Question 3: As is the case with the development of the national environmental law, where the contribution of the EU law has been critical (G. Giannakourou, 2004, p.51,53), the EU Law was also the catalyst for the development of the relevant legislative framework on access to environmental information. In particular, legislative provisions in this field were at first introduced in order to ensure harmonization with the requirements of the Directive 90/313/EEC, although this happened almost two years after the expiration of the deadline for the transposition of the Directive. It is worth noting that a ground-breaking Ruling of the Council of State (Decision 3943/1995), by which the Court recognized the "direct effect" of the provisions of the Directive 90/313/EEC in conjunction with the infringement

[2] The absolute character of the exceptions relating to the protection of family and private life is criticized by the legal theory on the grounds that the absolute prerogative to the protection of one constitutional right in relation to the other (right to information) does not seem to be compatible with the principles for the solution of the conflicts between constitutional rights [Vlachopoulos, 2007, p. 121].

procedures initiated by the Commission put significant pressure on the government to transpose the Directive into the national legal system [Roumeliotou, 2001]. The Directive 90/313/EEC was finally transposed through the issuance of the Joint Ministerial Decision 77921/1440/6.9.1995 (Hellenic Government Gazette Issueb/795/14.09.1995).

Answer to Question 4: The relevant Reports concerning the implementation of the Aarhus Convention and the implementation of the Directive 2003/04 do not include any specific statistical data concerning the types of applicants for access to environmental information [Aarhus Convention National Implementation Report 2013]. There is, though, a single reference, according to which there is a significant number of oral requests by citizens and NGOs for access to environmental information. The relevant findings of the Greek Ombudsman, which is a constitutionally established Independent Authority, demonstrate that environmental NGOs and citizens associations are among the most common types of applicants who seek persistently to have access to environmental information, including those which relate to financial data and green funds [Annual Report of the Greek Ombudsman, 2006, p. 140-147; Concluding Findings after the complaint of two NGOs as regards the publication of the utilization of green funds, May 2008]. Finally, the most significant problems which have been identified by the public authorities relate, *inter alia*, to the *lack of staff and the necessary technical and material infrastructure, the absence of systematically kept records, the insufficient interoperability between data services and the insufficient knowledge and experience of the civil servants on environmental issues especially at the local government level.* Moreover, the public authorities can face difficulties in cases where the relevant request is too general or the requested information is quite complex, so that collaboration with other authorities is necessary [Aarhus Convention National Implementation Report 2013, p.11 ff]. All these difficulties can subsequently result in delays concerning the response of the relevant requests.

Answer to Question 5: It should be at first clarified that Greece ratified the Aarhus Convention by the enactment of the Law 3422/2005 (Hellenic Government Gazette Issue A/303/13.12.2005). Furthermore, the Directive 2003/04/EC was transposed into the national legal system with significant delay and after the initiation of infringement procedures by the Commission through the issuance of the Joint Ministerial Decision [JMD] 11764/653/2006 (Hellenic Government Gazette Issue B/327/17.03.2006). As already indicated, the provisions of the Joint Ministerial Decision are incorporated in the Presidential Decree 28/2015. Furthermore, it should be mentioned that the definition of "environmental information" is identical with the relevant definition of the Directive (Article 43 of the Presidential Decree). Moreover, there is no specific national jurisprudence on this issue. It is worth noting though that the Greek Ombudsman, within the framework of the relevant mediation efforts, identified that the competent authorities, also due to the lack of experience and knowledge face difficulties in classifying certain pieces of information as "environmental information" and in applying the relevant legislative framework[3].

