Greece: Implementation of Environmental Liability Directive: Actors & Procedure*

*Emilia Liaska** & Angeliki Bosdogianni****

In Greece, the Environmental Liability Directive (ELD) provisions have not yet received special elaboration because of how misunderstood its operation within the modern administrative mechanism is, and the fact that many stakeholders may even be unaware of its existence. However, Presidential Decree (PD) 148/2009 transposing the directive into the Greek legislation remains the main legislative instrument, which establishes an environmental liability regime based on the polluter pays principle, focused on the prevention and remediation of environmental damage. Active citizens can play a very important role in the successful implementation of the ELD directive. But, as immediate public participation and informed decision-making is not always possible at an individual level, environmental organizations contribute to raising awareness, informing, and activating society to onset of the ELD procedure. The Greek Ombudsman can also make a unique and crucial contribution in ensuring the implementation of the environmental liability legislation. The power of environmental transparency and the implementation of the Aarhus Convention principles will help implement the ELD regime. Up-to-date, accurate and easy-to-find environmental information empowers public and key stakeholders to make informed decisions that impact the environment. The aim of this article is to share the experience gained in the application of ELD and to contribute to a better understanding of the ELD key terms, and to improving the effectiveness of its implementation.

Keywords: Environment, liability, Ombudsman, operator, environmental damage, remediation, compliance, authorities, transparency, prevention

I. Introduction

The Environmental Liability Directive (hereinafter ELD) 2004/35/European Commission (EC) has been incorporated into the Greek legal order with the Presidential Decree (hereinafter PD) 148/2009 'Environmental liability for the prevention and remediation of damage to the environment' (OJ 190A). Although the Greek legislation is moving towards the second decade of its validity, its provisions have not yet received special elaboration, because in practice there are still serious problems in the implementation of the regime, which concerns, on the one hand, how misunderstood its operation is within the modern administrative mechanism and, on the other hand, the fact that many stake holders remain unaware of its existence. Therefore, its limited activation and the small number of cases in the Greek legal order that fall under the above system of environmental liability is not surprising.[1]

Stakeholders and Non-Governmental Organizations (hereinafter NGOs), which are recognized to have a legitimate interest, have an important role to play in the effective implementation of the Directive in Greece.

Immediate public participation and informed decision-making based on a system of criteria and reliable data are not always possible at an individual level, but they can take place in organized groups or local community organizations. Active citizens can play a very important role in the successful implementation of the directive.

In contrast with the EU report, which notes that relatively few requests for action were reported as having been initiated by people affected by environmental damage or by environmental NGOs,[2] the Greek Ombudsman (hereinafter GO) often proves through the complaints it receives that environmental organizations contribute to raising awareness, informing and activating society on a local or national level concerning environmental issues. This role is filled by groups of citizens, which take the form of organized pressure groups, and bring citizens together for a common goal and with their actions and campaigns are active parts of civil society. Some of the reports received by the GO on environmental issues come from NGOs.[3] This is also the case with environmental liability.

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** Lawyer, LLM European Law, MSc Environmental Management & Legislation, Senior Investigator at the Greek Ombudsman Institution, 10432 Athens, Greece, Email: liaska.emilia@gmail.com.

*** Dr Environmental Engineer – Civil Engineer, Senior Investigator at the Greek Ombudsman Institution, 10432 Athens, Greece, Email: agebosd@gmail.com.

[1] Dr Kleoniki Pouikli, *The Presidential Decree No 148/2009 and the Case Law of the Council of State* (Conference proceedings on Environmental liability, Prevention & Rehabilitation: Challenges & Opportunities for the Protection of Biodiversity in Greece, Heraklion, 08–10 Sept. 2017).

[2] 2010/75/EU (OJ L 334, 17 Dec. 2010, at 17).

[3] I. Sayas†, A. Bosdogianni & E. Liaska, *Public Participation and the Role of the Ombudsman in the EL Cases* (Conference proceedings on Environmental liability, Prevention & Rehabilitation: Challenges & Opportunities for the Protection of Biodiversity in Greece, Heraklion, 08–10 Sept. 2017).

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In addition, establishing the framework for liability and compensation for pollution damage, the immediate priority for the ELD is to lead to a change in the behaviour of operators in order to increase the level of prevention and precaution, which is very difficult to gain accepted and be implemented.[4]

The role of the Ombudsman can also make a unique and crucial contribution in ensuring the implementation of environmental liability legislation. Providing access to an objective, free and fair mechanism for resolving complaints means that the GO Authority can ensure that environmental rights are respected and that, where necessary, redress is provided.

It is worth mentioning that in some cases the incident was widely publicized, immediately brought into the ELD regime, and the appropriate measures were taken accordingly. Despite this, the media did not connect the accident and the remediation measures with the ELD and did not raise at all the ELD issue as they are not aware.[5]

II. Authorities Charged with ELD Cases

The competent authorities established at national and regional level are:

- At a national level: Ministry for Environment and Energy, the Coordination Office for the ELD Implementation (hereinafter COIEL) for cases of national importance, exceptional/particular significance, or cases between regions.
- At a regional level: Decentralized authorities – Regional Committees for ELD implementation (hereinafter RCIEL): for cases within their territorial competency (thirteen regional committees have been established).

