



# **Report submitted by Greek NGOs to the Aarhus Convention Secretariat**

## **2021 Reporting Cycle**

**This report is submitted on behalf of the NGOs WWF Greece and Hellenic Ornithological Society/BirdLife Greece, in accordance with decisions I/8 and VI/7 of the Meeting of the Parties.**

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# Introduction

The present submission is structured in three sections. Each section covers one of the three pillars of the Aarhus Convention: the access to the environmental information (Section 1), the public participation in the decision-making process regarding environmental matters (Section 2), and the access to justice (Section 3). Each section starts with a brief summary of WWF and the HOS's activities (Part I of each Section), and continues with the presentation and assessment of certain decisions and actions of the Greek state which, in the opinion of WWF and the HOS, constitute breach of the relevant provisions of the Aarhus Convention (Part II of each Section).

It should be noted that the present report is not exhaustive. It focuses on specific examples of non-adherence to the certain obligations set out in the Aarhus Convention, with the purpose of ensuring better compliance and, in turn, better protection of the environment.

The Aarhus Convention was ratified by law 3422/2005 (OGG A 303), which came into force on December 13th, 2005.

# 1. ACCESS TO ENVIRONMENTAL INFORMATION

## *I. NGOs work on access to environmental information*

WWF Greece's law and governance programme follows closely the development of environmental law and policy in Greece. To this purpose, all relevant official publications, websites and databases are monitored, and requests for environmental information are submitted. During the last 15 years, WWF Greece published annual environmental law reviews, which are widely recognized as a valuable source of knowledge on environmental policy development and implementation. In 2019, these reviews were prominently mentioned in the European Commission's (DG ECFIN) 2019 European Semester report for Greece.<sup>1</sup> In addition, WWF Greece has organized a voluntary legal team, which regularly advises citizens and citizen associations on issues related to environmental law: often, these issues involve the rights conferred by the Aarhus Convention.

One of the main activities of the Hellenic Ornithological Society (HOS)/ BirdLife Greece is the substantial intervention on matters of evolution of environmental legislation, policy and plans/projects that might have a significant impact on the environment. To that purpose, HOS uses publicly available environmental information relevant to the fields mentioned above. When necessary, HOS/Birdlife requests access to environmental information in accordance with the first pillar of Aarhus Convention (and other related instruments of national, EU and international law), with the aim of promoting widespread and effective participation in the public discourse and of disseminating the collected information to the public via its channels.

## *II. Alleged non-compliance with the provisions of the Aarhus Convention on access to environmental information*

### **A. Non-granting of access to environmental information by the Greek public authorities**

#### **a. The PPC case**

#### **Relevant facts**

The Public Power Corporation (the PPC) is Greece's national power company and operates the majority of Greece's highly polluting lignite mines and large combustion plants (the LCPs).

Under Greek law, the environmental permit is a "prerequisite" for any other permit or license required for operating an installation or carrying out an activity.<sup>2</sup> Thus, an LCP should hold an individual production permit and an individual operating permit, in addition to an environmental permit. However, this permitting sequence has been side-stepped in the case of LCP's operated by PPC. More precisely, PPC has been granted a Single Production Permit (the SPP) and a Single Provisional Operation Permit (the SPOP) for all the LCPs it operates by virtue of special laws and acts of legislative nature (or emergency acts), while the

<sup>1</sup> DG ECFIN. Country Report Greece 2019 Including an In-Depth Review on the prevention and correction of macroeconomic imbalances, p. 53. Retrieved from: [https://ec.europa.eu/info/sites/info/files/file\\_import/2019-europeansemester-country-report-greece\\_en.pdf](https://ec.europa.eu/info/sites/info/files/file_import/2019-europeansemester-country-report-greece_en.pdf).

<sup>2</sup> Currently, see article 2 par. 10 of law 4014/2011 (OGG A 209).

environmental permits for an indefinite number of them have nominally expired. These permits are characterized as “single”, because they do not refer to individual installations, but to all the installations operated by the operator in question, i.e. PPC. Thus, the SPP and SPOP allow the continuous operation of a number of LCP’s that lack the necessary individual environmental permits in force (and possibly other permits under national or EU law).