[3]In this context, the Ombudsman held that a study for the construction of an underground parking lot and the relevant studies and documents for a system of controlled parking should be classified as "environmental information" on the grounds that they constitute measures that directly affect the environment [Annual Report of the Greek Ombudsman, 2006, p. 143-145; Karageorgou, 2008]. Moreover, the Ombudsman held that the relevant data concerning the utilization of the so-called green funds should be classified as environmental information [Concluding Findings after the complaint of two NGOs as regards the publication of the utilization of green funds, May 2008], while also the data

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Answer to Question 6: The relevant provision (Article 44 para.1 of the Presidential Decree 28/2015, Article 3 para.1 of JMD 11764/2006) is identical to that of the Directive. Furthermore, there is no relevant national jurisprudence in this field. **The competent authorities are in certain cases, though, not well informed about their obligations arising from the access to environmental information regime, so that they deny access on the grounds that the applicant does not demonstrate legal or reasonable interest**[4].

Answer to Question 7: The relevant legal provision (43 para. 2 of the Presidential Decree 28/2015, Article 2 para. 2 lit. b and c of JMD 11764/2006) is identical to that of the Directive in the sense that not only the public authorities but instead any natural or legal person performing public administrative functions or providing public services related to the environment under the control of the public authorities is bound by the obligation to provide access to environmental information. Furthermore, there is no relevant national jurisprudence in this field. It is worth noting that **significant issues concerning the application of the access to environmental information regime by the relevant public entities and companies which are in the process of privatization in Greece, can be raised** [National Report of Greece on Directive 2003/4/EC on access to environmental information, 2009]. For example, the abolition of the Hellenic Mapping and Cadastral Organization and the transfer of the relevant competencies concerning the organization, accessibility and availability of geo-spatial environmental data relating to pollution, water, air and forest maps to the National Cadestry Public Limited Company, which is under the process of privatization, was heavily criticized by environmental NGOs, because it was questionable whether this public entity was bound by the obligations to grant access to geo-spatial and environmental information [WWF Hellas Press Release, 11.06.2013]. The solution given is in line with the CJEU Ruling on Fish Legal, as it is provided that access to the public data of the abolished Organization can be granted for free to any third person and with the necessary open licenses (Article 1 para.1 of the law 4163/2013, as modified by Article 56 of the Law 4178/2013).

Answer to Question 8: The relevant legislative provision concerning the addressees of requests for access to environmental information (Article 44 para.1 of the Presidential Decree 28/2015, article 3 para. 1 of the 11764/2006 JMD) is to a large extent identical with the relevant provision of the Directive. It is worth noting though that the formulation of the provision is not very successful, because it is not clearly defined **that the requests to public authorities for access to environmental information can relate not only to information held by a public authority but**

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concerning the quality of drinking water should be classified as environmental information, so that the relevant legislative regime on access to environmental information should be applied complementarily to that for the drinking water concerning access to the relevant documents.

[4] A municipality in Crete did not recognize the right of certain natural persons or citizen associations to have access to the relevant data concerning the quality of the drinking water. Moreover, the municipality of Athens refused to grant access to certain documents to a President of a Company on the grounds that both the company and the President himself did not have legal interest, as the registered office of the company was in another municipality and the President was not a resident of Athens [Annual Report of the Greek Ombudsman, 2006, p. 145] Finally, the mediation of the Greek Ombudsman was critical in order to persuade an association of local municipalities in Crete to grant access to information which related to the proceedings of their Executive Board concerning the installation of wind mills which was refused on the grounds that the residents did not demonstrated their legal interest.

also to information held for a public authority. Subsequently, this abstract formulation can result in ambiguities which can practically limit the right of access to environmental information. Finally, there is no relevant jurisprudence.

