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Mr Virginijus Sinkevičius,
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Subject: Briefing on the status of implementation of EU environmental law in Greece

Dear Commissioner Sinkevičius,

In view of your forthcoming meetings with Greek authorities in Athens this week, we are writing to express our concerns regarding Greece's compliance with EU law for the protection of the environment.

Greece has in many instances failed to fulfill its obligations deriving from EU legislation. We hereby submit for your consideration a brief analysis of certain key aspects of Greece's non-compliance with EU law. This analysis is presented in the attached note and briefly outlined below. Please kindly note that this list is by no means exhaustive, but reflects key areas of concern in regards to Greece's implementation of EU environmental law.

- **Directive 2011/92/EU** on the assessment of the effects of certain public and private projects on the environment: Greece has failed to correctly transpose the provisions of this directive with respect to the following issues related mainly to public participation: (i) the public is not informed of "the request for development consent", (ii) municipal authorities are not given an opportunity to express their opinion during the public consultation process, and (iii) the public is not fully informed of the content of the decision, especially in the case of legislative provisions that extend the duration of every development consent in force. Consequently, access to justice is seriously hampered.
- **Directive 2001/42/EC** on the assessment of the effects of certain plans and programmes on the environment: The adoption of plans and programmes by legislative provisions (Acts of Parliament), without SEA and public participation is not consistent with this directive.
- **Directive 2010/75/EU** on industrial emissions (integrated pollution prevention and control): Recently adopted national legislation that (i) updates permits without the reconsideration required by the Directive, and (ii) grants derogations without the substantial and procedural requirements of the Directive, notably permit update, information to the public and public participation violates key provisions of the Directive. As a consequence, access to justice is seriously restricted.

- **Directive 2013/30/EU** on safety of offshore oil and gas operations: The notification procedure of planned seismic surveys violates the requirements of public information and public participation.
- **Environmental inspections:** Recently-enacted legislation on environmental inspections (law 4843/2021) violates the general requirement of effective, proportional and dissuasive penalties. It also makes impossible the suspension of operation of polluting installations where EU law requires it, notably in the case of IED installations that threaten the environment with serious adverse negative effects.
- **Directive 92/43/EEC** on the conservation of natural habitats and of wild fauna and flora: Greece has not as yet complied with the judgment of the Court of Justice of the EU (C-849/19) in relation to obligations deriving from articles 6(1) and 4(4) of Directive 92/43/EEC, and has not established conservation objectives and conservation measures for Natura 2000 sites. Furthermore, Greece has not correctly and fully transposed article 6(3) for the appropriate assessment of projects and plans. Finally, it has failed to establish a system of strict protection for the animal species listed in Annex IV.
- **Directive 2014/89/EU** establishing a framework for maritime spatial planning: Greece has failed to establish and implement maritime spatial plans by the deadline set by this Directive. Furthermore, the integration of MSP into the national spatial planning system is not in line with the objectives of this Directive.
- **Directive 2008/98/EC** on waste: The findings of the 2018 Early Warning Report remain valid, notably with respect to the 2013 target for the landfilling of biodegradable municipal waste. A new law fails to implement crucial Directive provisions, notably on the reclassification of by-products and hazardous waste, and on the permitting requirement for waste treatment operations.
- **Directive 2000/60/EC** establishing a framework for Community action in the field of water policy: Greece unjustifiably delays the preparation of the 2nd Review of the River Basin Management Plans and the 1st Review of the Flood Risk Management Plans, thus seriously jeopardizing the achievement of good (ecological and chemical) status of Greek waters by 2027.

We call upon the European Commission to take the necessary steps to ensure that Greece transposes the aforementioned Directives fully and correctly, and enacts the appropriate legal framework for their implementation, so as to contribute effectively to the achievement of the EU's collective vision and objectives as envisaged in the European Green Deal.

We remain at your disposal to provide further information on these issues.

Yours sincerely,



Demetres Karavellas
Director, WWF Greece



Implementation status of EU environmental law in Greece

Briefing to Commissioner Virginijus Sinkevičius

I. Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

With respect to Directive 2011/92/EU, we would like to draw your attention to several instances of non-conformity or incomplete transposition. The common thread of those instances is the restriction of information available to the public and the hollowing of public participation. Recital 16 states that “effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken...”. [Hereinafter, references will be made to Directive 2011/92/EU as amended by Directive 2014/52/EU (the amended EIA directive)].

As a preliminary remark, it should be noted that Member States are required to “communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by ...Directive” 2011/92/EU.¹ The widespread practice of adopting national legislation, which implicitly or explicitly modifies the provisions of national law “in the field covered” by the same Directive, without notifying the Commission, undercuts basic transparency requirements and makes a mockery of the rights guaranteed by EU law.