On 24.12.2015, the SPOP in force was extended up to 31.12.2017 by virtue of an emergency act (the Emergency Act). Pursuant to the Emergency Act, PPC was required to submit the necessary documentation for the “regularization” of the permitting of all the LCPs it operates until 31.03.2017.<sup>3</sup> In this case, “regularization” would require the issuance or renewal of environmental permits for all installations that lack them, and then the issuance of production and operating permits for the same installations.

WWF filed a petition to the General Directorate of Regional Policy and the General Directorate of Energy of the Ministry of Environment and Energy requesting access to the aforementioned documentation filed by PPC. However, the ministry denied access to the supporting documentation *in globo* on the grounds that intellectual and industrial property rights were included in this documentation.

The Greek Ombudsman was seized, and concluded that the denial of the public authorities was not properly justified since i) some documents could not - by definition - include intellectual and industrial property rights, and ii) the intellectual and industrial property rights that would be affected by the disclosure were not specified. Despite this, the Minister of Environment rejected again the request of WWF on the grounds that the supporting documentation included documents associated with intellectual and industrial property rights and that the disclosure of the supporting documents could not be permitted due to public safety reasons.

## **b. The Fracking Case**

### **Relevant facts**

By virtue of a decision under no. D1/29042/19.12.2011, of the Minister of Environment and Energy (formerly named Ministry of Environment, Energy and Climate Change), a special committee (the Special Committee) within the General Secretariat of Energy (formerly named General Secretariat of Energy and Climate Change) was formed with the purpose of conducting a research in relation to the existence of shale gas/black shale formations and bituminous shales in Greece.

In accordance with the aforementioned decision, the Special Committee issued i) an information note on shale gas/black shale research worldwide and bituminous shales worldwide, and ii) a preliminary geological study of possibilities and prospects for locating possible geological formations of shale gas/black shale and bituminous shales in Greece (the Special Committee’s Reports).

On 31.1.2018, WWF filed a request of access to the Special Committee’s Report with the General Directorate of Energy of the Ministry of Environment and Energy, the Directorate of Energy Policies of the same Ministry as well as with the Institute of Geology and Mineral Exploration, directly supervised by the Ministry of Environment and Energy.

WWF followed-up several times on its request but none of the aforementioned authorities provided it with the Special Committee’s Reports. Finally, on 4.6.2018, WWF filed a petition to the public prosecutor, requesting an order enjoining the General Directorate to grant access to the Special Committee’s Report; however, under Greek law, it is understood that the public prosecutor can merely order the addressee to reconsider the request, and answer to it

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<sup>3</sup> By virtue of article 32 of law 4643/2019 (OGG A 193) the force of the SPOP was further extended up to 31.12.2021.

promptly and in a reasoned way. The public prosecutor promptly issued the order requested; however, the public authorities continued to refuse immediate access to the Special Committee's Report.

Finally, on 29.6.2018, that is with a significant delay which is inconsistent with art. 4(7) of the Aarhus convention, the authority in charge responded to the request. The answer was negative: the authority claimed that the report concerns the subsoil, which is not part of the "environment"; that the report contains "incomplete" or "fragmentary" data, the accuracy of which has not been verified; that the report is protected by intellectual property rights; that the report consists in "internal information"; that the provision of environmental information is not part of General Directorate's mission; and finally, that report is associated with "financial interests... on which the financial stability of the State is based".

In the meantime, a journalist shared the report with WWF. There was no indication that the report was "unfinished". The report did not contain financial or mineral estimates of any sort, or any original information, but was entirely based on open bibliographic sources. Possible areas where black shale/shale gas resources might exist were described, but in a complete general way, and without any maps, and esp. geological maps. The report also contained a general description of the environmental impact of fracking, based mainly on widely available European and US studies: of course, it was quite obvious that the environmental impact, at least, is not limited to the "subsoil". One can only conclude that the General Directorate either seriously misconstrued, or seriously abused the reasons for refusal allowed by art. 4(4) of the Aarhus Convention.

### c. Breach of article 4 of the Aarhus Convention

The PPC and the fracking case are two clear examples of the failure of the Greek public authorities to comply with the requirements of article 4 of the Aarhus Convention.