Answer to Question 9: The timeframe for answering the relevant requests for environmental information is shorter (20 days) than that set in the Directive (Article 44 para.3 lit. a' of the Presidential Decree 28/2015). Several other provisions, though, make the extension of the deadline possible under certain conditions, which are not clearly defined. In particular, **Article 44 para. 3 lit b' (article 3 para 2 lit. b' of JMD 11764/653/2006) allows the deadline to be broken in case of *force majeure* or when the applicant invokes circumstances which are known to the competent authorities,** raising thereby compatibility issues with the EU legislation because such exceptions from the set deadline are broader than those envisaged by the Directive and can create ambiguity. Furthermore, **the relevant national provisions concerning the response to requests which are formulated in too abstract a manner or to requests for making the information available in a specific form and to the practical arrangements (Article 44 paras. 6, 7, 9 of the Presidential Decree 28/2015) are identical with the provisions of the Directive**. The application of the relevant provision concerning the "practical arrangements" can be regarded as partially satisfactory. In particular, a Circular was issued in December 2009 by the then Minister of Environment providing guidance to the environmental authorities on how to apply the relevant legislative framework and asking the public servants to support the public in seeking environmental information. Furthermore, **the lists of public authorities are publicly accessible in the Citizen Service Centers (CSCs[5])** and on their websites, so that citizens can have overview of the authorities where they can obtain information [National Report on Directive 2003/04, p.4]. Finally, there is no specific jurisprudence concerning the interpretation of the above provisions.

Answer to Question 10: Article 46 of the Presidential Decree 28/2015 (Article 5 of JMD 11764/653/2006) provides the possibility for imposing charges for granting access to environmental information and the issuance of a Joint Ministerial Decision for the specification of the details. ***Such a Ministerial Decision has not yet been issued and no charges are imposed. Subsequently, there is also no relevant jurisprudence.***

Answer to Question 11: In certain cases the competent authorities claim the protection of intellectual property only as a reason for denying access to environmental information and not as a basis for imposing conditions concerning the use of information. It is worth noting that the State Legal Service took the opinion that access to an Environmental Impact Assessment Study, which was submitted to the competent authority, **cannot be denied on the grounds of the protection of the intellectual property rights of the author of the Study, because the company claiming the application of the relevant exception referred to such rights in a too general way and did not specify the concrete parts of the Study for which the author established property rights, so that the competent could weigh the conflicting interests** [**State Legal Service Opinion 135/2010]**. **Furthermore, the Greek Ombudsman took the position that a refusal of a municipal company to make available to citizens certain data concerning the condition of the environment, which were collected for the company, on the grounds of the**

[5] CSCs are specific administrative structure established by the Ministry of Interior which aim at assisting citizens in dealing effectively with public administration and in accessing information and documents.

protection of intellectual property, was ill-reasoned, because such data do not constitute actual "work" under the term of copyright law[6] **[**Annual Report of the Greek Ombudsman, 2006, p. 147].

Answer to Question 12: As regards access to documents, which contain personal data, Article 27 para. 3 of the Presidential Decree 28/2015, which incorporated the relevant provisions of the Law 2742/1997 on the protection of personal data, requires that the processor of the data has to inform the data subject for their disclosure to a third person. **Subsequently, access to documents which contain personal data does not presuppose the consent of the data subject but only its prior information** (Article 24 para. 2 lit. b)[7], while the data subject has the right to express its objections concerning the procession of the data (Article 29). In contrast to that, Article 25 para.1 of the Presidential Decree 28/2015 stipulates that the procession of "sensitive" personal data is allowed only when the Data Protection Authority gives its consent, one of the exceptional cases set in para. 2 is applied and the principle of proportionality is observed [Kyriakou, 2011, p. 269]. **Furthermore, Greek law does not contain any specific provision requiring the prior consultation with the affected parties as a pre-condition for the disclosure of any possible trade secrets, which are not legally defined due to the difficulties concerning their determination [**Papadopoulou, 2007, p.27]. Finally there is no specific jurisprudence concerning the role of third parties in access procedures[8].