Clearly and unambiguously, the amended EIA Directive requires that the public shall be informed “electronically and by public notices” “early in the environmental decision-making procedures” of “the request for development consent.”² This omission is not rectified by the supply of “information about the “details for public participation”,³ as the latter refers to a distinct, later stage of EIA decision-making: after all, at the stage of the request, it is unknown whether an EIA is required. Unfortunately, there is no such requirement under Greek law.

Also, Member States should ensure that “that the authorities likely to be concerned by the project by reason of their ...local and regional competences are given an opportunity to express their opinion on the information supplied by the developer and on the request for development

¹ Art. 13 of Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012), as amended.

² Art. 6(2)(a) of Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012), as amended.

³ Art. 6(2)(g) of Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012), as amended.

consent...”.⁴ To that end, authorities to be consulted shall be designated.⁵ Accordingly, a recent CJEU ruling clarified that the amended EIA directive precludes a Member State “from carrying out the procedures for public participation in decision-making that relate to a project at the level of the headquarters of the competent regional administrative authority, and not at the level of the municipal unit within which the site of the project falls”.⁶ However, this applies not to the opinion of the public concerned, but also to the opinion of the municipal (self-government) unit concerned. Unfortunately, for public consultation purposes, Greek law “designates” unambiguously only the regional, and not the municipal authorities.⁷

In addition to the above, when a decision to grant or refuse development consent has been taken, the competent authority is required to promptly inform the public about the content of the decision, the main reasons and considerations on which the decision is based, including those that surfaced during the public participation and consultation process.⁸ In at least two respects, Greek legal practice is inconsistent with this essential requirement:

- The Greek legislator has repeatedly adopted legislative provisions that extend the duration of every development consents in force.⁹ These are complemented with similar sector-specific legislation,¹⁰ which allows certain projects to operate without the development consent required by EC law: a typical example is the legislation for tourist resorts, which allows them to operate without an EIA-compliant development consent at least since 2014.¹¹ Indeed, these provisions grant indiscriminately development consent to “changes or extensions” of the amended EIA Directive Annex I or II activities, and, in some cases, update “permit conditions” of IED Annex I installations. Unfortunately, European law subjects those acts to specific procedural conditions: for example, under the amended EIA directive, they are, respectively, either subject to public participation,¹² or excluded from it if certain “selection criteria” are valid.¹³ In the Greek case, none of these considerations has taken place. It should also be noted that, because of the joint procedures under Greek law,¹⁴ these failures also affect projects falling under directives 92/43/EEC, 2010/75/EU and 2000/60/EC.

- Under Greek law, an environmental inspection may lead to a “plan of corrective actions”: this is a plan which will result, eventually, in the compliance of an operator.¹⁵ In essence, the compliance plan modifies the development consent, and, at a minimum, the public must be duly informed.¹⁶ This is not required under Greek law.

⁴ Art. 6(1)(a) of Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012), as amended.

⁵ Art. 6(1)(b) of Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012), as amended.

⁶ Judgement of the Court (first chamber). (7.11.2019). *Alain Flausch et al. v. Ypourgos Perivallontos kai Energeias et al.*, C-280/18, para. 44.

⁷ See, esp., art. 3(6) of Joint Ministerial Decision 1649/45/2014 (“Specification of the procedures for public consultation, public participation and for informing the public during the environmental assessment of category A works and projects”), where the “designated authorities” are listed.

⁸ Art. 9(1) of Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012), as amended.

⁹ Recently, art. 1(2) of law 4685/2020 has prolonged *ex lege* the duration of every development consent in force en bloc to 15 years. In 2011, art. 2(8)(a)(a) of law 4014/2011 (the Greek EIA law), prolonged the duration of all development consents then in force to 10 years.

¹⁰ Cf., resp., for certain quarries, art. 68(23) of law 4518/2019 as amended recently by law 4819/2021.

¹¹ Indeed, a sequence of legislative provisions adopted by acts of Parliament allows all tourist installations to operate without a development consent, since 2014, if not earlier [arts 1(2) of law 4276/2014, 66 of law 4403/2016, 53 of law 4484/2017, 9 of law 4685/2019, and 79 of law 4722/2020]. None of the safeguards of the amended EIA directive – e.g., art. 2(5) – has been applied.

¹² Art. 4(1) in combination with Annex I, point 24, of Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012), as amended.

¹³ Art. 4(3)(a), in combination with art. And Annex II, point 13(a) of Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012), as amended.

¹⁴ Cf., art. 2(3) of Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012), as amended.

¹⁵ Art. 21(1)(a) of law 4014/2011, as recently amended by law 4843/2021.

¹⁶ Art. 9(1) of Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012), as amended.

II. Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment

With respect to Directive 2001/42/EC, we would like to highlight the problems created by the adoption of plans and programs by national legislative provisions. Recently, CJEU has confirmed its long-standing case-law, according to which “article 2(a) of Directive 2001/42/EC must be interpreted as meaning that plans and programs whose adoption is regulated by national legislative ... provisions, ..., must be regarded as ‘required’ within the meaning, and for the application, of that directive.”¹⁷ The right of Greece to adopt plans and programmes by acts of Parliament is not disputed – provided the procedural requirements of the Directive have been followed beforehand.

A typical example is provided by national legislation concerning the “default” building regulations outside an urban plan or village – “default” meaning that they are applicable in the absence of more specific land-use plans, or other provisions or prohibitions (in Greek, “out-of-urban-plan” building regulations).¹⁸ They are applicable to a large part of the country, and define, in great technical detail, the building regulations for a wide range of installations (for residential, agricultural, industry, commercial, storage, office and tourism activities, including data centers), including built-surface and site-coverage ratios, surface area and allowed building heights. As a result, they define “a significant body of criteria and detailed rules for the grant and implementation of one or more projects likely to have significant effects on the environment”, and they constitute plans and programs under the Directive.¹⁹ Unfortunately, they were recently adopted by national legislation, without being subject to a strategic environmental assessment and the other strictures of Directive 2001/42/EC.

III. Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control)

As a preliminary remark, it should be reminded that Greece, like any other Member State, is required to make information available on the implementation of the Directive, including the application of best available techniques and granting of exemptions.²⁰ In addition, administrative bodies are to apply EC law in its entirety and to protect rights which the latter confers on individuals (even by disapplying, if necessary, any contrary provision of domestic law).²¹ Nevertheless, and despite the open infringement proceedings,²² we draw your attention to recent Greek legislation, which blatantly violates the requirements for reconsideration and updating of the permit conditions,²³ as well as for the derogation from emission limit values laid down by decisions on BAT conclusions.²⁴ In view of the significant dangers for public health and the environment, entailed by the operation of covered installations without the permit required by the Directive, and the requirements of the EU “towards zero-pollution” action plan,²⁵ decisive and swift action by the European Commission is urgently needed.

¹⁷ Judgement of the Court (grand chamber). (25.6.2020). A and Others, C-24/19, para. 52.

¹⁸ Art. 31-40 of law 4759/2020. It should be noted that these provisions fall both under art. 3(2)(a) [“plans and programmes... prepared for agriculture, forestry, ...industry, transport, ... tourism, town and country planning or land use”] and art. 3(2)(b) [“plans and programmes ...which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC”] of Directive 2001/42 Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001).

¹⁹ Judgement of the Court (second chamber). (27.10.2016). Patrice D’ Oultremont and Others v Région wallonne, C-290/15, para. 49, and references therein.

²⁰ Art. 72(1) of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010).

²¹ Judgement of the Court (second chamber). 14.10.2010. Günter Fuß v Stadt Halle, Case C-243/09, para. 61, and references therein.

²² See infringement proceedings INFR(2019)2140. According to the EC’s website, a reasoned opinion has been issued on the “incorrect transposition of Articles 33(4) of Directive 2010/75/EU and granting of derogations to 5 industrial plants not in line with the requirements of Directive”.

²³ Art. 21 of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010).

²⁴ Art. 15(3) and 15(4) of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010).

²⁵ European Commission. (12.5.2021). Communication from the Commission. EU Action Plan: “Towards Zero Pollution for Air, Water and Soil”. COM(2021) 400 final.

The recent legislation allows the operation of installations “for up to two years” without an updated permit.²⁶ To benefit from the provision, the operator has to notify a report on the compliance of the installation with the updated BAT conclusions. No “reconsideration” (or any other involvement) of the competent authority takes place: the permit is considered tacitly to be “updated” when the report is filed, in accordance with the operator’s submissions. Obviously, this procedure involves neither a “reconsideration” of “**all** the permit conditions,”²⁷ nor the required “non-routine environmental inspection” before the reconsideration or update.²⁸ More importantly, the tacit approval of the operator’s notification violates the essential requirement of transparency – i.e., of making available to the public, inter alia, “the content of the decision, including a copy of the **permit and any subsequent updates**”, “the reasons on which the decision is based”, and information on “how the permit conditions ... including the emission limit values, have been determined in relation to the best available techniques and emission levels associated with the best available techniques”.²⁹ In view of the lack of information on the issuance and content of the updated permit, access to justice under the Directive is also seriously restricted.³⁰ Finally, given the fact that Greece applies a joint procedure for Directives 2010/75/EU and 2011/92/EU, the requirement of a “reasoned conclusion” incorporated on the permit is also violated:³¹ art. 19(1) TEU requires that “Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law”, while art. 47 CFR provides that “everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy”.³²