In both cases, the request of WWF concerned **environmental information**. Indeed, the petitions and the supporting documentation in the PPC case were filed for the purpose of the extension of the SPOP, an "administrative measure" or "legislation" *affecting or likely to affect the elements of the environment within the scope of the subparagraph (a)*<sup>4</sup> of the Article 3 of Aarhus Convention. Besides, article 6 of the directive 2003/4/EC<sup>5</sup> provides that the environmental information to be made available and disseminated shall include at least "authorizations with a significant impact on the environment". The same applies for the Special Committee's Report as it included information related to the extraction of shale gas/black shale and bituminous shales i.e. information on "factors" likely to affect the state of air and atmosphere, the water (including the aquifers), the soil, the land, the landscape and the natural sites.<sup>6</sup>

The authorities concerned were in both cases **public authorities** within the meaning of article 2 par. 2 of the Aarhus Convention. In the fracking case, aside from the obviously abusive invocation of the grounds for refusal, their interpretation in an expansive (and nonrestrictive) way that verged on hyperbole, the response violated the deadline of art. 4 par. 7, without stating the **reasons justifying this delay**. In the PPC case, the refusal was also in breach of article 4 of the Aarhus Convention. As stated above, the refusal of the public authorities did not specify the intellectual and industrial property rights included in the supporting documentation preventing, therefore, the administrative or judicial bodies from determining the validity of this particular reason of refusal. In addition, the supporting documents could not - by definition - be covered by the intellectual property exemption as they were **administrative documents** within the meaning of the Greek and international law (documents created by or

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<sup>4</sup> Aarhus Convention, article 2.3.b.

<sup>5</sup> Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC.

<sup>6</sup> Aarhus Convention, article 3.a

on behalf of public authorities, in the context of their administrative functions). The publication of this information was not only allowed, but **required** by European law, and notably art. 24(2) of Directive 2010/75, as it was related to an update or reconsideration of an IED permit. As stated above, this conclusion was reached by the Greek Ombudsman as well. The exemption of article 4 par 1 subparagraph (e) was not interpreted by the public authorities in a **restrictive manner** in compliance with paragraph 2 of the same article.

Finally, supposing that the supporting documentation included indeed information related to intellectual and industrial property rights, the public authorities could have separated the confidential information and made available to WWF the remainder of the environmental information in accordance with article 4(6) of the Aarhus Convention.

## **B. Non-transparency and difficulty in the use of the environmental electronic registers**

### **a. The relevant provisions of the Aarhus Convention**

Article 5(2) of the Aarhus Convention establishes the obligation for each state to ensure that, within the framework of the national legislation, the way in which public authorities make environmental information available to the public is **transparent** and that the environmental information is **effectively accessible**.

Pursuant to article 5(9) of the Aarhus Convention “*each party shall take steps to establish progressively, taking into account international processes where appropriate, a **coherent, nationwide system of pollution inventories or registers** on a structured, computerized and publicly accessible database compiled through standardized reporting [...]*”.

### **b. The Greek electronic registers and the problems encountered**

WWF and the HOS would like to reiterate the importance of retaining environmental registers that are accessible to everybody and that manage the environmental information in a clear and transparent way [cf. arts. 3(1), 5(2) of the Convention]. The Greek EIA law, in line with the Aarhus Convention [see also arts. 5(1)(a), 5(3)(d), 5(7)(c), 6(9) of the Convention], specifies that all environmental information related to environmental permits should be made publicly available by means of an electronic register. All documents related to the “life-cycle” of an environmental permit are included.<sup>7</sup> In fact, the law explicitly stipulates the results of environmental administrative inspections should be publicly available.<sup>8</sup> In other words, Greek legislators have decided that the results of environmental administrative inspections should be publicly available, and do not fall under any ground of refusal allowed by Aarhus Convention or any other law [cf. also art. 3(5) of the Convention]. As a result, this is certainly not a case of protecting “the confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law” [art. 4(7)(a) of the Convention], and in every case, administrative inspections are not part of the “course of justice” or of an “enquiry of a criminal or disciplinary nature” [art. 4(7)(c)].<sup>9</sup>

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<sup>7</sup> Art. 18(2) of law 4014/2011.

<sup>8</sup> Pursuant to article 20 of the same law (the EIA law, law 4014/2011), the projects that have been granted an environmental permit are subject to regular or extraordinary environmental inspections, in order to ensure that the terms of the environmental permits are complied with.

