



Secretary to the Aarhus Convention Compliance Committee  
United Nations Economic Commission for Europe  
Environment Division  
Palais des Nations  
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Dear Madam,

**Communication to the Aarhus Convention Compliance Committee concerning compliance by Greece in the context of public participation in the preparation of a transitional national plan under the Industrial Emissions Directive ('the Communication')**

I refer to your letter dated 10 October 2017 requesting ClientEarth and WWF Greece provide further information on the use of domestic remedies relevant to the Communication.

I will respond to each question contained in your letter in turn:

**“1. When and how did you learn of the adoption of the TNP, e.g. through the publication in the Official Government Gazette on 20 August 2015 or otherwise?”**

1. WWF Greece learned of the adoption of the TNP through the publication in the Official Government Gazette. The relevant Official Government Gazette<sup>1</sup> was in fact published on 21 August 2015.<sup>2</sup>
2. By reviewing the internal e-mail exchanges, we can confirm that WWF Greece was informed of the TNP publication on 25 August 2015.

**“2. What were the relevant timeframes for challenging the adoption of the TNP? What types of procedures existed to challenge the TNP (even if none of these were used)?”**

3. In summary:

- (a) The Joint Ministerial Decision that approved the TNP (**‘the TNP JMD’**) is most probably a regulatory administrative act. Therefore, the available remedy against the TNP JMD was an action for annulment before the Council of State, within 60 days after the publication of the TNP JMD.

<sup>1</sup> Series B, number 1793, year 2015

<sup>2</sup> Ethniko Typografeio. (2017). Imerisia kikloforia [Daily circulation]. Retrieved from: <http://bit.ly/2hHWJoO>



- (b) Given the nature of the TNP JMD as regulatory administrative act, there was no available internal administrative review procedure.
  - (c) The TNP JMD was published on 21 August 2015, however, the deadline to challenge the TNP JMD did not start until the 16 September 2015. This is because deadlines do not run during judicial holidays (1 August to 15 September). The deadline to challenge the TNP expired the 15th of November 2015.
4. To reach this conclusion we had to first to identify the nature of the TNP JMD. This required an in depth analysis of the Greek administrative and constitutional law. Through this we were able to determine the available procedures and timeframes. For your benefit we have summarised the following:
- (a) the types of Administrative courts;
  - (b) the types of Administrative Acts;
  - (c) internal administrative review requirements;
  - (d) deadlines for both administrative and judicial review; and
  - (e) specific remedies available for (individual) environmental related administrative acts.

#### **The types of Administrative courts:**

5. Administrative litigation is brought before administrative courts. These include administrative Tribunals and Court of Appeals, and the Council of State (**'the CoS'**), being the Supreme Administrative Court. The CoS also has 'general' jurisdiction, this means that the CoS can make requests for annulments that have not been specifically transferred to other administrative courts.

#### **Types of administrative acts:**

6. Administrative acts (or omissions) are distinguished as:
- (a) Individual administrative acts: when the act regulates a specific individual case, for example the operational or environmental permit of a specific power plant.
  - (b) Regulatory administrative acts: when the act legislates impersonal and abstract rules. Unlike individual administrative acts, regulatory administrative acts refer to an undetermined number of persons and to a general case.
7. The TNP JMD better matches the features of the **regulatory administrative act**. First, it was adopted by virtue of a legislative delegation to the Minister for Energy and Environment. Thus, the TNP JMD is not an individual decision that implements a piece of legislation, nor does it grant an environmental permit to a particular undertaking. It specifies in a national level the limits and quantities of air pollutants by derogation of the IED for a transitional period in order to achieve the national targets



for emissions' reduction. The TNP further identifies the applicable limits and quantities for particular power plants, through national limits.