Answer to Question 13: a) As is the case with trade secrets, Greek Law does not contain any definition for business and industrial confidential information. This kind of information is mainly protected through the relevant provisions of the Law 146/1914 for "unfair competition"' (Articles 16-18), which introduce criminal penalties in cases of their disclosure. **It is thus up to the competent authorities to decide whether a certain piece of information constitutes business or industrial confidential information, taking into consideration the relevant criteria, which are developed in the legal theory relating to the nature of the relevant information ("result of mental work with a certain decree of innovation" and close and direct relationship with the company"[Papadopoulou, 2007, p.25-26] and to apply the relevant exception, if the protection of the confidentiality outweighs the benefits of disclosure.** In recent years certain provisions which establish the confidential character of certain kind of business and commercial information have been introduced (Article 22 para. 2 of the Law 4262/2014, Article 6

[6] Finally, it is worth mentioning that in accordance with the provision of Article 2 para.5 of the 2121/1993 Law for Intellectual Property, the provisions for the protection of the intellectual property rights do not apply in cases of official documents which constitute the expression of the authority of the State, notably to legislative, administrative and judicial texts. T**he claim of intellectual property rights on administrative documents and public sector information material including those containing environmental information by public authorities and civil servants is, thus, subject to very strict conditions, as it has to be demonstrated that the concrete work was not created within the framework of the administrative duties [Koumantos, 2002, p.174-176].**

[7] The Data Protection Authority, which is an Independent Authority established by Law 2742/1997, held that the publication by the Ministry of Finance of the name list of the persons who owe big amounts of money to the Greek State constitutes a constitutionally acceptable procession of personal data, if certain conditions are fulfilled and the current economic situation is taken into account (Decision 4/2011)

[8] In a broader context, the Council of State recognized the absolute prerogative of the protection of a person' s erotic life in relation to the freedom of the press and the right to information (Decision 3545/2002).

para. 4 of the Law 3986/2011 in its current version[9]), although there was no specific justification on the need for the protection of legitimate economic interest**.** In **practical terms, the competent authorities do not apply in certain cases the relevant exception in a restrictive way, as they refuse to grant access to environmental information without sufficient justification concerning its application**[10]. b) The proceedings of the Cabinet of Ministers and other government bodies (Articles 4, 6 para 5, 11 and 59 paras.3 and 9 of the Presidential Decree 63/2005) as well as of the collective administrative organs (Article 14 para.10 of Administrative Procedure Code) are secret, so that information release concerning the proceedings falls within the scope of the relevant exception[11]. c) **There is no significant law and jurisprudence concerning the disclosure of "raw data" and "material in the course of completion".** d) **The relevant national provision (Article 11 para. 2 of the Law 1565/1985, as modified by Article 49 para.8 of the Law 4235/2014), which establishes the confidentiality of the information concerning any technical, industrial or trade element of pesticides does not take sufficiently into account that certain information, such as those concerning the composition of the pesticide relate undoubtedly to "emissions to the environment", as defined in the Ruling of the General Court in the Case Stichting Greenpeace Nederland and must be, thus, publicly available. e) Besides the relevant provision introducing the exception, there is no significant law and jurisprudence. f) As already shown, the relevant experience demonstrates that in the majority of cases the competent authorities do not carry out a balancing procedure in order to weigh the public interest served by the disclosure against the interest protected by an exception. Instead of that, they only identify whether the requested information falls into one or more exempted categories.**

Answer to Question14: a) Greece did not establish any Independent Authority responsible for dealing with the re-consideration of decisions concerning access to environmental information. Article 47 paras. 1 and 3 of the Presidential Decree 28/2015 [Article 6 of the JMD in conjunction with Law 4210/2013] foresee that the "quasi jurisdictional" administrative appeals against the refusal or the mishandling of the relevant requests are reviewed by the legally designated

[9] Article 22 para. 4 of the Law 4262/2014 ''Simplification of the authorization of economic activities and other provisions" stipulates that **the conditions, the extent, the exceptions and the art of the procedure by which the natural persons that have submitted a complaint relating to the operation of a concrete activity can have access to relevant information, which is classified as confidential and constitutes part of the relevant administrative file, is regulated in deviation from the general provisions concerning access to documents.** Furthermore, Article 6 para. 4 of the Law 3986/2011**,** as modified by Article 12 of the Law 4138/2013 stipulates **that the relevant information submitted by the companies which are in the process of privatization to the Hellenic Republic Development Asset Fund is regarded confidential and potential investors can have access to it only under the obligation of confidentiality.**

[10] In the case of a large-scale touristic investment project (toplou investment) in the northeastern part of Crete the competent authorities (Invest in Greece and Ministry for Development) rejected the request of the residents and NGOs for access to the relevant documents by claiming the protection of the confidentiality of business information. A then Member of the European Parliament asked the European Commission whether the denial for granting access to the relevant documents is compatible with both the Aarhus Convention and the 2003/04 Directive. (Question for a written answer to the Commission submitted by EP Member Criton Arsenis on 13 March 2013).