In addition, a separate national provision allows the granting of derogations with procedure that violates several requirements of the Directive.³³ First, the granting of derogations should not be completed without public participation.³⁴ Second, the derogation is granted when the operator’s request is filed: there is no published permit update, no “setting” of alternative emission limit values, no competent authority decision and no “documentation” whatsoever of the required conditions. However, the Directive requires clearly that the competent authority documents “in an annex to the permit conditions the reasons for the application ... including the result of the assessment and the justification for the conditions imposed...”.³⁵ Third, it should be remembered that the competent authority is required to “make available to the public, including via the Internet... the specific reasons for that derogation based on the criteria laid down in that paragraph and the conditions imposed”.³⁶ Fourth, and more importantly, derogations are not granted at the operator’s wish: the competent authority must beforehand weigh costs and environmental benefits, as affected by the geographical location of the installation concerned and its technical characteristics,³⁷ and “ensure that no significant pollution is caused and that a high level of protection of the environment as a whole is achieved”.³⁸ since the competent authority is a mere recipient, and does not update or reconsider the permit, these obligations are also not complied with. Finally, access to justice is negated, as this nonpublic, undisclosed, and undocumented procedure ensures that no

²⁶ Art. 109(1) of law 4821/2021.

²⁷ Art. 21(3)(a) of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010).

²⁸ Art. 23(5) of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010).

²⁹ Art. 24(2)(a), (b) and (e) of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010).

³⁰ Cf. art. 25(1), in accordance with which Member States are to ensure that “members of the public concerned have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to Article 24...”

³¹ Art. 1(2)(g)(iv), 1(2)(g)(v) and 8a(1)(a) Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012), as amended.

³² On this issue, see: European Commission. (28.4.2017). Communication from the Commission. Commission Notice on Access to Justice in Environmental Matters, para. 22 subseq.

³³ Art. 109(2) of law 4821/2021.

³⁴ Art. 24(1)(c) and Annex IV of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010). In fact, taking into account the deadlines of the national provision (10 days for pending applications, and 30 for new ones), effective public participation is impossible.

³⁵ Art. 15(4)(c) of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010).

³⁶ Art. 24(2)(f) of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010).

³⁷ Art. 15(4)(2) of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010).

³⁸ Art. 15(4)(4) of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010).

information is made available to the public on access to possible administrative and judicial review procedures,³⁹ if they exist at all.

Finally, we would like to highlight the incomplete implementation of the Directive with respect to the “baseline report.” According to the Directive, when the activity involves hazardous substances, the operator shall submit a baseline report: upon the cessation of the activity, the state of soil and groundwater contamination is compared to the state established in the baseline report, and any pollution is addressed.⁴⁰ The importance of these requirements for a just and green transition, the circular economy, the restoration of natural habitats, near zero pollution, protection of public health, equitable access to environmental services and urban green spaces, water availability, air quality, and the modernization of economic activities in the EU, cannot be overestimated. However, Greece does not comply with this obligation to make the baseline report available via the Internet to the public.⁴¹

IV. Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC

One of the main goals of Directive 2013/30/EU on safety of offshore oil and gas operations is the deepening of public participation: “... not all exploratory offshore oil and gas operations are covered by existing Union requirements on public participation. ... However, such exploration operations may in some circumstances potentially have significant effects on the environment and the **decision-making should therefore be the subject of public participation** as required under the Aarhus Convention...”.⁴² Seismic surveys, particularly offshore, are similar exploration operations,⁴³ and the recent EU law recognizes that seismic surveys should be subject to an EIA: “with a view to ensuring a high level of protection of the marine environment, especially species and habitats, environmental impact assessment and screening procedures for projects in the marine environment should take into account the characteristics of those projects with particular regard to the technologies used (for example seismic surveys using active sonars). For this purpose, the requirements of Directive 2013/30/EU ... could also facilitate the implementation of the requirements of this Directive” [i.e., Directive 2011/92/EU].

EU law requires an “authorization” for seismic surveys.⁴⁴ Moreover, when “public participation has not been undertaken pursuant to other Union legal acts,”⁴⁵ EU law requires also that “the public is “identified” and “informed”; that “relevant information about ..planned operations is made available”, on which “the public is entitled to express comments and opinions at a time when all options are open”; and finally, that “due account is taken of the results of the public participation” and “the Member State in question promptly informs the public...about the decisions taken and the reasons therefor and considerations upon which those decisions are based, including information about the public participation process”.⁴⁶

³⁹ Art. 25(5) of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010).

⁴⁰ Art. 22(2) – 22(3) of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010).

⁴¹ Art. 24(3)(a) of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010).

⁴² Recital 16 of Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC (OJ L 178, 28.6.2013).

⁴³ See art. 1(d) (ii) of the Protocol for the protection of the Mediterranean sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil (Barcelona Convention) [Barcelona offshore protocol], which is part of EU law [Council Decision 2013/5/EU of 17 December 2012 on the accession of the European Union to the Protocol for the Protection of the Mediterranean Sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil (OJ L 4, 9.1.2013, 13–14)]. According to this article, “seismological activities” are part of the “activities concerning exploration and/or exploitation of the resources on the protocol area.”

