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Administrative Circular 161484/2014 “Application of the provisions of Article 2 para. 8 lit.b of the Law 4014/2011” The document is available at the webpage of the Ministry for Environment (www.ypeka.gr)

KEYWORDS

-Introduction of guidelines and criteria that limit the administrative control in cases of the extension of the permits of projects with significant environmental impacts
-Insufficient consideration of the need for providing dynamic environmental protection

ABSTRACT AND ANALYSIS OF THE NON REGRESSION CASE

This administrative Circular provides certain guidelines for the application of Article 2 para.8 lit.b of the Law 4014/2011 for the environmental authorization, which, as already mentioned in the previous report, simplified and accelerated the EIA procedure, without taking sufficient consideration of the need to examine carefully in advance the environmental effects of the projects. Article 2 para. 8 lit.b provides that the environmental permits, which were valid at the time of the publication of the Law 4014/2011 (21.09.2011) for projects and activities belonging to category A (namely those with the most significant environmental impacts) can be extended until their completion 10 years after the time-point of their issuance under the condition that no substantial alteration of the relevant facts on which the authorization was based has taken place. In the above-mentioned Circular, it is stipulated **that for the extension of the environmental permit up to ten years of its issuance, the operator must submit to the competent authority a declaration, according to which either no substantial alteration of the facts on which the authorization was based, has taken place or the project remains compatible with the subsequent changes in Special Spatial Planning Frameworks, the Urban and City Plans, the regulations concerning the sites belonging to the Nature 2000 network (protected areas), the declared archaeological sites and areas with special status of protection, such as forests.**

**The specification of Article 2 para.8 lit.c of the Law 4014/2011 within the framework of this Circular seems to be incompatible with the non-regression principle. The first reason for that is that the administrative control for granting the extension is very limited. This is due to the fact that no certain criteria and measures have been introduced for examining the compatibility of the project or the activity with the above-mentioned legal documents and the established procedure does not provide the framework for the competent authority to assess in an appropriate manner how the continuation of the individual project or activity affects the environment of the specific area (direct and indirect effects of the project or the activity, the interactions between different environmental media and the cumulative effects caused by several projects), as required by Article 3 of the EIA Directive.**

**Furthermore, given the fact that the high polluting installations that fall under the scope of the Directive 2010/75 on industrial emissions belong also to the projects of category A as established in Law 4014/2011 and they subsequently fall within the scope of application of the critical Circular, the interpretation given in it contradicts Article 21 of the 2010/75 Directive, which requires that the permit conditions are periodically re-considered by the competent authorities and updated if necessary, in order to ensure that a high level of environmental protection can be achieved. Under this prism, both the relevant legislative provision (Article 2 para. 8 lit.c of the Law 4014/2011) and the Circular specifying this provision do not seem to be compatible with the non-regression principle, because they constitute a drawback in relation to the relevant provisions of the EU (Directive 2010/75) and the national Law (Joint Ministerial Decision 36060/155/E.103/2013 transposing the relevant Directive) and they practically limit the competence of the authorities to monitor polluting activities and to adopt the relevant measures where necessary.**