#### **Internal administrative review requirements:**

8. The nature of the administrative act is crucial for the identification of available internal administrative remedies. The internal administrative review provisions of the Code for Administrative Procedure applies only to individual acts or omissions.
9. As the TNP JMD is a most probably a regulatory administrative act, it would not have been not subject to internal administrative review

#### **Deadlines for internal administrative and judicial review**

10. The deadline to challenge an administrative act is generally 60 days. The nature of the administrative act determines when the deadline to challenge the act starts.
  - (a) Individual acts: unless otherwise specified, time starts the following day from the notification of the decision to the interested party and in any case, when the interested party receives knowledge of the act (this can be before the notification). Since 2010, individual administrative acts are uploaded to a public website, where acts of the government, independent authorities and public entities are published. In these cases, the deadline starts the following day after the upload and in any case when the affected party receives knowledge of the act.
  - (b) Regulatory acts: the deadline starts the day after the publication to the National Gazette.
  - (c) Internal administrative review: The 60 day deadline can be interrupted by an internal administrative review application for 30 days if this review is provisional or for as much as specifically provided by law if the review is obligatory.
11. As the TNP JMD is a regulatory act, the deadline started the day after publication in the National Gazette. However, as explained above, this is extended due to judicial holidays.

#### **Challenging the lack of public participation:**

12. Joint Ministerial Decision 9269/470/2-3-2007 ('**the remedies JMD**') provides legal remedies for non-compliance with Article 3(7) and Article 4(4) of the Public Participation Directive. These cover public participation and acts or omissions of public authorities regarding the EIA procedure and permits granted under the IED. The available remedies provided in Article 3 of the Remedies JMD are:
  - (a) internal administrative review before the Ministry for Energy and Environment.
  - (b) judicial remedies:
    - compensation claim based on the civil liability procedure (Article 105 of the Introductory law of Civil Code.) This claim only aims to repair the harm of the



citizen caused by the unlawful act or omission of the Administration. It does not to consult and inform the public and does not annul the disputed decision.

- Action for annulment before CoS regarding the act or omission of the Ministry not to inform and consult the public.
13. The above administrative and judicial remedies apply only to challenge issues regarding public information and participation during the environmental permit approval procedures of projects and activities, which are individual administrative decisions, and not approval procedures of plans and programmes.
14. Therefore, the TNP JMD does not fall under the procedures described in the Remedies' JMD given that this applies only to individual administrative acts. The TNP is not an individual decision nor does it refer to a project or activity, it is a national plan that regulates emissions' limits in a national level, thus, it does not fall under the scope of Remedies' JMD.

**“3. Please provide further information and clear evidence to substantiate each of the submissions set out in paragraphs 56 (a), (c) and (d) of your communication. This should not be limited to isolated examples, but you should provide evidence that demonstrates that these submissions reflect the practice in general.”**

**Submission 56(a):**

15. Submission 56(a) states the following: “[w]ith respect to WWF, the following reasons were also considered:... a. the strong deferential attitude of Greek courts to administration, especially where technical regulations are at stake...”
16. The restricted judicial review of complex technical assessments, determinations and regulations, and the deference of courts with respect to those matters, is a well-known aspect of administrative law for many Parties to Aarhus Convention. For example, this restriction exists in UK,<sup>3</sup> and France (where it is known as *contrôle minimum* and *contrôle restreint*).<sup>4</sup>
17. Similar concepts are present in EU law, where “*review by the European Union judicature is limited to verifying whether there has been a manifest error of assessment or a misuse of powers, or whether those authorities have manifestly exceeded the limits of their discretion. In such a context, the European Union judicature cannot substitute its assessment of scientific and technical facts for that of the institutions on which alone the EC Treaty has placed that task...*”.<sup>5</sup>
18. Unsurprisingly, this restriction also exists in Greek administrative law, whereby actions for annulment (*aitisei akryosis*) of administrative acts do not review the

<sup>3</sup> Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a. (2017). *United Kingdom (2009)* [webpage] . Retrieved from: <http://bit.ly/2hdh48i>

<sup>4</sup> Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a. (2017). *France (2016)* [webpage]. Retrieved from: <http://bit.ly/2zxYLSZ>