<sup>9</sup> See, in this respect, UNECE. (2014). The Aarhus Convention: an Implementation Guide, pp. 87-88.

However, according to the implementing ministerial decision and the administrative practice, only authorized users, and not the interested public, have access to the results of environmental administrative inspections. Apparently, the authorities take the view that the interested public is entitled to access only the final permit and documents subject to public participation requirements. In this way, not only the public is effectively deprived of the access to vital information on the practical effect of environmental permitting, and the state of the environment around polluting installations, but also national law is routinely disregarded. In addition, even the access to documents related to the process of environmental licensing is uneven, as for reasons not explained properly this access may differ from case to case or from one period to another.



## 2. PUBLIC PARTICIPATION IN THE DECISION-MAKING PROCESS REGARDING ENVIRONMENTAL MATTERS

### *I. NGOs work on public participation in decision-making process regarding environmental matters*

WWF Greece actively participates in the decision-making process regarding environmental matters in multiple ways. These include public consultation on national and European environmental legislation and on plans or projects likely to have a severe environmental impact, and drafts of policy addressed to national and European officials. Furthermore, WWF Greece is often invited to parliamentary hearings to discuss draft legislation.

HOS is an active participant in decision-making procedures regarding environmental matters. The HOS submits comments and proposals at the stage of public consultation during the formulation of both national and EC environmental law, and during the authorization of plans and projects likely to affect the environment. Moreover, the HOS proactively assists in the development of environmental policy by launching initiatives that improve the implementation of national, EC and international law.

### *II. Alleged non-compliance with the provisions of the Aarhus Convention on public participation in decision-making process regarding environmental matters*

#### **A. The *ex lege* prolongation of environmental permits**

##### **a. The Greek Law 4685/2020 and the extension of the validity of the environment permits**

The recently enacted law 4685/2020 (OGG A' 92) introduced significant changes in the legal framework for the protection of the environment in Greece. Among other provisions, the law has prolonged ***ex lege*** the duration of all environmental permits in force en bloc to **15 years**.<sup>10</sup> Previously, and as a general rule, the **duration of an environmental permit was 10 years**. Therefore, the duration of most environmental permits has been extended by 5 years.

According to the law, the extension is valid only if there is no "*change of the circumstances*" on which the original development consent was based. However, the law does not specify in what this change consists, and the procedure or the competent authority that will verify or attest that no "change of circumstances" has taken place.

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<sup>10</sup> Art. 2(8)(a)(a) of law 4014/2011 (the Greek EIA law), before it's amendment by art. 1(1) of law 4685/2020.

It is noteworthy that following certain questions by members of the European Parliament, Commissioner Sinkevičius stated that the EU Commission intends to assess its conformity with the European legislation.<sup>11</sup>

## **b. Breach of article 6 of the Aarhus Convention**

To the (significant) extent that the Greek EIA law concerns “proposed activities listed in Annex I” of the Aarhus Convention, the practice contravenes art. 6(1)(a) in combination with Annex I, item 22 of the same Convention. In short, those combined provisions require public participation in “any change to or extension of activities, where such a change or extension in itself meets the criteria/thresholds set out in this annex.” Arguably, the *ex lege* prolongation of *all* development consents in force is such a “change or extension”. To the extent that Greek EIA provisions cover activities that are not listed in Annex I of the Convention, the latter also requires, in accordance with national law, public participation “early in an environmental decision-making procedure” that concerns “any activity ... where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation”, as well as “proposed activities *not listed* in Annex I which may have a significant effect on the environment” [arts. 6(1)(a) in relation with Annex I item 20, 6(1)(b) of the Convention].

In addition or alternatively, with respect to Annex I activities, this practice contravenes another requirement of the Aarhus Convention: notably, “when a public authority reconsiders or updates the operating conditions for an activity”, the public participation procedures envisaged by the Convention “are applied *mutatis mutandis*, and where appropriate” [art. 6(10) of the Convention]. In this respect, the Aarhus Convention Compliance Committee (ACCC) has remarked the following: “the Committee considers that the permitted duration of an activity is clearly an operating condition for that activity, and an important one at that. Accordingly, any change to the permitted duration of an activity, be it a reduction or an extension, is a reconsideration or update of that activity’s operating conditions”.<sup>12</sup> Moreover, ACCC has made clear that “except in cases where a change to the permitted duration is for a minimal time and obviously would have insignificant or no effects on the environment, it is appropriate for extensions of duration to be subject to the provisions of article 6... an extension of an activity’s duration by five years is by no means minimal”.<sup>13</sup> In the present case, neither the explanatory report, nor other associated materials of law 4685/2020 contain any “reconsideration” of operating conditions, or explain why the public participation procedures would be inappropriate, in each and every case: therefore, ACCC’s findings apply *a fortiori*.