When environmental damage occurs, the national competent authority recommends to the Minister the appropriate prevention or remediation measures that shall be implemented with the cooperation of the relevant operator; may take the appropriate (prevention or remediation) measures and recover the expenses from the responsible operator; monitors ELD implementation both at national and regional level; and recommends measures for financial security. The national competent authority imposes penalties in instances of non-compliance. However, in 2018, the COIEL slashed the number of experienced employees – environmental Inspectors as well as administrative staff, amounting to more than 50% of the original staff. The COIEL ended up with five employees in the end of 2018.

The Environmental Inspectors Body, the Environmental Departments of the Regional Administration and the Environmental Control task force of the Regional Administration contribute to the implementation of ELD and assist the work of COIEL and RCIEL. The onset of the environmental liability procedure starts with the inspection report being submitted by the inspection bodies.

The Register of Environmental Liability Cases is the official tool for collection of data on ELD cases, maintained by the COIEL, but it is not publicly available. However, data retrieved from the Reports on the implementation of ELD and the Annual Report of the Inspectorate for Environment, Construction, Energy and Mines, include data on the adoption of preventive measures.

Regarding the frequency of environmental damage or imminent threat of damages (soil, water, air or protected species and natural habitats), it is indicated that 154 cases have been reported by the end of 2018[6,7] In relation to the type of damage recorded, twenty-nine cases have caused damage or imminent threat to biodiversity, sixty-one are associated with water damage and sixty-nine lead to land/soil damage mainly due to disposal of solid or liquid, hazardous or non-hazardous waste.[8]

III. Liability Regimes and Inspection Control

3.1 Form of liability

The legal scheme for the protection of the environment from pollution and degradation of any kind, extends to public or private, personal, or corporate activity.

Framework law 1650/1986 'on the protection of the environment' is the main legislative instrument, which establishes administrative, criminal, and civil liability and enforcement tools for the abatement of pollution and degradation of the environment, ensuring public health, and maintaining ecological balance. The most important amendments are based on Law 3937/2011, known as the Biodiversity Law, and Law 4042/2012 on the protection of the environment through criminal law – transposition of Directive 2008/99/EC – and waste generation and management framework legislation – transposition of Directive 2008/98 EC.

Law 1650/1986 includes a set of criminal and administrative sanctions imposed on natural persons or legal entities causing pollution or degradation of the environment. However, it does not require the adoption of remedial measures for the restoration of the environment by the polluter.The most frequent administrative sanctions are fines and temporary or permanent shutdown of

[4] *Ibid.*
[5] *See below* the Saronikos shipwreck oil spill case & the Legraina case.
[6] *See* Implementation of the Environmental Liability Directive, Greece-Country fiche 2019, Outcome of the Specific Contract 'Support for the REFIT actions for the ELD – phase 2', June 2019 and 2019 Annual Report on the implementation of Environmental Liability Directive 2004/35/EC in Greece submitted to the European Commission pursuant to Art. 20 of the Presidential Decree 148/2009.
[7] *See* Draft main report on OECD-Environmental Performance Review of Greece, at 40.
[8] *Ibid.*

corporate activities. These sanctions depend on the severity of the infringement, the frequency, the recurrence, the level to which statutory limits of emissions were exceeded and the violation of environmental terms and standards.[9]

In other words, its scope remains limited to establishing liability and punishing the damage and pollution rather than to remediate the environmental damage and/or impose measures to prevent or compensate for the loss of environment caused by the damage. Those aspects were met by PD 148/2009 introducing environmental liability based on the *polluter pays principle* focused on the prevention and remediation of environmental damage.[10]

Liability for tort is subjective. This means that a wrongful act or omission is required. In some exceptional cases, however, the liability is objective. That is, it depends solely on the occurrence of the result, without the guilt of the perpetrator being examined.The Greek Civil Code, in the Articles 914–938, the Greek equivalent to the concept of tort or delict, follows as a rule the principle of 'no liability without fault'.[11] The civil liability of the polluter can be based on the general clause for liability on torts. The Article 914 of the Greek Civil Code requires an unlawful act or omission, intention or negligence, damage and causal link between act and damage.

3.2 Inspection controls

Despite the provisions of both European and national legislation regarding environmental protection through the imposition of the above-mentioned administrative sanctions and through the criminal law, the GO investigation of a significant number of complaints proves that many activity operators consider that improving the activity's environmental behaviour comes in direct conflict with other business objectives, persisting with practices such as the uncontrolled waste disposal. Specifically, as pointed out both in the Annual Reports of the activities of the Independent Authority and in its Special Report on 'Entrepreneurship and Environmental Protection',[12] there are many units that operate for long periods of time without obtaining the legal permits and approvals or exceeding the limitations thereof and without installing anti-pollution systems and appropriate facilities for the treatment of the waste generated. At the same time, there is an inability or excessive delay of the administrative services to monitor the terms of company installations and operation and the environmental terms in the context of both preventive and regular controls.

This is due to the lack of staff, both in the central, but mainly in the regional services; lack of training and specialization/expertise of the existing staff; as well as the serious lack of information technology and logistical infrastructure (measuring instruments, laboratories, and even means of transport). These problems result in the inability to carry out substantial inspections and systematic monitoring.