[11] The Council of State ruled though that the secrecy of the proceedings of the discussions of the Cabinet of Ministers cannot preclude the satisfaction of the applicant's request to have access to those parts of the proceedings which refer to him personally (Council of State 3130/2000).

administrative organs of the Ministry of Interior and Administrative Restructuring or of the Decentralized State Administrations without further specification concerning the concrete Department or Committee which is responsible[12]. Therefore, a Circular was issued by the Ministry of Environment (February 2015) according to which the relevant complaints should be submitted either to the Ombudsman or to the Body of Inspectors for Public Administration mishandlings, until the issue of the competence for reconsideration of the relevant decisions is clarified. In practical terms, the Ombudsman has handled a large number of complaints concerning access to environmental information so far. Furthermore, Article 47 para. 5 of the Presidential Decree 28/2015 stipulates that an appeal before the administrative Courts of First Instance can be exercised against the decision issued after the exercise of the "quasi jurisdictional" administrative appeal[13]. **b) There is no specific judicial decision concerning the standing of persons affected by the relevant decisions concerning access to environmental information. In environmental-related disputes the Council of State developed, though, broad legal standing criteria [Menoudakos, 1997].**

Answer to Question 15: The relevant efforts of the Greek State concerning the dissemination of the environmental information cannot be regarded as entirely satisfactory, although significant steps have been taken. A significant step was the establishment of the National Environmental Information Network, which is a horizontal mechanism for the collection and dissemination of data, through intranet or internet, in relation to the main environmental sectors (www.e-per.gr). *Only registered users can, though, have access to the system after the submission of an application, which presupposes that applicants demonstrate the reasons for which they seek access*, a requirement which raises compatibility issues with the relevant regime. Furthermore, a significant development for the dissemination of the environmental information constitutes the fact that the environmental permits, but not the relevant EIA Studies, issued by the Ministry of Environment are publicly available on its website (www.ypeka.gr). In addition, the Green Fund, which is the only national source for environmental funding, provides wide access to environmental information concerning the financing activities on its website (www.prasinotameio.gr). Despite the above-described positive steps, one significant problem relates to the fact that *the public is not sufficiently informed concerning the authority which can make the environmental information available, as there is no sufficient information concerning the functions of the public authorities* [WWF, 2013, p.5ff]. Moreover, the relevant web info-point about the Aarhus Convention is not accessible and cannot provide information about the focal points of the implementation of the Aarhus Convention in other ministries besides the Ministry of the Environment. Furthermore, deficiencies can be observed as regards the establishment of pollution inventories and registries, as besides the Emission Pollutant Release Registry, which was established for the fulfillment of international obligations and is not sufficiently updated, there is no registry concerning water use

[12] The Special Committees under Law 1943/1991, which were designated as the administrative organs responsible for the review of the relevant decisions under Article 6 of the JMD after the exercise of a quasi jurisdictional administrative appeal were abolished by Law 4210/2013.

[13] The other two possibilities provided in Article 47 para.1 of the Presidential Decree (previously in Article 6 of the JMD), namely the exercise of the right for compensation after the elapse of the relevant deadline before the competent administrative bodies and the right to file a suit before the Court on the basis of the Civil Liability Provisions, have not experienced practical application so far.

but only a map containing the stations of the National Monitoring System, while the relevant registry for energy is not publicly available [WWF, 2013, p.7]. Moreover, access to draft legislative acts on the environment is not always easily accessible through the website of the Ministry, while national reports on the state of the environment are not publicized very regularly.

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