<sup>5</sup> Judgment of the Court (Fourth Chamber) of 21 July 2011, *Etimine SA v Secretary of State for Work and Pensions*, C-15/10, ECLI:EU:C:2011:504, paragraph 60.



factual circumstances on which the issuance of an administrative act is premised. Accordingly, grounds for annulment that attack or question the appraisal of these facts by the administration (known as ‘technical appraisals’) are rejected.<sup>6,7</sup> According to the European e-justice portal (maintained by Greek authorities), Greek “*courts cannot look beyond the administrative decision, verify and deal with technical findings and calculations of the administration*”.<sup>8</sup>

19. According to recent national case-law, some issues that fall under the ‘technical appraisal’ category and are, as a result, unreviewable include:
  - a. the emission intensity of base stations;<sup>9</sup>
  - b. measures to limit and control local fishing activities,<sup>10</sup> or to protect adjacent water bodies from a waste disposal facility;<sup>11</sup>
  - c. the choice of a waste management method,<sup>12</sup> or the effectiveness of anti-pollution devices.<sup>13</sup>
20. Admittedly, the distinction between fact (‘technical appraisal’) and law is fraught with difficulties. The TNP contains a mix of technical appraisals, factual determinations and legal requirements. The degree of reference to the administration was relevant for the prospects of a legal challenge against the TNP.
21. In our opinion, it was highly likely that Greek courts might find many aspects of the TNP unreviewable.
22. First, the Greek TNP would have been immune from judicial review, if (in the view of the Court) it contained or was significantly premised on ‘technical appraisals’ and/or factual determinations. In other words, it was possible that the association between the “measures foreseen”<sup>14</sup> and the environmental objectives (the emission ceilings) would have been unreviewable. Moreover, it was known that “*the Commission has examined the consistency and correctness of the data, assumptions and calculations used for determining the contributions of each of the combustion plants covered by the TNP to the emission ceilings set out in the TNP, and has analysed whether it*

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<sup>6</sup> Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a. (2017). *Greece (2009)* [webpage]. Retrieved from: <http://bit.ly/2zyNL7N>. There, it is stated that “[c]ontrol over an administrative act depends on several parameters: the judge cannot control the appropriateness of a decision any more than the administration assessments of a technical nature (for example, the toxicity of a chemical). Finally, he/she cannot replace his/her assessment with that of the competent administrative authority...”.

<sup>7</sup> Spiliotopoulos, E.-P. (2011). *Encheiridio Dioikitikou Dikaïou, Tomos 2 [Handbook of Administrative Law, Volume 2]*, p. 137. Athina: Nomiki Vivliothiki.

<sup>8</sup> European E-justice Portal. (2016, September 14). *Access to justice in environmental matters – Greece* [webpage]. Retrieved from: <http://bit.ly/2ivZIAN>

<sup>9</sup> Council of State decision n. 1782/2015.

<sup>10</sup> Council of State decision n. 4049/2015.

<sup>11</sup> Council of State decision n. 3561/2014.

<sup>12</sup> Council of State decision n. 746/2014.

<sup>13</sup> Council of State decision n. 3823/2010.

<sup>14</sup> 32(4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).



*contains objectives and related targets, measures and timetables for reaching these objectives”, and “is satisfied that the Hellenic authorities have taken into consideration the provisions listed in Article 32(1), (3) and (4) of Directive 2010/75/EU and in Implementing Decision 2012/115/EU.”<sup>15</sup>*

23. Second, these considerations are also related to the public consultation requirement specifically raised in the Communication. Under EU and national law, public consultation is triggered only if TNP is a “*plan... which set[s] the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC*”.<sup>16</sup> This, in turn, depends on the choice of the measures foreseen by the plan, and whether those measures “*set the framework*” of permitting decisions. In this respect, note that the Greek TNP (and, apparently, the European Commission) deems that certain measures contained in it are “indicative”.<sup>17</sup>
24. In view of the Greek legal context, these are questions that could contain a degree of ‘technical appraisal’. The issues are not radically different from the issues described in points (a) to (c) in paragraph 20 above. As a result, it is possible that an administrative appeal might be judged unreviewable by the Greek courts.
25. In view of the above, we believe that our reservation about the “*strong deferential attitude of Greek courts to administration, especially where technical regulations are at stake*” was justified.