Finally, the requirement that there should be no “change in circumstances” does not cure the above-mentioned deficiencies. It should be remembered that “each Party shall take the necessary legislative...measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention...to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention” [art. 3(1) of the Convention]. In addition, the extension of the operating conditions of proposed activities should be made available [art. 6(9)(b)]. As a result of the unclear formulation of the *ex lege* extension, the public is unable to know which operating conditions have been extended, and which have expired. In every case,

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<sup>11</sup> Parliamentary questions, 30 June 2020, Answer given by Mr. Sinkevičius on behalf of the European Commission, Question reference: E-002671/2020. Parliamentary questions, 30 June 2020, Answer given by Mr. Sinkevičius on behalf of the European Commission, Question reference: E-002672/2020.

<sup>12</sup> Economic Commission for Europe. Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters Compliance Committee. (4.10.2018). Findings and recommendations with regard to communication ACCC/C/2014/104 concerning compliance by the Netherlands, para. 65.

<sup>13</sup> Economic Commission for Europe. Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters Compliance Committee. (19.8.2019). Findings and recommendations with regard to communication ACCC/C/2013/107 concerning compliance by Ireland, paras 83-84.

“where appropriate” - that is, on a case-by-case basis, or at least on a preliminary analysis involving a categorization of art. 6 proposed activities- , the authorities should have ensured access to art. 6(6) information, for each of the activities benefitting from the *ex lege* extension [art. 6(10) in relation to art. 6(6)]. Inevitably, “where appropriate”, they should have also ensured the *mutatis mutandis* application of arts 6(1) to 6(5), and 6(7) to 6(9) of the Convention.

## **B. Adoption of environmental plans without prior submission to a public consultation procedure**

### **a. The TNP case**

Directive 2010/75/EU (hereinafter, IED) includes special provisions for Large Combustions Plants (the LCPs). Those provisions specify emission limit values (the ELVs) for emissions of nitrogen oxides (NOx), sulphur dioxide (SO<sub>2</sub>) and dust applicable as of 1 January 2016<sup>14</sup>. However, IED also provides that during the period from 1 January 2016 to 30 June 2020, the Member States may opt to institute a transitional national plan (the TNP) for certain eligible LCPs. Subject to certain conditions, TNP effectively replaces the obligation for installation-level emission limit values by a “ceiling” of maximum annual emissions, which applies collectively to all the eligible LCPs.<sup>15</sup> Of course, TNP eligibility amounts to the exemption of eligible TNPs from typical emission limit values, and this exemption has an impact on the environment and public health, esp. in the vicinity of those LCPs. TNPs also contain “provisions on monitoring and reporting”, as well as “measures foreseen for each of the plants in order to ensure timely compliance with the emission limit values that will apply from 1 July 2020”.<sup>16</sup>

IED was transposed into Greek law in **2013** by the Joint Ministerial Decision 36060/1155/E.103/13-6-2013 (the JMD). The procedure for TNP formulation was unique: art. 28(7) of the JMD provides that a TNP shall be drafted by a technical working group (the “technical working group”). The technical working group is composed of at least three Ministry of Environment representatives and one representative from the Ministry of Finance, while technical experts and other representatives of the public or the private sector are allowed to join. The first technical working group consisted of three (3) representatives from the Ministry of Environment, one (1) representative from the Ministry of Finance and one (1) representative from each of PPC, Hellenic Petroleum and Motor Oil, which are three of the largest LCPs in Greece. In September 2014, the composition of the first technical working group changed, but the representative of PPC remained.

No provision for public participation before or during the drafting of the TNP was included in the JMD. The first time that the public was notified of the TNP was **only at the time of its publication**. Accordingly, the public was neither notified of the establishment of the technical working group, nor was it asked in any way to participate or contribute to the work of the technical working group. No information related to the TNP was shared until the TNP was published as it came into force.