There is also a serious delay in the imposition of administrative and criminal sanctions, even in cases where pollution and environmental degradation were proved to be long-term. For many years the Inspection authorities have not implemented the provisions in force, citing the importance of existing illegal installations for the sustainability of the local economy, especially in the current international and national economic context. The tolerance shown by the inspection authorities has resulted in further encouraging the companies not to take measures to protect the environment.

It is pointed out that in cases of causing pollution or degradation of the environment, regardless of the obligation of the administration to take appropriate measures, the imposition of sanctions is not at the discretion of central or local administration, but it is a binding responsibility (Council of State Decisions nos. 3977/10, 935/17, 268/19, 171/21). Consequently, the refusal of the competent authorities to impose the prescribed sanctions in case of a violation of the relevant legislation constitutes an omission of a due action (Council of State Dec. no 2680/03) and possibly a breach of duty, if all conditions are met.

Another important issue is the selectivity and fragmentation that characterizes the inspections. In most cases where there is a violation of environmental legislation, the re-inspection is carried out after a long period of time and usually following a new complaint. Furthermore, there is a lack of a comprehensive environmental inspection plan, which should include an assessment of important environmental issues, the geographical area covered, a register of existing facilities, and provisions for cooperation between the various inspection authorities. Particularly important is the fact that there is no clear picture of the number of industries, the type of production activity, the quality and quantity of waste generated and the manner of its disposal.

In most of the cases, the environmental damage is a result of activities of the manufacturing industry especially relating with their waste treatment. Operators involved in the production of basic metals and metal products (*see* the Asopos case[13]) are also frequently liable

[9] European Commission, *Implementation Challenges and Obstacles of the Environmental Liability Directive, Annex – Part A: Legal Analysis of the National Transposing Legislation*, at 133.

[10] Implementation of the Environmental Liability Directive, Greece-Country fiche 2019, Outcome of the Specific Contract 'Support for the REFIT actions for the ELD – phase 2', June 2019.

[11] *See* among an abundant relevant bibliography Ap. Georgiadis, in *Civil Code, Law of Obligations*, Vol 4 (Ap. Georgiadis & M. Stathopoulos eds, 1982), Introductory remarks to Arts 914–938, no. 21.

[12] The Greek Ombudsman, *Quality of Life Department,* Special Report on Entrepreneurship and Environmental Protection 2016, https://www.synigoros.gr/?i=quality-of-life.el.files.380146.

[13] The Greek Ombudsman, *Quality of Life Department, Preventive Action of the Greek Ombudsman to Deal with Pollution in the Area of Asopos* (2012), https://www.synigoros.gr/?i=quality-of-life.el.diaxeirisi_epifaneiakwn_ydatwn.79135.

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for such damages. Other activities causing damage are associated with the waste management sector.[14] The uncontrolled disposal of hazardous waste is not an isolated case, but is unfortunately systematic. The GO has repeatedly emphasized the need for integrated hazardous waste management, including settling on final disposal sites for the country, as well as investigating relevant cases, indicated a direct correlation between the lack of final disposal sites with (1) improper management of hazardous solid and liquid waste and (2) the uncontrolled disposal of hazardous waste resulting in serious health effects and significant pollution and degradation of the environment, and of the natural resources.[15] Environmental damage also results from construction activities in Natura 2000 areas.

IV. Relevant Definitions

The purpose of the ELD is to establish a framework of environmental liability, based on the *polluter pays principle*, to prevent and remedy environmental damage. Competent authorities are in charge of specific tasks such as assessing the significance of the damage and determining which remedial measures should be taken (in co-operation with the liable operator). For this reason, it is important to know how the ELD defines *operator* and *environmental damage.* Unclear definitions of the notion of damage and the significance thresholds led to confusion and uncertainty in practice. Due to the lack of clear criteria and definitions the decision on whether the threshold is reached, is to be made on a case-by-case basis, which even fosters big differences on the concept of damage between the EU Member States.[16]

In PD 148/09, there is no official definition of *significant threshold.* It results, instead, from a case-by-case analysis. The threshold for biodiversity damage is a 'significant adverse effect' and Annex I of the PD sets out the criteria for assessing significant adverse changes in compliance with the Directive.

The water damage is determined by damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in the PD 51/2007 implementing the Water Framework Directive. The threshold for land damage is determined whether a significant risk has been created of human health being affected.

The significant threshold is often interpreted as damage, which has a significant adverse effect on achieving or maintaining a favourable situation. The significance of these consequences must be assessed in relation to the baseline condition. These baseline data do not exist in Greece and consequently, most of the times it is difficult to precisely assess the damage.

As it concerns the definition of *operator*, according to the PD 148/2009, *operator* means any natural or legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorization for such an activity or the person registering or notifying such an activity.

According to Article 12(3) of the PD, there is a *joint and several* liability of the operator and of the competent authority if there is contributory negligence. Specifically, the article provides that if the competent authority or another public authority is one of the parties liable for either the rise of an imminent threat or for (further) environmental damage, then Article 300 of the Civil Code applies.

In the case where the competent authority finds that several operators are responsible for the environmental damage caused or the immediate threat of such damage, Articles 926 and 927 of the Civil Code shall apply *mutatis mutandis* to the imputation and the recovery of prevention or rehabilitation costs (Article 12(1) of PD).