#### **Submission 56(c):**

26. Submission 56(c) states the following: “[w]ith respect to WWF, the following reasons were also considered: concern over the practical impact of any legal action (as complex cases often take 3-5 years of litigation in Greece).”
27. Unfortunately, accurate cumulative data concerning the length of administrative case proceedings in Greece are sorely lacking. Submission 56(c) was an empirical statement, drawn from our own experience.
28. Nevertheless, in order to supply ACCC with the best available data, ClientEarth and WWF Greece considered the following sources:
- a. The studies conducted by the European Commission for the efficiency of Justice (CEPEJ), on behalf of the European Commission (**‘the CEPEJ study’**); and
  - b. The typical length of proceedings of 2 representative samples of cases, selected as described below (**‘the Case Samples’**).

<sup>15</sup> 7<sup>th</sup> and 9<sup>th</sup> recital of Commission Decision 2013/687 of 26 November 2013 on the notification by the Hellenic Republic of a transitional national plan referred to in Article 32 of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (notified under document C(2013) 8133).

<sup>16</sup> 3(2)(a) of 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.

<sup>17</sup> Note to tables in paragraphs 1.1 and 1.2, and paragraph 1.3 of Annex B of Joint Ministerial Degree 34062/957/E103/2015 (i.e., the finalized TNP).





29. **The CEPEJ study:** According to data collected by CEPEJ for the period 2010-2015, the “disposition time” of “administrative law cases” was as follows:

Year	Disposition time (days)
2010	2003
2011	N/A
2012	1520
2013	1148
2014	N/A
2015	964

30. **The Case Samples:** Furthermore, in order to compare the length of proceedings of administrative cases and accurately apply it to a potential legal TNP challenge, we have pulled together two sets of data.

31. The first set (**Annex 1**) lists all cases before the Council of State mentioning Directive 2001/42/EC (the Strategic Environmental Assessment Directive) or mentioning the Joint Ministerial Decision implementing that Directive (**'SEA cases'**). The second table (**Annex 2**) lists all cases mentioning the Aarhus Convention (**'Aarhus Convention cases'**).

32. The results concluded the following:

- a. **SEA cases (Annex 1):** Omitting the cases with the shortest and the longest duration, SEA cases required between 493 and 2616 days (1.35 to and 7.17 years).
- b. **Aarhus Convention cases (Annex 2):** Omitting the cases with the shortest and the longest duration, Aarhus convention cases required between 771 and 2616 days (2.11 and 7.17 years).
- c. A caveat to these results is contained in Annex 3.

33. Furthermore, the time required for the implementation of any successful legal challenge must also be considered. At a minimum, several months are required for organizing a public consultation. Applicable Greek law requires at least 30 days for the public consultation itself. If those developments required changes in the covered installations, the measures foreseen or the emission ceilings, additional delays would have been inevitable.

34. According to the Industrial Emissions Directive, the TNP is a legal regime of limited duration: it expires on 30 June 2020. Therefore, a possible annulment after 2 or 3 years would have a very limited useful effect.



35. In view of the above, we consider that submission 56(c), which referred to the duration of “complex” cases, was approximately correct.

**Submission 56(d):**

36. Submission 56(d) states the following: “[w]ith respect to WWF, the following reasons were also considered: lack of funds. The cost of a hearing in the competent Court, which is the Council of State, starts from a minimum of approximately 4000 euros, a cost that is considered as prohibiting access to justice under the current financial crisis. Unfortunately, WWF does not qualify to receive financial support for access to justice under the existing Greek legislative framework.”

37. The question regarding point 56 (c) of the Communication will be developed in three parts: (1) estimated amount of fees (2) legal aid and (3) WWF context.