### **b. Other plans adopted by specific laws**

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<sup>14</sup> Chapter III of Directive 2010/75 of the European Parliament and the Council on industrial emissions (integrated pollution prevention and control).

<sup>15</sup> Art. 32, esp. 32(3) of Directive 2010/75.

<sup>16</sup> Art. 32(4) of Directive 2010/75.

The practice of adopting plans by specific legislation is widespread in Greece. These plans include spatial plans, regularization of categories of illegal activities, or the provision of special operating conditions for proposed, Annex I activities. An example of the first category (spatial plan, in this case for the construction sector) is the law on building restrictions and conditions on areas not covered by other plans [arts. 31-41 of law 4759/2020 (OGG A 245)]: this law specifies the “default” building restrictions and conditions that apply to those areas where other, local and more specific plans do not exist, and, as a result, it has widespread application, and is likely to affect large swathes of Greek countryside. An example of the second activity is the regularization of all existing activities inside the Greek international ports [art. 86 of law 4504/2017 (OGG A 184)]. An example of the third category (updating of operating conditions) are the provisions on power plants and energy production in the island of Crete: these provisions allow the construction or the installation of power plants in the island without any prior permits, including environmental permits, which the operator may obtain after construction and operation [art. 88 of law 4602/2019 (OGG A 45)]. An example that belongs both to the first and third category is the specification, by special legislation, of the location of waste transfer and reloading stations [arts 92 of law 4685/2020 (OGG A 92) and 142 of law 4759/2020 (OGG A 245)].

In all those cases, essentially administrative functions, such as the authorisation of plans or proposed activities, are carried out, wholly or in part, by special laws. Although problematic, this practice is not *per se* contrary to the Convention. It is contrary to the Convention insofar as it is used to circumvent the specific requirements of the Convention, including the art. 6 public participation requirements. In all the above-mentioned cases, these requirements were violated, including the art. 6(3) requirement of effective public participation, and the art. 6(2) requirement of the provision of adequate information in a timely manner.

### **c. Breach of the Articles 6 and 7 of Aarhus Convention and the WWF complaint to ACCC**

The above presented facts demonstrate that Greece failed to comply with Article 7 and Article 6(3)-6(4), 6(8) of the Aarhus Convention. In the TNP case, WWF Greece along with ClientEarth filed a complaint to the ACCC on 2 August 2017 (the “First Complaint”).<sup>17</sup> As elaborately detailed in the Complaint, the TNP qualifies as a plan relating to the environment, therefore it triggers the application of art. 7 [and via art. 7, art. 6(3)-6(4), 6(8)].

As described above (sub-par. b), there was no public consultation prior to the TNP adoption. Of course, participation in the technical working group is not a substitute for public participation; the authorities provided for the participation of certain members of the public, and these were all representatives of the regulated operators. Thus, contrary to art 7, neither the interested public was identified, nor public participation in a fair and transparent framework was ensured.

## **C. The ministerial decision regulating hunting**

### **a. Annual ministerial decision regulating hunting**

Hunting activity in Greece is regulated by a decision of the Minister of Environment and Energy, which is issued or renewed annually. To that end, the competent Department of the

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<sup>17</sup> ACCC/C/2017/148 Greece “Communication to the Aarhus Convention Compliance Committee Regarding the Failure of Greece to Comply with Article 6 and 7 of the Aarhus Convention” available at <https://unece.org/acccc2017148-greece>

Ministry calls every interested party for a consultation process, involving the submission of comments. Each year, a few interested parties (environmental NGOs, hunting associations, forestry services, scientific bodies, protected areas management bodies) participate in the consultation process. Although hunting is not listed in Annex 1 of the Aarhus Convention, it is undoubtedly “plan” or “programme” “relating to the environment” [cf.art. 7], and it has a significant impact on its elements (biodiversity) [cf., also, art. 14(1) (a) and (b) of the Convention on Biological Diversity]. Therefore, the ministerial decision on hunting falls under the scope of the articles of the Convention, and arts. 7, 6(3), 6(4) and 6(8) are applicable to it. In this respect, it is noteworthy that hunting activity is not subject to a prior environmental assessment.