The Council of State, the Hellenic highest administrative court, in its decision no.975/15, clarified that if environmental damage was caused by more than one activity, it is not required to be identified in any of them. It considered that in order to charge the cost there had to be *a causal link* between the activity, the operators and the environmental damage and that it was not possible to identify all those responsible, while in order to quantify the damage the exact location of the pollution had to be identified. As far as the liability is concerned, all activities had to be identified to find the degree of responsibility of each one, which is difficult. The court decision stated that if the Environmental Inspectorate finds that the request is substantiated as to the existence of the environmental damage and it is specific, caused by either one or more offenders, it is obliged to accept the claim without requiring a reasonable specific operator.

Regarding the identification of the operator, the case of the gradual contamination of the underground water bodies and soil, mainly near residential and rural areas of Asopos area, is quite characteristic. In this case, during in-situ inspections by both the Regional Environmental Protection Teams and the Environmental Inspectors, pollution from uncontrolled sources and violation of environmental permit conditions by existing industrial units was found. Meanwhile, a study was conducted by the National Technical University of Athens (NTUA)

[14] Implementation of the Environmental Liability Directive, Greece-Country fiche 2019, Outcome of the Specific Contract 'Support for the REFIT actions for the ELD – phase 2', June 2019.

[15] The Greek Ombudsman, *Quality of Life Department, Restoration of Environmental Damage from a Fire Incident at a Company's Facilities in Aspropyrgos* (2019), https://www.synigoros.gr/resources/230620-porisma-synhgoroy-aspropyrgos.pdf.

[16] *See European Commission Technical Report – 2014 – 2087 Study on ELD Effectiveness: Scope and Exceptions*, https://ec.europa.eu/environment/legal/liability/pdf/BIO%20ELD%20Effectiveness_report.pdf.

according to which the pollution in the area was mainly of anthropogenic origin and was due either to buried solid waste in localized areas or to uncontrolled disposal of liquid waste. The study found an unidentified source in the underground of a company's plot, whose productive activity had no causal link with the source. In this instance, the issue of locating the operator was raised, in accordance with Article 4(2) of PD 148/2009, as there are a certain number of polluting activities in the area. According to Article 5(2)of the PD, environmental liability legislation applies to environmental damage or imminent threat of such damage caused by pollution of a diffuse character only if a *causal link* can be proved between the damage and the activities of individual operators. Considering the above, the Ombudsman proposed the implementation of the ELD procedure, in accordance with the provisions of PD 148/2009, at the expense of the State. Funding should be provided either through the *Green Fund*[17] or through the inclusion of the project in the state budget. The GO proposed the immediate application of the relevant provisions if the polluter were identified through the final study report. The case is still pending (since 2011).[18]

In the case of the excessive delay in the restoration of the site of an abandoned asbestos production factory in the former Municipality of Rio, the previous owner went bankrupt and the subsequent owner, the bank, was refusing to restore the space, claiming that it was not the one that caused the damage. After the intervention of the GO, the owner bank, defined as universal successor, accepted the responsibility, and submitted a consolidation-restoration study.

The term of the owner is very essential as – according to *the polluter pays principle* – the owner must pay and restore the damage. The owner ought to take the appropriate measures to avoid the pollution in accordance with the precautionary principle and the provided ELD prevention measures. In many instances, the operator is not identical with the landowner. It is very difficult to identify the operator mostly in cases of uncontrolled waste disposal.

A major issue is also the abandonment of excavation, construction, and demolition waste (ECDW) during transport and their uncontrolled disposal in public or private areas, often of unknown owner, resulting in a lack of management and the creation of uncontrolled waste disposal sites. According to Article 24 of law 4042/2012,[19] the waste producer is also responsible. However, in most cases it is difficult to identify both the producer and the owner of the land, and even more so the person liable. Furthermore, municipalities are responsible for eliminating the uncontrolled waste disposal and for the rehabilitation of the area if it is located within their territorial jurisdiction (Article 228 of Law 4555/2018). These 'activities' fall within the scope of the PD148/2009 on Environmental Liability (paragraph 1(2) of Annex III ' … waste management procedures … ').Therefore, the restoration of public areas where ECDWs have been disposed of (usually other waste coexists) should be carried out based on the measures provided for the restoration of the damage by the competent local authority and after the imposition of costs on the person in charge, if identified. In case of dumping in private areas, the owner of the plot shall be the person liable.

V. The ELD Procedure

5.1 Onset of the ELD procedure

According to Article 13 of the PD, natural or legal persons (& NGOs) affected or likely to be affected by environmental damage or having a sufficient interest in an environmental decision made relating to the damage are entitled to submit to the competent Inspection Authority any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware; and are entitled to request the competent authority to take action under the PD.

One of the first ELD cases started from a citizens' association complaint submitted to the GO regarding the excessive delay in the restoration of the site of an abandoned asbestos-production factory in the former Municipality of Rio. The Ombudsman requested the implementation of environmental liability procedure.