**Estimated amount of fees:**

38. The minimum amount to bring a case in the Council of State could be at least 4000 euros. This amount includes the minimum remuneration for lawyers, various fees for the Court, notification fees and adverse costs.

39. According to Articles 58(3) of the Code for Lawyers, when there is no written agreement between a lawyer and a client the minimum fees included in Annex I of the Code apply.<sup>18</sup> These minimum fees include the minimum remuneration and contribution to the National Insurance and Health Scheme Funds as specified at the time in Annex III of the Code. According to Article 61(1) the lawyer has the obligation to pay the national contributions before acting on behalf of his client, otherwise the legal action is not admissible and the lawyer is fined. In practice, legal quotes are based on the minimum remuneration. A very ‘cheap’ legal representation would be twice as much as the minimum remuneration. A 23% VAT applies on both minimum remuneration and national contributions.

40. Therefore, the amount incurred from filing a case to the Council of State to the decision of the Council of State, presuming that there would not be a preliminary decision (for example referring an issue to the European Court of Justice or appointing an expert), would be as follows:

Action	Minimum remuneration (in euros)	National Contribution (in euros)	Filing and hearing stamps (in euros)
Filing the case	331.00	40.00	60.00
Hearing	491.00	60.00	40.00
Written observations	491.00	60.00	40.00

<sup>18</sup> Law 4194/2013, National Gazette A’ 208/2013.





41. In total 1,473.00 euros plus VAT 23% = 1,811.79 euros (addition of second and third columns). As a cheap quote according to the current practice would be twice this amount, this would equal 3,623.58 euros. In addition, at various times throughout the proceedings one has to paste stamps to support the expenses of the Ministry of Justice and the Pension and Health Funds for lawyers. For cases before the Council of State this would amount to an additional 140 euros with no VAT added (fourth column of the table above entitled “Filing and hearing stamps”). The claimant would have to file four (4) copies of the application to the Secretariat of the Council of State and pay for each copy an additional stamp of 2 euros, so in total 8 euros for copies.
42. To this amount one should add the Court fee, which is 150 euros<sup>19</sup> and notification fee of 30 euros. If the action for annulment touched upon the substantive issues of the validity of TNP along with the lack of public consultation, the Court would probably appoint a technical expert. This would amount to an extra cost. Finally, the adverse cost could be around 1,000.00 euros. Therefore, the minimum amount to support the case without technical assistance would be **4,951.58 euros** [(1,811.79 X 2) + 140+8+150+30+1000].
43. Article 81 Code for Lawyers prohibits the provision of legal services for free. Breaching this provision is a professional misconduct and results in a disciplinary procedure and penalty.

#### **Legal Aid:**

44. Article 37 Presidential Decree 18/1989 provides legal aid for reasons of ‘poverty’; the beneficiary for aid has to prove that he/she cannot afford the expenses but also that he/she cannot afford their daily living expenses.
45. Article 194 Civil Procedural Code provides that non-profit organisation qualify for legal aid if they do not have the means to implement their objectives. The extra ‘poverty’ requirement of Article 37 mentioned above would be extremely difficult to prove for a non-profit organisation.
46. The legal aid would cover only the minimum fees for lawyers (1,811,79 euros but no additional remuneration), national funds’ contributions, stamps, the Court fee or notification fee.<sup>20</sup> It would not cover the adverse cost.<sup>21</sup>
47. Following an application of the presumed beneficiary, the Court appoints a lawyer to defend the case in its discretion, while the beneficiary cannot impose an obligation to the Court to select the lawyer of his/her (beneficiary’s) preference.<sup>22</sup> The beneficiary has the right to oppose the Court’s decision but it has to prove why the appointed attorney is not suitable to defend the case. In any case the appointed attorney has the obligation to accept the assignment, even though he will be underpaid.

<sup>19</sup> Article 36 Presidential Decree 18/1989, as was in 2015 into force by virtue of Article 8 law 3900/2010, National Gazette A 213/21.12.2010.