The consultation process contravenes the Aarhus Convention in two respects. First, contrary to arts 7(a), 6(3) and 6(4), neither any draft of the Ministerial Decision, nor any kind of impact assessment of the hunting activity, on which the Decision is explicitly based, is made public in an early and effective manner. As a result, the interested parties are unable to verify practically the scientific completeness, timeliness and adequacy of the studies which form the basis of the decision. Second, contrary to the arts. 7(a), 7(d), and 6(8), and upon the completion of the consultation process, the competent Ministry does not make public in any way the submitted comments of the interested parties, and does not explain how due account was taken of them.

### 3. ACCESS TO JUSTICE REGARDING ENVIRONMENTAL MATTERS

#### *I. NGOs work on access to justice regarding environmental matters*

WWF Greece often files legal actions before the national courts (mostly under the jurisdiction of the Council of State) in cases either of plans or projects with severe environmental impact, or of administrative acts that weaken the *environmental acquis*. It was also a claimant in a case referred to the Court of Justice of the EU for a preliminary ruling. In addition, it has filed complaints to the European Commission in cases of national legislation that breaches EU environmental law and policy. Last but not least, it has filed two complaints before the ACCC.

If all else fails and interventions on previous stages such as the public consultation prove to be fruitless, the HOS initiates legal actions either before the national courts (mainly Council of State) or the European Commission.

#### *II. Alleged non-compliance with the provisions of the Aarhus Convention on access to justice regarding environmental matters*

##### **A. The PPC case and the WWF Complaint to ACCC**

###### **a. The PPC case**

###### **Relevant laws**

In accordance with art. 95(1) (a) of the Greek Constitution, “the jurisdiction of the Supreme Administrative Court pertains mainly to: (a) the annulment upon petition of enforceable acts of administrative authorities for excess of power or violation of the law”. Moreover, in accordance with arts 95(4) and 95(5), “the jurisdiction of the Supreme Administrative Court shall be regulated and exercised as specifically provided by law”, and only “the administration shall be bound to comply with the annulling judgments of the Supreme Administrative Court”.<sup>18</sup> As a result, the Greek system of judicial review does not provide for the direct review of legislation.

###### **Relevant facts**

The relevant facts have been stated above (II, A, a). Essentially, PPC has obtained its **SPP** by virtue of a special law issued by the Greek Parliament in 1999. In addition to the above, the Greek Parliament granted to PPC an **SPOP** for the plants that were already holding an SPP through the adoption of a special law, which entered into force in 2001. From the period of 2001 until 2015, the Greek Parliament issued special laws that were extending the SPOP of PPC. In 2015, the force of the SPOP was extended up to 2017 by virtue of the Emergency Act.<sup>19</sup> As neither special laws nor emergency acts are available for judicial review, no one was able to challenge the SPOPs granted to PPC.

<sup>18</sup> A semi-official English version of the Greek Constitution can be found here: <https://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma/>

<sup>19</sup> By virtue of article 32 of law 4643/2019 (OGG A' 193) the force of the SPOP was further extended up to 31.12.2021.

As regards to PPC's **environmental permit**, in 2011 a special law extended or kept in force the already granted environmental permit that each of PPC's LCPs held until that time. IED requirements for existing LCPs came into force in January 2016. Nevertheless, with the extension of the environmental permits already granted in 2011, PPC did not update its environmental permits in order to meet the standards imposed by IED in 2016, but continued to validly hold them. Furthermore, as the environmental permit constitutes a pre-condition of an SPOP, the extension of PPC's environmental permit also facilitated the grant and extension of the SPOPs as per the above paragraph. Since the extension of the environmental permit of PPC was given through a special law, no challenge in court was available.

#### **b. Breach of article 9 of the Aarhus Convention and the WWF complaint to ACCC**

As stated above, the direct review of either SPP or SPOP (or their numerous renewals) is not subject to direct judicial review. However, these are self-evidently "decision[s], act[s] or omission[s] subject to the provisions of article 6", and therefore, the lack of access of "a review procedure before a court of law and/or another independent and impartial body established by law" is a violation of art. 9(2) of the Aarhus Convention. For purposes of reporting such failure to comply, WWF Greece along with ClientEarth filed a complaint to the ACCC on August 2nd 2017 (the "Second Complaint"), where the issues raised are further elaborated.<sup>20</sup> Indeed, as described in the Second Complaint, (a) the **special law** that granted the SPP to PPC, (b) the **special laws and the Emergency Act** that granted and extended the SPOP of PPC as well as (c) extended the validity of the environmental permits of PPC **cannot be challenged and judicially reviewed by anyone**. Moreover, since the special laws and the emergency acts are not judicially reviewable and no option of remedies is provided to the public concerned at all, it becomes apparent that article 9(4) is breached as well.