In the long-lasting case of Asopos, a complaint was submitted in 2011 to the GO by a local Environmental Organization – concerning the gradual contamination of surface water and soil, near residential and rural areas. The GO investigated the case and proposed the decontamination of the water and the restoration of the riverbed through the Environmental liability mechanism.[20]

An interesting case study is that of pollution caused by a shipwreck oil spill due to the sinking of a tanker on the shores and sea area of the Saronicos Gulf. The environmental damage was obvious and immediately became known to the public, as it occurred in the sea area of the capital at the end of the summer season. 250–300 tn of oil were spread over Attica beaches.[21] The incident received

[17] The Green Fund is a public-law entity reporting to the Ministry of Environment and Energy. It is the mission of the Green Fund to support development through environmental protection with administrative, economic, technical and financial support coming from programs, measures, and actions aimed at preserving and enhancing the environment, supporting the environmental policy of the country and serving the public and social interest through the administration, management and utilization of its resources.

[18] 2012 Annual report GO.

[19] Law 4042/2012 on Criminal Environmental Protection – Harmonization with Directive 2008/99 / EC – Waste generation and management framework - Harmonization with Directive 2008/98 / EC.

[20] *See 2012 Annual Report of the Greek Ombudsman,* at 18, https://www.synigoros.gr/resources/annualreport2012–3.pdf.

[21] Article in the Sunday newspaper 'Proto Thema', 12 Apr. 2019, https://www.protothema.gr/greece/article/881496/me-ekriktika-vouliaxan-to-agia-zoni/.

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a great deal of publicity resulting in immediate action by the State. A ministerial decision was published setting out measures of medium-long-term effects of pollution along the coast and in the sea area of the Gulf for the prevention of environmental damage in the water (coastal and marine), to the protected species and to the natural habitats. The Ministry of Environment took over supervision of the cleaning procedures and the determination of monitoring measures. The ministerial decision required that the ship owner/operator responsible – in a timeframe of twelve months – investigate the sediments of the affected Gulf area; continue monitoring the water quality; document the status of the habitat; and, if pollution still remains, to proceed with extra monitoring and take complementary measures.

In another case, a local NGO filed a complaint to the Ministry of Environment and the GO aimed at determining measures for the prevention and restoration of environmental damage in the coastal wetland of Legraina in the region of Attica. In March 2016, environmental damage was caused to the coastal wetland of Legraina by clearing and works (road and parking construction) with machinery (bulldozer and truck) carried out by the Municipality. In 2018, a ministerial decision set out the measures for the restoration of the damage. The measures included: restoring the halophytic and forest vegetation by preventing access and movement of wheeled vehicles in the area of the wetland (for which the Municipality would be responsible); carrying out a restoration study, which would have set out the measures to restore the relief to the previous situation considering the functions of the sand dunes; demarcation of an access path, strengthening the fencing with natural materials to prevent and control the entry of vehicles into all protected habitats; protection of the natural regeneration of their vegetation wetlands; protection of the wetland; providing signage for the protected area, with detailed information on its operation and its natural ecological characteristics. As the local Municipality has not yet taken all the necessary measures and the authorities competent for the implementation and enforcement of ELD display inertia and inactivity, the case is still pending.

5.2 Measures

Operators are obliged to adopt and implement the measures forest out in the decree, to prevent and remedy the environmental damage or imminent threat of such damage, as well as to cover the relevant costs, whatever their amount, when their liability for such damage can be shown (Article 7of the PD).

The competent authority 1. takes the precautionary measures itself and in the event that the operator cannot be identified or is not required to do so under Article 11(4), (5) of the PD, bears the relevant costs; 2. may authorize third parties or require third parties to carry out those Precautionary Measures (Article 8(3) of the PD). If the costs must be covered by the competent state authority, then they must be included in the state budget, a process that is time consuming.

Regarding cases for which the owner/operator has not been identified, the so called abandoned 'orphan sites', like the case of an uncontrolled deposition of barrels with caustic waste in Piraeus, the competent authorities noted the severity of the problem, and at the same time the lack of resources. Thus, they did not implement the provisions, which require the removal of hazardous waste and the sanitation of the premises. In this concrete case, following the Ombudsman's mediation, a credit of 450,000 euros was approved to enable the waste removal. After this, it became clear that the public administration should perform preventive controls and be able to take measures and allocate the necessary resources for rehabilitation. Since then, funds are credited annually, originating from the revenues of the State budget, to cover possible requests for the restoration of places, where the offender has not been identified.

Environmental damage caused by the fire that broke out on the premises of a private recycling center (PRC-KDAY) in Attica in 2015 raised the issue of the restoration process of the environmental damage.

The competent authorities acted immediately after the fire to mitigate the risk and investigate the effects on public health and the environment. The process of implementing the environmental liability was initiated by COIEL due to the importance of the incident, which resulted into a decision for rehabilitation measures. The measures approved included only rehabilitation measures and not preventive, fencing and security measures for the installation. The refusal of the polluter to proceed with the restoration, due to financial inability and its declaration of bankruptcy (Article 99 of the Greek Bankruptcy Code), the re-initiation of the procedure and a call for tenders for the award of the technical study led to a delay of the environmental rehabilitation beyond four years after the event occurred. Following the bankruptcy of the owner, an amount of 5 million euros for the restoration project was paid by the Green Fund, while the competent Region was designated as the authority responsible for the study and the restoration work.