<sup>20</sup> Article 199 (1) Civil Procedural Code.

<sup>21</sup> Article 200(1) Civil Procedural Code.

<sup>22</sup> See for example CoS decision n. 515/2000.



48. In practice, Courts are very frugal in providing legal aid for individuals and even more frugal to provide legal aid for legal entities. Even the Court granted legal aid in our case, the complexity of the case and the particular expertise in environmental law needed would result possibly in a poor representation before the Court; the amount of work needed would be disproportionate to the minimum remuneration affecting the quality of work. Additionally legal aid is not prepaid, so the appointed lawyer would have to bear on his/her own the cost and get reimbursed after several months.<sup>23</sup>

49. In case of unsuccessful outcome, WWF would bear on its own the adverse cost.

**WWF Greece context:**

50. The WWF Greece financial statement for the applicable reporting period [July 1st, 2015 – June 30th, 2016] is attached (**Annex 4**).

51. According to the “Statement of Financial Activity” (p.8), WWF Greece had a deficit both in 2015 and 2016.

52. WWF Greece is funded by both restricted and unrestricted funds. Any legal action must be funded by unrestricted funds. According to the “Statement of Unrestricted Financial Activity” (pp. 9-10), unrestricted reserves were also deficient in 2014/2015.

53. The unrestricted expenses per project code are listed in pp. 37 subseq. (2014-5). Any legal action against the Greek TNP would probably fall under project codes “Policy for coal”, “Policy for the economic crisis”, “Environmental legislation”, or “Environmental policy-general”. The total expenses for these project codes were 70,908.08 euros (2015). Essentially, all activities under those project codes are undertaken on a shoestring.

54. In addition, in August 2015, WWF Greece was involved in 4 more legal actions, including one that involved a preliminary reference to ECJ (case 43/2010).

55. In view of the above, the expenses of an additional legal action would have been significant. According to Eurostat data, minimum monthly wage in Greece was 683.76 euros, thus, the cost of an additional legal action (roughly 4,000-6,000 euros) would have amounted approximately to anywhere between 5 and 9 monthly minimum salaries (2015). These expenses were and are not insignificant for environmental NGO’s located in a country badly hit by unemployment and financial crisis.

56. In view of the above, we urge ACCC to consider that lack of funds was a real concern.

“4. Regarding paragraph 56 (b), please explain why this would affect available domestic remedies in Greece and provide suitable evidence in support of your explanation. Have you or any other member of the public complained to the European Commission regarding the lack of public

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<sup>23</sup> Article 199(3) Civil Procedural Code.



participation prior to the adoption of the TNP, and if so, what was the outcome of that complaint?"

57. On 7 January 2014 the European Environmental Bureau (EEB) wrote to the European Commission requesting an internal review of the decision taken on 26 November 2013 approving the Greek TNP.<sup>24</sup> The grounds for the request were:
- (a) lack of public information and consultation (point 2.1 of the request);
  - (b) failure to carry out SEA approval procedure (point 2.2. of the request);
  - (c) substantive allegations regarding lack of information for timely implementation of the TNP (point 2.2.1 of the request);
  - (d) inappropriate reference of ELVs applying after the expiration of the TNP (point 2.2.2. of the request);
  - (e) inconsistency regarding the dust ceilings for 2016 (point 2.2.3 of the request);
  - (f) disregard of ambient air quality objectives (point 2.2.4); and
  - (g) breach of Treaty obligations given that the Commission's decision approving the TNP benefited an individual entity, the Greek Public Power Corporation.
58. The European Commission, in its letter dated 8 April 2014, rejected the request for internal review reasoning that the Greek TNP Approval Decision "*does not establish nor approve specific individual obligations for the operators concerned. It is for the Greek authorities to implement the plan and take decisions affecting installations individually*".<sup>25</sup>
59. EEB filed an action for annulment against Commission's decision before the General Court of the European Union and the case received number T-462/2014. EEB discontinued the case and by order of 12 May 2015, the case was removed by the Court's Registry.<sup>26</sup>
60. Although the European Commission was aware of the lack of public participation requirements, it still approved the amended Greek TNP by its decision on 2014. To our knowledge no further complaint was brought against this new decision.
61. Challenging the Greek TNP before the CoS would practically mean challenging the European Commission's decision that approved the TNP. According to the