⁴⁴ Arts. 4-7 of the Protocol for the protection of the Mediterranean sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil (Barcelona Convention) [Barcelona offshore protocol] (approved by Council Decision 2013/5/EU).

⁴⁵ Art. 5(1) of Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC (OJ L 178, 28.6.2013).

⁴⁶ Art. 5(2), points (a) to (f) of Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC (OJ L 178, 28.6.2013).

Greek law and practice about offshore seismic surveys violate all the requirements above. Recent offshore concessions, which include standardized clauses, require simply the notification of seismic surveys by the operator, which is merely “reviewed” by the competent authority.⁴⁷ A notification or a “review” is not an “authorization”. Moreover, the notification is not made available to the public, and it is not subject to public participation. No screening, in the sense of European law (e.g. Directives 92/43/EEC, or 2011/92/EU) has been conducted.

As a final note, we emphasize the ecological value of the cetacean fauna of the Greek seas,⁴⁸ which is likely to be affected by seismic surveys. Cetaceans belong to Annex IV of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, which includes obligations arising from the Convention on the Conservation of European Wildlife and Natural Habitats (also known as the Bern Convention).

V. Environmental inspections

Moreover, we would like to highlight the recent national law on environmental inspections which provides the following: Before imposing penalties, the environmental inspectorate is in every case obligated to issue a compliance plan. The duration of the compliance plan is between 1 and 3 years: essentially, for 1 to 3 years, the inspectee is allowed to operate in violation of its permit conditions.⁴⁹ After the deadline, it is doubtful if compliance is legally required, as the law characterizes the compliance plan as a “recommendation”⁵⁰. For a typical IED installation, a minimum of 6 months is needed before the formulation of a compliance plan (ignoring the delays caused by administrative and judicial reviews, additional assays, and other exigencies),⁵¹ and then up to 3 years before the expiry of a compliance plan. A re-inspection⁵² follows, before the inspectorate issues a proposal on penalties.⁵³ Penalties are not final yet, as they are imposed by other authorities, i.e. the Ministry or the regional authorities.⁵⁴ Sadly, the same formalities apply when there is a direct threat to public health, a threat of “significant adverse effect upon the environment”, and even a lack of a valid permit.⁵⁵

These provisions are incompatible with EU law. First, European environmental law typically requires “effective, proportionate and dissuasive” penalties,⁵⁶ and the Greek system described above is neither effective, nor proportionate and dissuasive, as it encourages administrative paralysis and strategic delays on the part of competent authorities and operators. Second, some European Directives, notably IED, Seveso III,⁵⁷ and the Offshore Directive⁵⁸, clearly require suspension or prohibition of the operation until compliance is restored. For IED, this is definitely

⁴⁷ According to the standard clauses of the Lease Agreements, “the environmental action plan (EAP) shall be submitted to the Lessor for review and must be complied with by the Lessee”. An environmental action plan is a document prepared for petroleum operations that, in the opinion of the Greek authority, do not require an EIA: “in case of activities for which an EIA is not mandatory, but nevertheless it is reasonably expected that some minor environmental impacts may occur, as in particular for the case of seismic surveys, the Lessee shall prepare an EAP, to determine, assess and mitigate these impacts, focusing on prevention and minimization thereof in accordance with Good Oilfield Practices.” See clauses 12.10 and 12.12, resp., of the Lease Agreement for hydrocarbon exploration and exploitation in the SW Crete block, as ratified by law 4628/2019, and available here (in English and Greek): <https://bit.ly/3k1kxnN>

⁴⁸ Foskolos I., Gkikopoulou K.C., Frantzis A. (2020) Current State of Knowledge and Conservation Perspectives on the Cetaceans of the Aegean Sea. In: The Handbook of Environmental Chemistry. Springer, Berlin, Heidelberg. https://doi.org/10.1007/698_2020_653

⁴⁹ Art. 20(15) of law 4014/2011, as replaced by art. 50 of law 4843/2021.

⁵⁰ Art. 21(1)(a) of law 4014/2011, as amended by art. 75(1) of law 4843/2021.

⁵¹ Art. 20(11) of law 4014/2011, as replaced by art. 50 of law 4843/2021.

⁵² Art. 20(15)(y) of law 4014/2011, as replaced by art. 50 of law 4843/2021.

⁵³ Art. 20(15)(β)(βα) of law 4014/2011, as replaced by art. 50 of law 4843/2021.

⁵⁴ Art. 20(15)(y)(δ) of law 4014/2011, as replaced by art. 50 of law 4843/2021.

⁵⁵ Art. 20(15)(β) and (y) of law 4014/2011, as replaced by art. 50 of law 4843/2021.