From the cases studied, it can be seen that the Greek cases have been remediated using the primary remediation type. No follow-up procedures were applied. The above-mentioned Saronikos shipwreck oil spill case constitutes an exception as it was completed in a very short period of time. The remediation measures were taken immediately, and a re-inspection followed shortly after the measures were implemented. The ministerial decision required that the ship owner/operator responsible act in a timeframe of twelve months.[22]

[22] StavroulaPouli, *Environmental Liability Directive: What Happens in Greece – an Administrative Perspective* (LIFE Natura THEMIS, Protecting habitats and endangered species in Europe through tackling environmental crime Heraklion 22–24 Oct. 2018) & WWF, *2019 Annual Report on the Environmental Legislation in Greece*, at 20.

In the case of the fire in the private recycling center, the measures decided included only cleaning and not preventive, fencing and security measures for the installation. Only after the intervention of the GO, were fencing and security measures taken.

The Hellenic Council of State, in its decision no. 3943/15, ruled that:

> *according to Article 24 (1) of the Constitution of 1975, as amended, the protection of the natural and cultural environment is an obligation of the State and a right of everyone. For its protection, the State has an obligation to take special preventive or repressive measures within the framework of the principle of sustainability.*

VI. Time Dimension

According to Greek legislation on environmental liability, the decisive date regarding its temporal application is the occurrence of the damage before the 1st May of 2007 (Article 19of PD 148/09).

In the above-mentioned case of the fire in a private recycling center, the re-initiation of the procedure and the call for tenders for the award of the technical study led to a delay in the environmental rehabilitation beyond the five years following the occurrence of the incident. As stated by the GO, although there are no deadlines set for the remediation of environmental damage in PD 148/09, this does not mean that the monitoring action of the administration is time unlimited. The scope of the administrative action is determined by the purpose of the provisions, which in this particular case is the risk management. This is explicitly and specifically defined in Article 6(2) of the PD which underlines that the authorities must *immediately* inform the Ministry of Environment concerning immediate or impending damage. Therefore, the execution time should depend on the fulfilment of the intended purpose. The delay in environmental rehabilitation combined with a scarcity of preventive measures resulted in a continuing environmental degradation of the area for four years, a serious risk of damage to the soil, surface and groundwater, the atmosphere and public health. Also, the lack of policing and guarding of the premises allowed the continued deposition, mainly of inert demolition materials but also mixed municipal and even hospital waste in the area, requiring appropriate and immediate management. The amount of combustible materials classified as hazardous and therefore not allowed to be disposed of in a licensed landfill was estimated at 2,000 tons. Their management significantly increased the rehabilitation cost in the case, considering the lack of a final disposal area in the country and hence the need to export to a suitable recipient abroad. The rehabilitation of the area was partially carried out by the contractor five years after the occurrence of the incident.

Regarding the restoration of the environmental damage caused by a fire at the facilities of a private recycling center located in an industrial area in Magnesia, the owner removed the burnt waste immediately. The competent authority in collaboration with an accredited chemical laboratory took samples of stagnant water, surface soil, stored material for recycling and burnt and wet material, which were sent for analysis. However, four (4) years after the fire and the removal of the burnt waste, the envisaged environmental liability process has never been completed, since the approval of a restoration study by RCIEL is still pending. In the meantime, the composition of RCIEL changed, which has led to further delays and lack of monitoring.[23] Thus, the non-permanent nature of the RCIEL raises the problem of further delays of ELD implementation at a regional level.

In 2014, the Inspection report of the Environmental Inspectors of Northern Greece confirmed illegal extraction of reeds and aggregates and other earthworks for the construction of a water ski track, without all the required licenses or special ecological assessment, in the protected wetland in Amphithea of the Lake Pamvotida, a Natura 2000 area. In 2015, a joint inspection of COIEL and the Environmental Inspectors showed that the planned restoration of the site was not completed. In 2017, COIEL, as a competent Authority, proceeded to determine measures to prevent damage to biodiversity in the Amphithea wetland (Article 8 of the PD). In this concrete case, the main problem was the lack of a presidential decree (Law 1650/86) establishing the protection status of the lake as a Natura 2000 site, and the permitted activities. This fact led to inaction by the administration, delays, and a lack of immediate enforcement of measures.

VII. Costs

As it is clear from Article 1 and the second recital in the preamble of the Directive 2004/35/ EC, that its purpose is to establish a common framework for environmental damage liability under the *polluter pays principle*, with a view to preventing and restoring environmental damage at a reasonable cost.

The remediation costs for restoring damaged natural resources are to be borne by the person liable, in line with the polluter-pays principle. The available evidence shows that the cost of remedial action in EU averages around EUR 42,000.[24] Greece reported a mean value of EUR 60,000 (EU 2016 Annual report).

The costs of environmental damage for liable operators can be reduced through the use of financial security instruments (covering insurance and alternative instruments, such as bank guarantees, bonds or funds). Greece has adopted legislation for mandatory financial security for environmental liability. However, the secondary

[23] Sayas[†], Bosdogianni & E. Liaska, *supra* n. 3.

[24] Calculated on the basis of 137 cases representing just over 10% of all reported ELD cases by Member State and without considering in particular the three largest losses in *Kolontár* (Hungary), *Moerdijk* (Netherlands) and the Greek *Asopos* case (since they were considered as outliers).