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<sup>24</sup> European Commission. (2016, December 12). The Aarhus Convention: Requests for internal review [webpage]. Retrieved from: <http://bit.ly/2IVdeSL>. The request submitted by the EEB is numbered 22.

<sup>25</sup> European Commission Directorate-General Environment. (2014, April 8). Subject: Request for internal review under Title IV of the Aarhus Regulation-Commission Decision of 26 November 2013 on Greek TNP approval [letter]. Retrieved from: <http://bit.ly/2zzbEMn>

<sup>26</sup> Order of the President of the Seventh Chamber of the General Court of 12 May 2015, European Environmental Bureau (EEB) v. European Commission, T-462/14.



established principles of European Law a national Court cannot control the legality and validity of European Institutions' decisions, a competence clearly belonging to the European Courts. The European Commission, to our knowledge never disputed or examined the lack of public information and participation of the amendment of the Greek TNP, although it was aware of that as a result of EEB's complaint. Therefore, it would be difficult to convince the CoS of the illegality/inadmissibility of the followed procedure and the CoS could never rule on the Commission's decision. Possibly it could refer a preliminary ruling to the European Court of Justice, but in that case the length of the proceedings would be disproportionate compared to the length of validity of the Greek TNP.

We hope that we have provided sufficient information to help answer the questions you have asked.

Yours sincerely,

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## Annex 1 - SEA Cases

Case number	Date of submission	Date of publication	Length of proceedings (days, excluding end date)	Comments
3053/2009	12.11.2006	9.10.2009	Excluded	Non-final decision - submission of preliminary question to ECJ [see ECJ case C-43/10, and Council of State case 26/2014]
3649/2009	2.4.2007	18.11.2009	961	
2624/2010	19.3.2008	9.8.2010	873	
3650/2010	30.10.2006	5.11.2010	Excluded	Non-final decision - submission of preliminary question to ECJ [see ECJ case C-177/11, and Council of State 786/2014]
3920/2010	17.3.2007	3.12.2010	1357	
1169/2011	18.5.2006	19.4.2011	1797	
3043/2011	3.10.2006	5.10.2011	1828	
3047/2011	9.12.2009	5.10.2011	665	
3048/2011	3.10.2006	5.10.2011	1828	
3049/2011	3.10.2006	5.10.2011	1828	
1824/2012	1.6.2009	17.5.2012	1081	
1970/2012	24.1.2007	25.5.2012	1948	
3403/2012	22.6.2009	17.9.2012	1183	
1421/2013	19.1.2009	10.3.2013	1511	
1492/2013	10.11.2011	17.3.2013	493	
2738/2013	24.12.2012	11.7.2013	199	
2739/2013	24.12.2012	11.7.2013	199	
26/2014	12.11.2006	10.1.2014	2616	Final decision after preliminary question to ECJ [ see Council of State case