The Greek authorities take the view that the guarantees of art. 9 are not compromised, since any member of the public can seek judicial review of possible administrative acts based on the special laws mentioned above. This, clearly, does not suffice. Firstly, this is not what art. 9(2) requires, which clearly mentions that "any" decision or act should be reviewable: indeed, neither the subject-matter, nor the content or other aspects of the special laws and the administrative acts are the same. It is worth emphasizing that art. 9(2), contrary to art. 9(3), is not limited to acts or decisions of "public authorities" [cf. art. 2(2)]. Secondly, and perhaps more importantly, no additional administrative acts are required in all cases: SPP and SPOP are "blanket" provisions that allow the continual operation of the covered power-plants without the issuance of any other administrative act. This is the very reason for their existence. Finally, it is worth noting that these issues involve "rights and freedoms guaranteed by the law of the Union", and art.9 (2) of the Aarhus Convention is corroborated by art. 47 of the EU Charter of fundamental rights.

Neither the "Second claim", nor the signatories of the present report dispute the fact that special legislation may, in some cases, be necessary, or that national parliaments may provide for special or extraordinary permitting procedures. However, this should not be done in a way that circumvents art. 9(2), or arts 6 and 7, of the Convention. Indeed, it would have been very easy to formulate a law that provides for the issuance of a confirmatory administrative act (allowing the review of at least some aspects of the overarching special law), or a law which explicitly allows some sort of "substitute" judicial review of its provisions. These are solutions often used by the legislator in other issues.

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<sup>20</sup> ACCC/C/2017/148 Greece "Communication to the Aarhus Convention Compliance Committee Regarding the Failure of the Hellenic Republic to Comply with Article 9 of the Aarhus Convention" available at <https://unece.org/acccc2017148-greece>

## List of abbreviations

<b>ACCC</b>	Aarhus Convention Compliance Committee
<b>DG ECFIN</b>	Directorate-General for Economic and Financial Affairs
<b>ELV</b>	Emission Limit Value
<b>HOS</b>	Hellenic Ornithological Society
<b>IED</b>	Industrial Emissions Directive
<b>LCP</b>	Large Combustion Plant
<b>NOx</b>	Nitrogen Oxides
<b>OGG</b>	Official Government Gazette
<b>PPC</b>	Public Corporation Company
<b>SO2</b>	Sulphur Dioxide
<b>SPOP</b>	Single Provisional Operation Permit
<b>SPP</b>	Single Production Permit
<b>TNP</b>	Transitional National Plan
<b>WWF</b>	World Wide Fund for Nature



# Organisational information

## 1. WWF Greece

WWF-World Wide Fund for Nature (also known as World Wildlife Fund) is an independent conservation organization active in nearly 100 countries, working to sustain the natural world for the benefit of people and wildlife. WWF's mission is to prevent and reverse the degradation of the earth's natural environment and to build a future in which humans live in harmony with nature by conserving the world's biological diversity, ensuring that the use of renewable natural resources is sustainable and promoting the reduction of pollution and wasteful consumption.

WWF Greece is the Greek national office of the WWF global network, was established in Athens in 1994 and is registered as a charitable foundation under Greek law. During the last 15 years, WWF Greece has developed an impactful law and governance programme, which aims at deepening environmental democracy with both proactive (advocacy, capacity building for better laws and enforcement) and reactive (legal action against the retrogression of environmental law during the economic crisis) initiatives.

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## 2. The Hellenic Ornithological Society (HOS)

The Hellenic Ornithological Society (HOS), a BirdLife Partner, is an environmental non-profit organization dedicated to the protection of wild birds and their habitats in Greece, as key elements of Greek nature. HOS was established in 1982, and since then its efforts aim at a sustainable environment for both birds and humans. HOS strives for the protection, conservation, research and study of wild birds, the management and protection of the environment, information, awareness and environmental education, and undertakes interventions on critical issues of the natural environment.

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