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legislation, -according to Article 14 of PD 148/2009, as amended by Law 4014/2011 – which will impose the Greek mandatory financial security system has not yet been enacted.

Greek legislation requires operators, with a permit to transport hazardous waste, or a permit to handle, store, dispose of, or recover hazardous waste at their sites, to have mandatory financial security for their operations (Joint Ministerial Decision 13588/725/2006 OJ 383B/28 March 2006 on measures, terms and restrictions for the management of hazardous waste in compliance with Directive 91/689/EEC on hazardous waste). The subject of such insurance is the restoration of the environment to its previous state. Most of the demand for environmental insurance (and to a lesser extent bank guarantees) arises from these operators.[25] However, the number of companies that have been insured so far is very small.

Furthermore the Ministry of Environment and Energy is also financing – through the Green Fund – a program for the restoration of environmental damage caused by uncontrolled waste disposal, following a proposal by COIEL or CIEL. During the period 2013–2017, forty-five projects were financed by the Green Fund for the removal of uncontrolled waste disposals, amounting to approximately 1.5 million euros. In 2013, twenty-three projects of 442,000 euros were included, in 2015 eighteen projects of 785,000 euros and in 2016 projects of 450,000 euros.[26]

Finally, we should point out that in some cases *excessive costs* for the restoration of environmental damage led to recourse to the courts, which leads to further delays. Specifically, in the case of the former asbestos factory, the owner bank submitted a consolidation-restoration study, in line with which two alternative solutions were proposed: the collection and cross-border transportation to licensed premises abroad of waste or the creation of a landfill within the plot. The competent decentralized administration, in order to avoid any reactions from the local community and despite opposition from the Special Secretariat for Environmental and Energy Inspection and the Ministry of the Environment Ypourgeio Perivallontos (Ministry of Environment) (YPEN), adopted the first proposal, the high cost of which the owner refuses to pay. The owner appealed to the court. The court decision rejected the appeal (decision no.1985/17 Council of State). The case is still pending.[27]

VIII. ELD and Aarhus Convention

ELD information shall be collected from multiple sources, not only from the concerned operators and environmental authorities, but also from other authorities and state organizations, such as the ombudsman offices, available statistics and reports, even if their primary topics are not the ELD matters. Only such a divergent set of sources can offer a sufficiently balanced ELD information system, where both aggregate and individual data, both new occurrences and old, unresolved pollution cases can be traced back and can be searched by interactive means. This way the problem with active and passive access to environmental information might be solved.[28]

Moreover, in order to achieve the best result in decision-making and policymaking, members of the public shall be able to participate in decision-making procedures concerning specific activities and installations, plans, programs and policies. For this type of decision-making, the Aarhus Convention parties must ensure that the public concerned is informed about the decision-making procedure, that public participation is provided for when all options are still open, that members of the public are allowed to comment and opine on proposed activities, and that such comments are duly taken into account when a decision is made.[29] Direct public participation and informed decision-making based on a system of criteria and reliable data is not always possible at an individual level but can only take place based on organized groups or local community organizations.

In Greece, environmental organizations contribute to raising awareness, informing, and activating society at a local or national level on environmental issues.Active citizens can play a very important role in the successful implementation of the ELD. Access to justice is also important to challenge 'decisions, acts and omissions of the competent authority' under the ELD. The Greek judicial system corresponds to the principles of the Aarhus Convention. Article 24 of the Greek Constitution underlines that *'the protection of the environment is an obligation of the State and everyone's right*'. The Greek courts have considered that the protection of the environment must be generally described in the statutory objective of the legal entities (NGOs) without being their sole or predominant purpose. That means that a citizen or group of people together have the right to appeal to the administration or the courts in order to protect the environment. Citizens or NGOs can challenge administrative decisions for legality or on substantive grounds provided by law and invoke their constitutional right to the environment directly in the judicial procedure.

Regarding the open database information, the Ministry of Environment and Energy has an Approval of

[25] Improving financial security in the context of the Environmental Liability Directive No 07.0203/2018/789239/SER/ENV.E.4 May 2020, at 5.

[26] Stavroula Pouli et al., *2007–2017: Ten Years of ELD Implementation: Issues and Perspectives at a National and European Level* 89 (Proceedings of the LIFE Themis National Conference, Crete 8–10/9/2017).

[27] *Ibid.*

[28] UNECE, *The Seventh meeting of the Task Force on Access to Information to the Aarhus Convention Geneva (Virtual Meeting)*, 16 Nov. – 17 Nov. 2020, https://unece.org/fileadmin/DAM/env/pp/a_to_i/7th_meeting/Statements_and_Presentations/7TFAI_V_6_Developments_Bluelink_J_E_Peev.pdf.

[29] Jonas Ebbesson, *Public Participation and Privatization in Environmental Matters: An Assessment of the Aarhus Convention,* 4(2) Erasmus L. Rev. 71 (2011).

Environmental Terms database available to the public through its website.[30] Through this system, the public can have access to all approved decisions of environmental terms of existing activities. Such an application is very useful not only for the public, but also for the public administration and the inspectors.

