

Greece

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1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in Greece and which agencies/bodies administer and enforce environmental law?

In Greece, emphasis is put on the construction of infrastructure works for the environment, which are organised on the basis of six-year action programmes. The Operational Programme "Environment", the Environmental Programmes financed by the Cohesion Fund of the European Union, and the environmental actions carried out under the framework of Regional Operational Programmes or Sector Operational Programmes, constitute the core of Greek environmental policy.

More specifically, the basic axis of environmental policy is the Operational Programme "Environment 2000-2006". Its basic aims as described are: a) the protection, administration, upgrading and promotion of the natural environment; and b) attuning with European environmental policy and national directions and commitments, and the observance and application of the obligations deriving from these, as far as the environment and development are concerned. The Ministry responsible for the administration of environmentally-related issues is the Ministry of Environment, Planning and Public Works.

There are a series of competent authorities at central and at prefectural/regional levels, with administrative and inspectorate functions. In terms of administration these bodies are: the competent central authorities of the Ministry of Environment, Physical Planning and Public Works; the Environmental and Physical Planning Unit of the Division for the Environment and Physical Planning of the Regions; the Bodies for Control of Environmental Quality (BCQE) that operate at prefectural level; and the Environmental Units of the Prefectures. In terms of enforcement, the competent authorities are: the Hellenic Environmental Inspectorate; the central or prefectural authorities that are competent for the establishment/operation of a project or activity; and the prefectural authorities that are competent for the evaluation of compliance with environmental conditions. In addition to the above, a body named "National Centre for the Environment and Sustainable Development" was established in 2000, with the aims *inter alia* of: environmental data collection and dissemination; scientific contribution to the establishment; implementation and evaluation of policies; programmes and measures

concerning the environment and sustainable development undertaken by the government; and offering education and training to national and local authorities, as well as to citizens, on issues related to the environment and sustainable development. The Centre also assists the authorities in the execution of national or European programmes and actions for the environment and sustainable development.

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

The majority of inspections are carried out by the services which are responsible for granting permits. The inspections are mainly carried out: (a) after specific complaints about pollution of the environment by projects or activities; or (b) during the procedure for the renovation of environmental permits. Regular inspections are performed (a) as combustion inspections of industries, special buildings, hospitals, bakeries, residences and cars in Attica and in Thessaloniki; and (b) of activities covered by the Seveso Directive. There is no regular reporting or accessible database of the inspections that have been carried out by either central or local authorities, nor of the nature of the follow-up action taken (e.g. warnings, close-downs and prosecutions). The establishment of the Hellenic Environmental Inspectorate is expected to fulfil this task through regular reporting. In relation to the task of inspecting the 12,000 projects or activities that need to be inspected in Greece, the additional inspection services provided by the Hellenic Environmental Inspectorate do not appear to be able to change the above-mentioned established inspection policy to a significant extent.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

In principle, everyone has a right of access to environmental information held by public authorities. Public authorities may refuse access to environmental information when the confidential and classified nature of (a) meetings of the Ministers Council and other government bodies; (b) national defence and foreign affairs; (c) security of the State and public order; (d) commercial and industrial classified information including intellectual property rights; and (e) private life and medical classified information, are damaged. In addition, access can be refused when a case is pending

before courts at any stage of the procedure and such an application for information would encumber this procedure. Further, when the information that is being asked for was given to the public authority by a third party voluntarily, and when such disclosure would harm rather than benefit the environment, access can also be refused. Partial disclosure is possible. Disclosure may also be denied when it would lead to the notification or surrender of incomplete documents, or is demonstrably general or unfounded. The public authority has no ground for refusal of disclosure merely because of the fact that the relevant information was not compiled or written by it. The public authority must answer in writing and in case of denial of access, the applicant has a right of appeal to the 'Commission on access to environmental information' and ultimately to the courts. The relevant provisions are likely to change towards more openness in the near future, with the transposition into national law of EU Directive 2003/4 and the ratification of the Aarhus Convention, moves which are imminent.

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

An environmental permit is required in all cases for

- new projects and activities; and
- relocation of existing projects and activities,

provided that their environmental terms are authorised by the competent authority.

In addition, an environmental permit is required in cases of:

- renovation;
- expansion; and
- modernisation

of existing projects, and cases of activities falling under the same categories, provided that any substantive modification as to their environmental impact is foreseen. This condition is dealt with by the authority that is competent to issue the environmental permit. If the competent authority affirms that a new environmental permit is *not* required, it is also under a duty to issue a fully substantiated Act.

Environmental permits are pre-conditions for the establishment and operation permits. If the project or activity changes hands and the new owner wishes to continue operations as before, then he shall apply for a modification of the environmental permit, and for establishment and operation permits as far as the trade name is concerned.