				3053/2009 ]
786/2014	30.10.2006	25.2.2014	2675	Final decision after preliminary question to ECJ [ see Council of State case 3650/2010 ]
2996/2014	25.8.2011	19.9.2014	Excluded	Non-final decision - submission of preliminary question to ECJ [see ECJ case 473/2014, and Council of State cases 2355-2361/2017]
2997/2014	25.8.2011	19.9.2014	Excluded	Same
2998/2014	12.10.2011	19.9.2014	Excluded	Same
2999/2014	21.10.2011	19.9.2014	Excluded	Same
3000/2014	26.10.2011	19.9.2014	Excluded	Same
3001/2014	31.10.2011	19.9.2014	Excluded	Same
3002/2014	31.10.2011	19.9.2014	Excluded	Same
3874/2014	14.1.2014	7.11.2014	297	
4512/2014	17.2.2009	15.12.2014	2127	
4982/2014	2.1.2012	31.12.2014	1094	
528/2015	11.10.2012	16.2.2015	858	
529/2015	11.10.2012	16.2.2015	858	
530/2015	11.10.2012	16.2.2015	858	
531/2015	18.10.2012	16.2.2015	851	
2152/2015	11.3.2014	5.6.2015	451	
2878/2015	7.10.2008	17.7.2015	2474	
2879/2015	19.9.2008	17.7.2015	2492	
4166/2015	14.12.2009	25.11.2015	2172	
1637/2016	7.5.2013	25.7.2016	1175	
670/2017	26.2.2013	8.3.2017	1471	
1390/2017	21.6.2016	17.5.2017	330	
1433/2017	30.10.2013	24.5.2017	Excluded	Non-final decision - referral to another chamber
1704/2017	10.5.2016	23.6.2017	409	
2355/2017	25.8.2011	22.9.2017	2220	Final decision after preliminary





				question to ECJ [ see Council of State cases 2996- 3002/2014]
2356/2017	31.10.2011	22.9.2017	2153	Same
2357/2017	21.10.2011	22.9.2017	2163	Same
2358/2017	26.10.2011	22.9.2017	2158	Same
2359/2017	12.10.2011	22.9.2017	2172	Same
2360/2017	25.8.2011	22.9.2017	2220	Same
2361/2017	31.10.2011	22.9.2017	2153	Same

## Annex 2 - Aarhus Convention Cases

Case number	Date of submission	Date of publication	Length of proceedings (days, excluding end date)	Comments
2123/2009	21.12.2006	26.6.2009	918	
2124/2009	17.5.2007	26.6.2009	771	
2125/2009	21.5.2007	26.6.2009	767	
3053/2009	12.11.2006	9.10.2009	Excluded	Non-final decision - submission of preliminary question to ECJ [see ECJ case C-43/10, and Council of State case 26/2014]
1169/2011	18.5.2006	19.4.2011	1797	
1295/2011	15.7.2008	6.5.2011	1025	
4885/2013	7.4.2009	30.12.2013	1728	
26/2014	12.11.2006	10.1.2014	2616	Final decision after preliminary question to ECJ [ see Council of State case 3053/2009 ]
4262/2015	11.1.2012	2.12.2015	1421	
4263/2015	11.1.2012	2.12.2015	1421	
2405/2016	11.7.2007	23.11.2016	3423	
1942/2017	11.11.2016	21.7.2017	Excluded	Non-final decision – referral to full chamber; pending



### Annex 3 – Case selection caveats

With respect to selection of the SEA and Aarhus Convention cases, several caveats must be made:

- The samples were collated through an automated word search of the Council of State digital case database. Therefore, only cases that mention the relevant legal are included.
- Published cases which have not yet been included in the database were unavoidably excluded.
- The cases included resolve different issues that arise under the relevant legal texts. No effort has been made to isolate those cases that refer to public participation requirement mainly raised by the Communication.
- Samples are current as of 27.11.2017.
- Non-final cases i.e., cases that refer questions or the final decisions to other courts or other chambers of the same court are excluded, as noted in the tables (see “comments”).
- Dates were extracted from the text of decisions

Client Earth and WWF Greece acknowledge the limitations of this analysis, and note that similar limitations mar all quantitative analyses of judicial activity. It is clear that these are cases of varying complexity and relevance. It is also clear that delays are not caused only by systemic weaknesses of the judicial system, but also by other factors (such as the behaviour of the litigants, the complexity of other unrelated legal issues involved, or preliminary references to ECJ). The very same factors would have been at play in a hypothetical legal action against TNP. In any case, we feel that this is an approximate, but simple and transparent way to give a rough indication of the most probable length of proceedings. Further information on any included case is available on request.