The National Geospatial Information Infrastructure is also a system that allows direct access to all the country's digitally-available geoinformation and for its entire territory, via the internet. This system was established by Law 3882/2010 in September 2010 (OJ 166 A). Law 3882/2010 aims to ensure equal access to geospatial data and services for all citizens and Public Administration, to save resources, protect the environment and encourage investment initiatives, through the creation of the National Geospatial Information Infrastructure. A complete list of all available geospatial data and services will be maintained at the National Geospatial Data Infrastructure. Both the Public Administration and the citizens will be able to access and process geospatial data through this portal.[31]

Even though the public-sector databases contain important environmental information, such information is presented without individual analysis or specialization (see posted aggregate information on quantities of incoming waste without further specification per month and per municipality). This obliges the citizen to further appeal to the public service responsible for detailed information with the risk of being denied access to it. Often, confidentiality of any technical, industrial, or commercial information is invoked, which runs against to free access to information. In order to achieve transparency as well as the successful promotion of entrepreneurship in our country, it is often necessary to link databases for greater interaction and immediacy.

Finally, since 2009 citizens can be informed on the legislative initiatives of the Ministries – including the Ministry of Environment and Energy – and able to participate in public consultation through the website *'Open Governance'*. The *Opengov.gr (Diavgeia)* website has been designed to serve the principles of transparency, deliberation, collaboration, and accountability. Since October 2009 almost every piece of draft legislation, or even policy initiative by the government, has been posted on *opengov.gr*, open to public consultation.

IX. Conclusions – Proposals

In conclusion, in Greece the ELD provisions have not yet received special elaboration, because of how its operation within the modern administrative mechanism has been misunderstood, and the fact that many stakeholders are even unaware of its existence. However, PD 148/2009 transposing the directive into Greek law remains the main legislative instrument, which establishes an environmental liability regime based on the *polluter pays principle* focused on the prevention and remediation of environmental damage.

Active citizens can play a very important role in the effective implementation of the ELD directive. But, as immediate public participation and informed decision-making is not always possible at an individual level, environmental organizations contribute to raising awareness, providing information, and engaging society to set up the ELD procedure.

The lack of an official definition of *significant threshold* results by a case-by-case analysis assessed in relation to the initial situation. This initial data base does not exist in Greece and consequently, most times, it is difficult to precisely assess the damage.

As it concerns the definition of the *operator*, in many instances, he is not identified with the landowner. Since it is very difficult to identify the operator – mostly in cases of uncontrolled waste disposal-, the landowner must pay and restore the damage. In the instance that the competent authority finds that several operators are responsible for the environmental damage or the immediate threat of such damage, the authority shall apply the *joint and several* liability rule for the allocation and recovery of prevention or rehabilitation costs

Although there are no deadlines set for the remediation of environmental damage in PD 148/09, this does not mean that the administrative action does not have a time limitation. This is explicitly and specifically set out in Article 6 (2) of the PD, which underlines that the authorities must immediately inform the Ministry. It is necessary to set binding deadlines for the restoration of environment damage given that the time of execution of the actions should be related to the fulfilment of the intended purpose (risk management). Adequate staffing with specialized personnel and provision of sufficient funds to implement environmental policy, both at a central and specifically at a local level, are also necessary. Moreover, the non-permanent nature of the Regional Committees for the Implementation of ELD (RCIEL) raises the problem of further delays in the ELD implementation.

As for the cost, in some instances excessive costs for the restoration of the environmental damage led to recourse to the courts, which causes further delays. The Ministry of Environment and Energy is using the Green Fund to finance the restoration of environmental damage in cases where the operator cannot be identified. *Green Fund* funding for environmental damage restoration should be put on a regular basis via a specific budget per year. In the instances where the State undertakes the rehabilitation costs, the assignment of a rehabilitation study should be done by way of derogation from the provisions of Law 4412/16 on public works, for reasons of public interest, as the procedure is very time consuming. In the rehabilitation decisions, precautionary measures should also be

[30] http://aepo.ypeka.gr/%CE%B1%CE%BD%CE%B1%CF%81%CF%84%CE%B7%CE%BC%CE%AD%CE%BD%CE%B5%CF%82-%CE%B1%CF%80%CE%BF%CF%86%CE%AC%CF%83%CE%B5%CE%B9%CF%82/.

[31] www.ypen.gr.

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provided concerning at least fencing and security measures for the installation site.[32]

The lack of monitoring and the imposition of sanctions constitute the main impediments preventing the companies from taking out insurance since no incentives are created either for private companies or the insurance sector. The completion of the legislative framework is necessary, linked to the issuing of the ministerial decision foreseen in Article14 of PD 148/09 on the mandatory insurance of the premises against environmental damage.

Finally, the Register of Environmental Liability cases should be publicly accessible. The power of environmental transparency and the implementation of the Aarhus Convention principles help to achieve Sustainable Development Goals. Many operators and other key stakeholders are still unaware of the potential liabilities arising from environmental damage. Up-to-date, accurate and easy-to-find environmental information empowers public officials, entrepreneurs, operators, and key stakeholders to make informed decisions that impact the environment. Aarhus Convention pillars, freedom of information, public participation and access to justice constitute valuable keys for fostering transparent governance, innovation and greening the economy.

[32] The Greek Ombudsman, Quality of Life Department, Restoration of environmental damage from a fire incident at a Company's facilities in Aspropyrgos 2019, https://www.synigoros.gr/resources/230620-porisma-synhgoroy-aspropyrgos.pdf.