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

The issue, refusal or conditions of environmental permits are subject to appeal to the superior administrative court of Greece, the Council of State. The appeal is a request for the annulment of the decision made by the authority which grants, refuses to grant, or imposes objectionable conditions on the environmental permit. In addition to the recognition

of the *locus standi* of the applicant for an environmental permit in relation to such trials, the Greek Council of State's jurisprudence has expanded *locus standi* to include a variety of organisations and individuals that could appeal against the said decision too. Interestingly enough, the overwhelming majority of environment-related cases in Greece do not begin from appeals by the directly regulated bodies in relation to a denial of a permit, but from third parties that seek to annul an authorised permit. The directly regulated bodies usually intervene in support of the administration.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

Under Greek law there are three categories of projects and activities, depending on the size and the potential impact on the environment of each one. In the first category, in order for an environmental permit to be granted, an environmental impact assessment is necessary. In the second and third less strict categories, the submission of supporting documents proving the non-negative impact of the activity on the environment are required for the permit to be obtained. Particularly polluting activities and large-scale installations/projects fall under the first category and would require an environmental impact assessment. In Greek law there is a long list specifying in detail which projects and activities fall under which category and therefore what procedure is required for the grant of the permit in each case. There is no requirement for audits; however it is the administration's practice to issue permits with a date of expiry (usually 3-5 years), which *de facto* obliges the developer to re-submit the supporting documents to renew the permit.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

Enforcement powers include criminal and administrative measures:

Criminal measures: imprisonment of three months to two years and a fine ranging from EUR 150 to 15,000 charged to the employee(s) in charge, the members of the board and/or the directors in the case that fraudulent intent can be proved. If negligence is proved, then only imprisonment of up to one year can be enforced. Prison sentences can be converted into fines ranging from EUR 4.40 to 59 per day of imprisonment. In addition to criminal behaviour having been established, the violation of the permit must lead to a "degradation" of the environment, the onus of proof of which rests with the prosecution.

Administrative measures: depending on the seriousness of the violation:

- administrative fines ranging between EUR 50 to 500,000; or
- prohibition of the operation of the plant and indefinite closure. Additional fines of EUR 29 to 2900 per day are imposed for violation of the closure.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

The definition of "waste" in Greek law follows the lead of European Union environmental law. Consequently, "waste" is every substance or object mentioned in the European Waste Catalogue that the holder discards or intends or is required to discard. Special categories that involve additional duties do exist, namely hazardous waste and radioactive waste.

3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

It is possible to do so. It requires the decision of the competent General Secretary of the Region in the case of solid waste, and a joint Ministerial Decision of the Ministers of Environment and of Health in the case of hazardous waste. However, radioactive waste cannot be discarded in Greece. Conditions of operation should be included in the environment permit.

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

Liability of the holder ceases as soon as the waste is delivered to a natural or legal person licensed for the collection, transport, disposal or recovery of the waste.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

All those who manage packaging are under an obligation to organise [private] or participate in [collective] Alternative Management Systems (AMS) in relation to their activity. "Management" is defined as the supply, production and trading of packaging. An AMS is an organisation, whether private or collective, for the collection, reuse and recovery of packaging and packaging waste. Participation in a collective AMS is accompanied by the deposit of a fee with the AMS on behalf of the interested manager, and by a monetary contribution. The value of the contribution is specified in the accession contract, and in return the AMS gives the manager the right to mark his products with a special sign, as proof of his participation in the AMS. In this way the liability of managers for their obligations under the law is covered. AMSs are licensed by the 'National Organisation for the Alternative Management of Packaging and Other Waste' (NOAMPOP), a not-for-profit entity established under private law and operating under the supervision and control of the Ministry of Environment, Planning and Public Works. Three such AMSs (two collective and one private) are licensed as of today. In addition, a series of waste categories other than packaging waste are also regulated. Their recovery and their management is regulated *mutatis mutandis*. They include waste oils, used tyres, end of life vehicles, accumulators and batteries, and waste from

electrical and electronic equipment. Six collective AMSs are established covering all the above mentioned categories. Waste managers, including directors of the relevant companies, that fail to respect the obligations mentioned above are guilty of a criminal offence entailing 1 to 3 years' imprisonment and a fine of up to EUR 3,000. The companies are subject to administrative penalties ranging to EUR 146,000, and if damage is proven civil liability is also attributed.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

There are criminal, civil, administrative liabilities and these can be both personal and corporate. In the case of criminal prosecution, defences that could be raised are that there was no fraudulent intent or negligence and (in the case of unlawful pollution caused by the operator) that the environment was not degraded by the unlawful activity. In civil suits, possible defences are that damage arose out of an act of God or from an action of a third party acting with fraudulent intent. Administrative liability is strict and the only defence is that the breach did not actually take place or (in case of unlawful pollution) that there is no causal link between the operator's activities and the pollution caused by the operator.