⁵⁶ See, among many others, art. 10a of Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012), as amended.; art. 79 of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010); art. 23 of Directive 2000/60/ establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000).

⁵⁷ See art. 19 of Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances (OJ L 197, 24.7.2012).

⁵⁸ See, e.g., art. 18 (e) of Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC (OJ L 178, 28.6.2013).

the case whenever permit breaches pose “an immediate danger to human health or threaten to cause an immediate significant adverse effect upon the environment”:⁵⁹ Unfortunately, even in this case, the new Greek law requires an open-ended, protracted and bureaucratic succession of hearings, inspections, plans and proposals.

VI. Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

The Court of Justice of the EU declared in its judgment of 17 December 2020 that Greece had failed to fulfill its obligations under articles 4(4) and 6(1) of Directive 92/43/EEC by not adopting, within the prescribed period, measures for establishing appropriate conservation objectives and appropriate conservation measures in relation to 239 designated Special Conservation Zones as part of Natura 2000 network (C-849/19). **Greece has not as yet complied with this judgment both concerning the establishment of conservation objectives and the adoption of appropriate conservation measures.**

Conservation measures: Greece’ statement before the Court that it will fully comply with the obligations deriving from article 6(1) upon the completion of project for the preparation of Special Environmental Studies and the issuing of presidential decrees and management plans for all Natura 2000 sites by the end of 2021 (C-849/19, para. 71) has not materialised. The fore-mentioned project has been subjected to delays, and there are concerns about the quality of its expected outcomes and the achievement of its objectives. Delays in this project are partly due to recently-enacted legislation (law 4685/2020) which amended the legal framework on land uses concerning protected areas; the implementation of this law has created confusion and uncertainty with respect to the process for establishing zoning systems and the regulation of activities within Natura sites.

Conservation objectives: Greece recently established nationwide conservation objectives for certain natural habitat types and species listed in Annex I and II of the Directive,⁶⁰ but it has yet to establish site-level conservation objectives for Natura 2000 sites for species and habitat types significantly present on each site as required by the Directive.⁶¹ The lack of conservation objectives significantly undermines both the adoption of appropriate conservation measures (article 6(1)) and the appropriate assessment of plans and projects with possible effects to Natura 2000 sites (article 6(3)).

Furthermore, recently-enacted legislation (law 4685/2020 and article 218 of law 4782/2021) has resulted in further regression of the protective regime of the Natura 2000 network in Greece. We have raised our serious concerns about the compatibility of these laws with EU law in our previous communications to the Commission in October 2020⁶² and March 2021.⁶³

Finally, with respect to **article 6(3) of the Directive**, we were pleased to be informed of the initiation of EU pilot (EUP(2021)9806) where the Commission has identified certain issues regarding the correct transposition of this provision into national legislation. We agree with the concerns raised by the Commission and believe that **Greek legislation is not consistent with article 6(3)**. Of particular concern are the following aspects of Greek legislation: (i) “plans” are not included in the scope of appropriate assessment (article 10 of law 4014/2011); (ii) projects not included in categories A and B recognized by national legislation (law 4014/2011) are also outside the scope of appropriate assessment; (iii) national legislation does not provide for a screening process to

⁵⁹ Cf. art. 8(2) of Directive 2010/75 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010). See also arts. 37 (malfunction or breakdown of LCP abatement equipment) and 47 (breakdown of waste incineration plant) of the same Directive.

⁶⁰ ΥΠΕΝ/ΔΔΦΠΒ/30339/982, Καθορισμός εθνικών στόχων διατήρησης φυσικών τύπων οικοτόπων και ειδών ενωσιακού ενδιαφέροντος (Establishment of nationwide conservation objectives for natural habitat types and species of Union interest).

⁶¹ Commission notice "Managing Natura 2000 sites - The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC" C(2018) 7621 final (Brussels, 21.11.2018), p. 17-19. Judgment of the Court (Sixth Chamber) of 17 December 2020 – European Commission v Hellenic Republic (Case C-849/19), para. 58-59.

⁶² https://www.eu-awsassets.panda.org/downloads/ltr_oct_2020_commission.pdf

⁶³ https://www.eu-awsassets.panda.org/downloads/ngocomplaint_to_dgenv_art218_law4782_2021.pdf

determine whether the plan or project is directly connected with or necessary to the management of the site, and whether it is likely to have a significant effect on the site; and (iv) the process for the appropriate assessment of projects located outside Natura sites which may have significant effects on these sites (article 10 para. 5 law 4014/2011) is vague and lacks statutory force.