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| Joint Ministerial Decision 170225/2014 "Specification of the content of the files for the environmental authorization of projects and activities belonging to category A of the Ministerial Decision 1958/2012, as it is in force, in accordance with Article 11 of the Law 4014/2011 and every other detail" (Hellenic Government Gazette Issue B/135/27.01.2014) | |
| KEYWORDS | |
| -Relaxed requirements concerning the information to be provided for the effects of the project on the environment and on specific eco-systems (forests)<br>-Insufficient framework for a comprehensive assessment by the competent authority | |
| ABSTRACT AND ANALYSIS OF THE NON REGRESSION CASE<br>This Ministerial Decision specifies the standards and information that the EIA Study for projects and activities belonging to the category A, namely those with the most significant environmental impacts, should have. **The requirements set in the above-mentioned Ministerial Decision do not seem to be compatible with the non-regression principle for a variety of reasons. The first one is that the requested information for the EIA Study as regards the effects of a project is limited by the introduction of certain criteria concerning the concrete area in which the estimated effects of the project are analyzed (1 or 2 km respectively from the designed installation or the place where the works will take place)[Annex II, 8.1-Area Study). Furthermore, certain provisions leave the developer significant room to assess whether the project or the activity will have significant impact on the environment or not. Moreover in the case that an evaluation is made that the project does not have significant impact on the environment, the developer or the person intending to be the operator of an installation only has the obligation to provide justification for the relevant position and not to analyze the effects (Annex II, 8). Subsequently, the above provisions cannot satisfy the requirement for a comprehensive assessment of Article 3 and Annex II of the EIA Directive (as interpreted by the Court of Justice of the EU (CJEU C-50/09 *European Commission v Ireland* [2011] ECR I-873,paras 37-41), because the information about the indirect and cumulative effects of the project required within the framework of the EIA Study is insufficient and the competent authority does not possess the necessary informational material for assessing the impacts of the project in an appropriate manner. Another reason for the incompatibility of the Ministerial Decision with the non-regression principle lies in the fact that the information required as regards the effects on certain elements of the environment (e.g forests) within the framework of the EIA Study is much less demanding and extensive than those required by the previous legislative framework for the authorization of an intervention in a forest area (Law 998/1979, as modified). Subsequently, in the present situation the competent authority cannot assess in an appropriate manner whether the relevant conditions for an exceptional intervention in a forest or forest area are satisfied as was the case with the previous legislative framework (In accordance with the provisions of the Law 4014/2011 the permit for intervention in a forest is incorporated in the environmental permit)** | |

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| - Law 4269/2014 "Spatial and Urban Planning Reform-Sustainable Development", Official Government Gazette Issue A/142/28.06.2014-Artcile 8 (Special Spatial Plans) | |
| KEYWORDS | |
| - Ad hoc planning regulations facilitating one-dimensional decisions<br>- Insufficient consideration of the various conflicting interests | |

ABSTRACT AND ANALYSIS OF THE NON REGRESSION CASE

Article 8 of the Law 4269/2014 introduces the Special Spatial Plans, which constitute a specific planning tool to pave the way for ad hoc planning interventions for two reasons. **The first one lies in the fact that although the directions of the approved National and Regional Spatial Plans should be considered within the framework of the approval of the Special Spatial Plans, these Specific Planning Tools can amend the approved Urban Plans under certain mainly vague-formulated conditions. The second reason relates to the fact that their provisions are binding for the Urban Plans in preparation, while the Special Spatial Plans can be exceptionally amended by the future urban plans only if specific justification is provided and the developer or the administrator of the area in which the Special Plan applies gives consent. In this way** the future planning instruments can be put in jeopardy due to the creation of *de facto* situations. In conclusion, it should be noted that the introduction of such specific planning instruments as instruments of spatial planning, which can be applied on a permanent basis and not only in certain specific conditions (as was the case of introduction of special planning rules for the reception of the infrastructure for the Olympic Games) does not seem to be compatible with the non-regression principle, **because they cannot provide the necessary framework for the optimal spatial coordination of the human activities and the protection of the environment in the critical area, but instead they can facilitate the adoption and implementation of "one-dimensional'' decisions which can result in sacrifices as regards environmental protection. Furthermore, they can overrule publicly negotiated Urban Plans, which can ensure a more balanced consideration of the various interests.**

Finally, it is worth noting that such specific planning instruments (Special Development Plans and later renamed Special Plans of Spatial Planning for Strategic Investments) were at first introduced by the Law 3894/2010 relating to the acceleration of the authorization procedures of certain large-scale investments ("Fast-track Legislation"). The provisions governing the "Special Plans of Spatial Planning of Public Estates" introduced by Law 3986/2011 (Articles 12,13,14 and 15) were also applied for the above-mentioned instruments. These special Planning regimes were underpinned by the derogation from the current planning rules for each relevant region, which are amended and substituted by Specific Land-Use Regulations for the chosen location area and by the weak public consultation procedures, which take place during their elaboration and approval. Subsequently, **the main differentiation between the new instrument introduced by Article 8 of the Law 4269/2014 and the above-mentioned instruments, which are integrated in the new instrument is that the scope of application of the former is significantly wider, while its introduction provides the framework for *ad hoc* planning regulations, which can jeopardize future planning, on a permanent basis.**