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

From the moment that he operates within lawful permit limits, no damages can be claimed from the operator.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

In the case that fraudulent intent or negligence can be proved, the following persons have concurrent criminal liability together with the actual wrongdoers: the President of the board; directors of sociétés anonymes; managers of limited companies; the Counsel of a cooperative; and all persons who act as governors. If found guilty of fraudulent intent they face imprisonment of three months to two years and a fine ranging from EUR 150 to 15,000. If negligence is proved then only imprisonment of up to one year can be enforced. Prison sentences can be converted into fines ranging from EUR 4.40 to 59 per day of imprisonment. In addition to criminal behaviour being established, the violation of the permit must lead to a "degradation" of the environment, the onus of proof of which rests with the prosecution. Civil liability for damages for private persons (that could include the above-mentioned directors) is also foreseen in the case of pollution and/ or degradation of the environment. Furthermore, administrative measures can be enforced: depending on the seriousness of the violation, administrative fines fall within the range of EUR 50 to

733,000.

Insurance is available only so far as civil liability is concerned.

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

Implications from an environmental liability perspective are no different to general liability covering such transactions. In the case of sociétés anonymes and/or limited companies, a share sale follows the law covering sale, and relevant liabilities are essentially limited to the contracting parties, whereas in relation to third parties' liability (including administrative liability), it is the company (as a legal person) and the board that is liable. In asset purchase transactions, liability (including administrative liability) extends to the purchaser to the amount covered by the value of the assets. Liability continues to lie with the seller. The asset purchased should represent the totality or an important part of the enterprise.

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

Lenders may be held liable provided it is proven they are also in fault.

5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

There is no notion of historic contamination in Greek law. These matters, specifically those of contaminated land or groundwater, are not regulated.

5.2 How is liability allocated where more than one person is responsible for the contamination?

There is no such provision under Greek law.

5.3 If a programme of environmental remediation is 'agreed' with an environmental regulator can the regulator come back and require additional works or can a third party challenge the agreement?

Programmes of environmental remediation are not provided for under Greek law.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

There is no such private right.

5.5 Does the government have authority to obtain from a polluter monetary damages for aesthetic harms to public assets, e.g., rivers?

Negative impacts on "aesthetic values" are considered by law as one of the elements of environmental degradation. Those responsible for environmental degradation can be held liable; consequently, it is possible for damages to be obtained.

6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc?

Inspectors have the right to enter any kind of installation whenever they think fit, when there is a reason to believe that infringements may be occurring. They are not required to give previous notice. They should take into account security provisions that are in place for each installation, whether it is in operation or not. They may inspect even if the owner and/or operator are not present, and they are accompanied, if this is possible, by an accredited representative of the owner or occupier. They have the power to require the production of documents, take samples, conduct site inspections, interview employees and generally conduct any inspection they think fit. People responsible for the operation of the installation are under a duty to provide all required data and information and in general to help the inspectors' work. Inspectors have the power to publish information about the prospect controls and the fines awarded.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

There is no such obligation. Nevertheless, if the polluter reports in time any such incident to the competent authority and, as a result of this conduct, consequences to the environment are substantially lessened, if found guilty of pollution or degradation, the penalty imposed can be reduced or he could even be acquitted altogether from all charges. This remedy is explicitly included in the law in relation to criminal liability, but such conduct should also favourably influence the decision on the damages award in relation to civil liability, and the amount of any administrative measures imposed.

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

An affirmative obligation does not exist *per se*. However, in the process of obtaining an environmental permit, an investigation for land contamination may be necessary in order to substantiate the potential environmental effects of the project on the soil.

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

Merger and takeover transactions are treated equally under Greek law. Upon official notification of the merger or takeover transaction, the original company/ies cease(s) to exist. The rights and obligations of the ceased company/ies are inherited by the company that purchased it/them. Since the obligation to observe the law and to refrain from pollution and degradation of the environment is also inherited, information on 'environmental problems' should be disclosed to the purchaser, whilst observing relevant prescriptions.

8 General

8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?

It is not possible yet to use such an indemnity. Greek law will essentially follow developments in EU law and in particular the anticipated transposition of the EU Environmental Liability Directive into national law.