Greece should amend its legislation accordingly to ensure full and correct transposition of the Directive, and compliance with its obligations to appropriately assess projects and plans in regards to their effects on Natura 2000 sites before permission is granted. The incorrect transposition of article 6(3) of the Directive has led to the licensing of various projects which may potentially have significant effects upon the integrity of sites, without appropriately assessing their effects. This may lead to the deterioration of natural habitats and/or the disturbance of species (in violation of article 6(2)), affect the conservation status of the protected species and habitats, and potentially undermine the coherence of the Natura 2000 ecological network.

Article 12: Greece has also failed to establish a system of strict protection for the animal species listed in Annex IV of the Directive as required by article 12. Action plans have recently been adopted for certain species⁶⁴ but they are general in nature, and do not include concrete statutory measures prohibiting the activities mentioned in article 12(1); they instead outline recommendations for the measures that need to be adopted. They do not thus establish a “coherent legal framework for the strict protection system”, or “concrete measures to enforce it effectively on the ground” as required by the Directive.⁶⁵

This is particularly worrying for the **protection of sperm whales (Annex IV species)** found in Greek waters, mainly in the Hellenic Trench, a critical habitat for this endangered species. The planning of seismic surveys as part of the development of oil and gas exploration and exploitation⁶⁶ in areas where sperm whales live, feed and breed, without the prior adoption of a system for their strict protection and the appropriate assessment of effects of these activities on these species, is not in line with article 12 of the Directive.

VII. Directive 2014/89/EU establishing a framework for maritime spatial planning

Greece transposed Directive 2014/89/EU by law 4546/2018 on 11 June 2018 (nearly two years after the deadline stipulated in article 15 para. 1). However, it has failed to establish and implement maritime spatial plans by 31 March 2021 as required by articles 4 and 15. The Ministry of Environment and Energy has initiated a process for the development of MSP; however, no concrete actions have, as yet, been undertaken, and no specific timeframe for the development of these plans has been established.

What is more, according to law 4546/2018, MSP has been integrated into the national spatial planning system which has a hierarchical structure. According to this system, Special Spatial Frameworks for specific activities (terrestrial and/or marine)⁶⁷ override and prevail over maritime spatial plans. Although the Directive provides that Member States can develop and produce the MSP “in accordance with the institutional and governance levels” determined by them (article 4 para. 3), they also have the obligation to ensure that the objectives set out in articles 1 and 5 are adhered to. The establishment and implementation of *ad hoc* special spatial frameworks for certain activities in marine and coastal areas negates the very essence of the MSP which aims to provide an integrated, comprehensive and cross-sectoral planning process for all uses and activities, and

⁶⁴ Action Plans have been adopted for the following species listed in Annex IV: *Caretta caretta*; *Parnassius apollo*; and *Rupicapra rupicapra balcanica*; all the above are accessible in Greek at: <https://edozoume.gr/en/project-deliverables/> [see Deliverable A.1 Development and legal adoption of Action Plans (APs) for species and habitats of Community Interest]

⁶⁵ Commission notice Guidance document on the strict protection of animal species of Community interest under the Habitats Directive C/2021/7301 final (Brussels, 12.10.2021), p. 11 et seq.

⁶⁶ See *supra* note 47.

⁶⁷ Two Special frameworks for spatial planning and sustainable development have been established: for Renewable Energy Sources (2008) and for aquaculture (2011).

to ensure coordination and cohesion of sectoral policies as part of the Integrated Maritime Policy of the EU (article 1).

Both the delays in establishing maritime spatial plans and the undermining of MSP as part of the national spatial planning system are particularly worrying in the light of increasing pressures on the marine environment from current and future activities, such as oil and gas drilling, offshore wind farms etc.

VIII. Directive 2008/98/EC on waste

As a preliminary remark, we would like to point out that, according to the 2018 Early Warning Report, Greece was one of the Member States likely to miss the 2020 reuse and recycling target for waste materials, and the 2020 target for re-use, recycling and material recovery of non-hazardous construction and demolition waste. Greece has also missed the 2013 target for the landfilling of biodegradable municipal waste. As of 2021, these warnings and findings have been confirmed.

Greece has recently adopted a new law on waste. Unfortunately, this law is unlikely to reverse the unsatisfactory performance of the country, or prepare the Greek society for the circular economy. Two significant issues of implementation arise immediately. First, the Waste Framework Directive allows Member States to apply detailed criteria for the classification of “specific substances or objects” as by-products. However, the reclassification, which is of vital importance in light of the circular economy, must safeguard a high level of protection of the environment and human health and the prudent and rational utilization of natural resources. Unfortunately, according to the new law, reclassification takes place with an individual decision, and not a decision of general applicability. Not only this is not a case of application of detailed criteria to all similar cases, but also creates the risk of haphazard decision-making, undermining the protection of the environment and public health, and distorting completion.