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Law 4280/2014 « Environmental Improvement and Private Urban Development, Sustainable Urban Development and Forestry law Provisions", Hellenic Government Gazette Issue A/159/8.08.2014

KEYWORDS

-Significant reduction of the level of protection of the forest ecosystems under the new legislative framework

-Expansion of the allowed uses within forest areas without sufficient guarantees

ABSTRACT AND ANALYSIS OF THE NON REGRESSION CASE

Law 4280/2014 introduced a series of changes to the then existing legislative framework for the protection of the forests, which, despite its deficiencies relating to the lack of a systematic approach and the existence of "single-case" provisions, provided a satisfactory level of protection for the

sensitive forest ecosystems. The most significant changes introduced by the new Law are the following: 1) the abolition of the absolute protection which land declared for re-forestration after a fire or clearing, enjoyed in accordance with Article 117 par.3 of the Greek Constitution, and the allowance for its use under certain conditions, especially for certain infrastructure projects, such as roads, dams and renewable energy installations (Articles 46,48 and 53 of the Law 998/1979, as modified by Law 4280/2014) 2)the expansion of the already provided uses of protected forest lands under certain conditions for industrial, mining, energy and tourist installations and for infrastructural projects, such as roads, energy and transport networks (Articles 47, 47A, 48, 49, 50 and 53 of the Law 998/1979, as modified by Law 4280/2014) 3) the possibility of the clearing of forest land up to 30 hectares for the cultivation of certain types of plants and trees (Article 47 paras. 1 and 2 of the Law 998/1979, as modified by Law 4280/2014) 4) the expansion of the allowed uses of the parks within the cities which enjoy the same level of protection as the forest eco-systems (Articles 58 and 59 of the Law 998/1979, as modified by Law 4280/2014) 5) the allowance for building residential houses within forests lands by housing cooperatives (Article 60 para.1), although the Council of State held in previous cases that the constitutional protection of the forests does not allow such a use. Subsequently, it becomes obvious **that the modifications of the forest legislation introduced by Law 4280/2014 can be regarded as violations of the non-regression principle, because the foreseen level of protection for the forest eco-systems under the new regime is substantially lower in relation to that provided under the previous legislative regime.**

It is worth noting that the relevant provisions of the Law as regards forest protection were heavily criticized by the vast majority of the environmental NGOs on the grounds that the achievement of "short-terms" development goals as a means of confronting the economic crisis cannot justify such "sacrifices" concerning the protection of the fragile forest eco-systems.

Reference: WWF Hellas, Press Release of 6 August 2014, "The Parliament passed the "forest-killing" Law, available at: http://www.wwf.gr/news/1305-2014-08-06-11-55-29

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| Article 22 of the Law 4262/2014 "Simplification of the authorization of economic activities and other provisions", Official Government Gazette Issue A/114/14.05.2014 | |
| KEYWORDS | |
| -Introduction of a confidentiality rule<br>-Insufficiently documented restriction to access to environmental information | |
| ABSTRACT AND ANALYSIS OF THE NON REGRESSION CASE | |
| Law 4262/2012 aims at simplifying the authorization procedures for a wide range of economic activities, including industrial installations, touristic activities, transport infrastructure and mining activities by providing the introduction of the General Standards of Operation for the various categories of activities. In the case of the adoption of such General Standards for a certain category of activities, the authorization procedure can be substituted by a declaration of the operator that the installation satisfies the relevant general Standards, while only in certain cases an operation permit is necessary. Article 22 par. 2 of the Law 4262/2014 stipulates that the conditions, the extent, the exceptions and the art of the procedure by which the natural persons that have submitted a complaint **relating to the operation of a concrete activity can have access to relevant information, which is classified as confidential and constitutes part of the relevant administrative file, is regulated in deviation from the general provisions concerning access to documents. The specific provisions will be set by a Presidential Decree which is going to be issued <u>on the basis of the delegation provided in the relevant provision</u>. This provision seems to be in contradiction with the non-regression principle, because, in deviation from the relevant provisions for access to** | |