8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

It is not possible to shelter environmental liabilities off balance sheet. The only reason for a company to dissolve in order to escape environmental liability is if the damage is revealed and the subsequent liability is borne after the end of the liquidation. As far as civil liability is concerned, the claim is prescribed at the lapse of five years from the time that the injured party had knowledge of the prejudice and the person liable for compensation, and in any case after twenty years after the occurrence of the act. As far as administrative liability is concerned, since there is no limitation time, once the liquidation of the company is over, a claim for liability ceases to have a respondent.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

It is not possible for a shareholder to be held liable for breaches of environmental law and/or pollution caused by the company.

The parent company can be held liable if it can be proven that it performs "commanding influence" on the affiliate. Commanding influence exists when the parent company owns directly or indirectly, e.g. through third parties that act on behalf of the company, at least 20% of the capital or voting rights of the affiliate and, simultaneously, exercises a dominating influence on the government and/or the operation of the latter. If the parent company is registered

outside Greece it would essentially depend on the law governing the parent company's country as to whether it could be sued in its national courts. Equally, if the parent company is registered in Greece and the affiliate in a foreign country, it is the latter's country law, in accordance with the parent/affiliate relationship, that would govern the possibility of the foreign claimants applying in the Greek courts.

8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?

In Greek law "whistle-blowers" are recognised only exceptionally, for crimes relating to terrorism or human trafficking where the law recognises a witness protection regime. In environmental matters, there is no specific legislation to address protection of "whistle-blowers".

8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?

Group and/or "class" actions are possible primarily in cases of annulment of administrative Acts in the Greek Superior Administrative Court, the Council of State. The widening of *locus standi* in the jurisprudence of the Court has not gone as far as to recognise *actio popularis* but is sufficiently flexible to accommodate a wide variety of claimants such as citizen groups, NGOs, neighbours etc. In administrative cases damages are not awarded, but it is possible for them to be awarded in criminal and civil cases. In the latter cases both penal and exemplary damages are available.

9 Emissions Trading and Climate Change

9.1 What emissions trading schemes are in operation in Greece and how is the emissions trading market developing there?

Greece was the last EU Member State to get its National Allocation Plan approved in mid-June 2005. Greece operates within the European Trading System (ETS), but the late implementation has not seen transactions so far. Enterprises to which emission rights have been allocated operate under a temporary licence for 2005. The registry is expected to be in operation in early 2006.

10 Asbestos

10.1 Is Greece likely to follow the experience of the US in terms of asbestos litigation?

There has been asbestos litigation in Greece (and some cases are still pending) but nothing compared to the magnitude and extent of the US litigation. In Greece there are asbestos mines and an asbestos industry, mainly near Kozani, Northern Greece and in Euvoia, Central Greece. All asbestos-related mining and manufacturing operations ceased in 1999. As far as the industry in Euvoia is concerned, the operating conditions for the miners and workers, at least in the first decades of operation of the industry, were deplorable. Measures indicated

concentrations of as much as 100 fibres per cm³ (the current EU standard is 0.1 fibres per cm³!), and there were neither masks nor training given to the workers. The majority of reported asbestos-related litigation involves the Euvoia case. Concern is rising since 1999 following investigations into public buildings; some 50 schools in Greece, the Peace Courts in Athens and the Ministry of Foreign Affairs are above the threshold limits. The competent authorities are in the course of asbestos removal from asbestos-polluted public buildings.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on site?

The bearer of duties in accordance with asbestos-related legislation in Greece is the employer and not the owner/occupier, since asbestos is primarily considered by law as an occupational health hazard. All employers, private or public, of any kind of activities which are likely to entail danger of exposure to dust from asbestos or from material that includes asbestos are under a duty to:

- have a written assessment of the likely danger due to the activity and the foreseen measures;
- measure asbestos in the premises;
- take all preventative measures; and
- inform employees.

A specific duty lies with employers that conduct the demolition of buildings or constructions which contain asbestos insulation materials, and the removal of asbestos or those materials, and the demolition of constructions and ships where asbestos can pollute the air of the working environment. In such cases the duty lies in:



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- preparing a work plan and submitting it to the competent authority;
- using as far as practicable specialised personnel; and
- putting instruction signs in the area likely to be affected by dust.

There is no general duty on employers and or owners/occupiers to identify whether asbestos materials are present in any building and relevant investigations are conducted following pressure and/ or initiative of the Unions. It is estimated that asbestos is present (as insulation material) in the majority of buildings built between 1969 and 1973. From 1 January 2005 Greece banned the marketing and use of asbestos. The use of products containing chrysotile already installed and/or in service before 26 August 1999 shall continue to be authorised until they are disposed of or reach the end of their service life. However, for reasons of public health, their use may be prohibited before they are disposed of, or before they reach the end of their service life.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in Greece?

There is no environmental insurance market in Greece yet.

11.2 What is the environmental insurance claims experience in Greece?

There is no such experience.



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