Second, the Directive allows Member States to reclassify “specific” hazardous waste as non-hazardous, provided the appropriate evidence is made available and submitted to the Commission. Again, the new law allows the waste management authorities to “consider” the (formerly) hazardous category of waste as non-hazardous. However, for obvious reasons, this is a decision which cannot be implemented by a mere “reconsideration” of administrative practices or policies, which lack transparency, justification and stability.

In addition to the above, the Directive requires a “permit” for any establishment or undertaking intending to carry out waste treatment; exemptions are restrictively mentioned. Unfortunately, the new law requires a permit only for waste treatment activities subject to an environmental impact assessment – a restriction not allowed by the Directive.

IX. Directive 2000/60/EC establishing a framework for Community action in the field of water policy

The Water Framework Directive (WFD) provides for the achievement of good (ecological and chemical) status (and potential) for the inland surface waters, transitional waters, coastal waters and groundwater in Europe, by 2015, except for duly justified cases. According to the findings of the Fitness Check of the WFD, the Floods Directive (Directive 2007/60/EC) and the daughter directives adopted by the European Commission in the end of 2019⁶⁸, “[g]iven that currently more

⁶⁸ European Commission (10.12.2019). FITNESS CHECK of the Water Framework Directive, Groundwater Directive, Environmental Quality Standards Directive and Floods Directive Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration Directive 2008/105/EC of the European Parliament and of the Council on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council Directive 2007/60/EC on the assessment and management of flood risks. SWD (2019) 439 final.

than half of all European water bodies are under exemptions, the challenges for Member States are more than substantial”, and “[t]he next round of river basin management plans and programmes of measures will play a key role in ensuring the necessary progress towards achieving the environmental objectives by the 2027 deadline”.

River basin authorities and EU Member States are currently finalising their RBMPs for 2022-2027 as required by the WFD. However, according to a report recently published by the Living Rivers Europe,⁶⁹ an NGO coalition fighting to protect water, that assessed 13 draft RBMPs in eight EU Member States (Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Slovakia) and one international River Basin District (Odra), covering 11 topics with 47 indicators, “20 years after the adoption of the Directive, the assessed draft RBMPs reveal that the commitments to achieving the WFD objectives by 2027 have not notably increased, with a few exceptions”.

The case of Greece is even more discouraging, since it is lagging far behind the timetable provided by the WFD for the preparation of the 3rd cycle of the RBMPs (2022-2027). According to the timetable for the 2nd Review (3rd cycle) of the RBMPs published in the dedicated website of the national competent authority for the WFD,⁷⁰ the public consultation on the draft RBMPs was supposed to take place in 2021 and the RBMPs were supposed to be finalised by December 2021.⁷¹ Nonetheless, the 2nd Review of the RBMPs and the 1st Review of the Flood Risk Management Plans (FRMPs) have not even been contracted yet.⁷² Given the aforementioned delays, it is highly likely that Greece will not timely conclude the 3rd cycle of the RBMPs, as well as the 1st Review of the FRMPs, since the draft RBMPs and FRMPs have not even been prepared yet. As you are aware, this is not the first time that Greece has not fulfilled its obligations of timely preparation of its RBMPs. As highlighted in the recently published country-specific assessment as part of the 5th implementation report of the WFD published by the EC, “Greece did not adopt or publish the [1st review of the] RBMPs in line with the timetable in the WFD”. That was also the case with the first RBMPs.

⁶⁹ Living Rivers Europe (June 2021). The final sprint for Europe's Rivers. An NGO analysis of 2022-2027 draft River Basin Management Plans. Accessible at:

https://wwfeu.awsassets.panda.org/downloads/wwf_the_final_sprint_for_rivers_full_report_june_2021_1.pdf

⁷⁰ <http://wfdver.ypeka.gr/en/home-en/>

⁷¹ Ministry of Environment and Energy. Action Plan for the 2nd Review of the River Basin Management Plans (RBMPs). Accessible in Greek at: http://wfdver.ypeka.gr/wp-content/uploads/2019/05/SIN_SXEDIO-DRASHS_2vn-SDLAP.pdf

⁷² <https://ted.europa.eu/udl?uri=TED:NOTICE:502962-2021:HTML:EN:HTML&tabId=0;>

<https://ted.europa.eu/udl?uri=TED:NOTICE:249563-2021:HTML:EN:HTML&tabId=0;>

<https://ted.europa.eu/udl?uri=TED:NOTICE:249565-2021:HTML:EN:HTML&tabId=0;>

Indicative of the delays are the only recently adopted decisions of the Ministry of Environment and Energy for the public procurement order for the preparation of the 1st Review of the FRMPs and the 2nd Review of the RBMPs [available only in Greek]:

<https://diavgeia.gov.gr/doc/63%CE%9D%CE%944653%CE%A08-%CE%A3%CE%99%CE%95?inline=true;>

<https://diavgeia.gov.gr/doc/6%CE%929%CE%A14653%CE%A08-13%CE%98?inline=true;>