**documents and those for access to environmental information, it establishes a special regime for the information included in the relevant administrative file of the economic activities, which is in general regarded as confidential. It provides subsequently the basis for the introduction of stricter conditions than those already in place for access to documents and possibly to certain kinds of environmental information through the issuance of the Presidential Decree, which can actually restrict access to information. Such restrictions do not seem to be proportional and justified, because the legislative framework in place already provides for exceptions in certain constellations relating to economic activities (protection of commercial and business interests)**

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HEADER Decisions of the National Water Committee for the Approval of River Basin Management Plans in Eastern Macedonia, Western Macedonia, Central Macedonia, Epirus, Thrace (Decision 1007/2014, Hellenic Government Gazette Issue B/2291/2014, Decision 107/2014, Hellenic Government Gazette Issue B/181/2014, Decision 106/2014, Hellenic Government Gazette Issue B/182/2014, Decision 1005/2014, Hellenic Government Gazette Issue B/2292/2014 and Decision 1006/2014 Hellenic Government Gazette Issue B/2290/2014)

KEYWORDS

-extensive use of the exceptions from the water quality objectives
-no sufficient measures for avoiding deterioration

ABSTRACT AND ANALYSIS OF THE NON REGRESSION CASE

Greece as a Member of the EU had the obligation to harmonize the national legal system with the requirements of the Water Framework Directive (2000/60). One of the most significant requirements of the WFD related to the adoption of River Basin Management Plans (RBMPs) for each river basin district by 22.12.2009 as a means for achieving the demanding water quality objectives of the Directive (Article 4). In this context it is worth noting that the Court of Justice of the EU ruled that Greece failed to comply with the obligations arising from the WFD because it did not complete the plans on time. The first RBMPs were approved in 2013, while the above mentioned plans were approved in 2014. The critical Plans do not fulfil the requirements of the WFD for a variety of reasons. The first one is that **the relevant exceptions as regards the achievement of the water quality objectives of Article 4 of the Directive (paras. 4-7) are applied to a significant percentage of the water bodies in the critical Plans without persuasive justification as regards the fulfilment of the relevant conditions for their application, so that doubts can be raised about their misuse as a means of escaping from the demanding quality objectives (For example, 46,9% of the water bodies in Eastern Macedonia are exempted from the good water quality objective). Furthermore, the application of the exceptions on water bodies which are designated as protected areas (parts of NATURA 2000 network) raises significant issues of compatibility not only with the requirements of the WDF as regards the achievement of the environmental quality objectives in the protected water areas by 22.12.2015 and the adoption of specific measures (Article 4 para.1 lit c and 11), but also with the non-deterioration obligation as regards the status of the protected areas, which is established in Article 6 para. 2 of the Habitats Directive. Moreover, the Critical RBMPs do not contain any monitoring programmes concerning the status of the protected areas, as required by the WFD (Annex VII[4]). Finally, the relevant Programmes of Measures included in the RBMPs do not contain the necessary "mandatory" and "auxiliary" measures, in order to ensure that the basic provisions of a range of EU Environmental Directives are applied on the critical water bodies, including those exempted, so that a quite satisfactory level of water protection can be achieved. For all these reasons it becomes obvious that the critical RBMPs cannot fulfil their basic function relating to the introduction of the necessary framework and the specific measures for achieving the water quality objectives within a set**

**timeframe. Furthermore, they do not include the necessary guarantees for the avoidance of the further deterioration of the status of the critical water bodies. From this point of view, they do not seem to be compatible with the non-regression principle either.**

Reference: WWF Hellas, Environmental Legislation in Greece, 10th Annual Review, September 2014,p.48-55 with further details