

Environmental Impact Assessments in Cyprus

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☞ Cyprus; Environmental impact assessments; Environmental policy; EU law; Oil and gas production

EU environment policy

From the beginning, environmental policy has been an important issue for the EU. Its environmental policy is described in the Treaty on the Functioning of the EU (TFEU), having first been set out in the Treaty of Rome. The Preamble to the TFEU sets the context for this at an early stage, stating that the EU is determined to promote economic and social progress for its people, taking into account the principle of sustainable development and within the context of environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields. The TFEU states that the EU aims at a high level of protection and improvement of the quality of the environment and that it will work in order to foster the environmental development of developing countries. It is committed towards ensuring sustainability by helping to develop international measures to preserve and improve the quality of the environment.

Title XX of the TFEU explicitly deals with the environment, and art.191 specifies the objectives of EU policy on the environment as follows:

- preserving, protecting and improving the quality of the environment;
- protecting human health;
- prudent and rational utilisation of natural resources; and
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

Article 191 provides that EU policy on the environment will be based on the “precautionary principle”, the “polluter pays principle” and shared responsibility, and that preventive action should be taken and environmental damage should be combated at source.

Environmental Impact Assessment Directive 85/337 as amended

In order to implement this approach the EU adopted Directive 85/337, the Environmental Impact Assessment Directive, which was subsequently amended by Directives

97/11, 2003/35 and 2009/31. The initial Directive of 1985 and its three amendments were codified by Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment. Following an extensive consultation process, a newly amended Environmental Impact Assessment Directive (2014/52) (the EIA Directive) entered into force on May 15, 2014 to simplify the rules for assessing the potential effects of projects on the environment. It is in line with the drive for smarter regulation, so as to reduce the administrative burden. It also improves the level of environmental protection, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term. The EIA Directive applies to a wide range of defined public and private projects, which are defined in Annexes I and II.

Annex I defines projects considered as having significant effects on the environment. These include long-distance railway lines, motorways, express roads, airports with a basic runway length in excess of 2,100m, installations for the disposal of hazardous waste, and large installations for the disposal of non-hazardous waste and for treatment of waste water. An environmental impact assessment (EIA) is mandatory for such projects. The projects listed in Annex II are generally less significant and smaller-scale, and national authorities have discretion to decide whether an EIA is needed. This is done by a “screening procedure”, which determines the effects of projects on the basis of thresholds or criteria or a case-by-case examination. In any event, national authorities must take into account the criteria laid down in Annex III, relating to the characteristics of the project, its proposed location and its potential impact.

The 2014 revision of the EIA Directive was a response to the fact that the 1985 Directive had not significantly changed in the more than 25 years since its introduction, although the policy, legal and technical contexts had evolved considerably over the same period. The 2014 amendments aimed to correct identified and persisting shortcomings; to reflect current environmental and socio-economic priorities and challenges; to align the directive with the principles of smart regulation; and to reflect the ECJ case law. Article 5 and Annex IV of the EIA Directive were amended to include a new provision with respect to the completeness and quality of the EIA report, requiring the developer to ensure that the EIA report is prepared by competent experts and the competent authority to ensure that it has access to the requisite expertise to examine and appraise the EIA report. Where necessary, the competent authority may request further information from the developer that is relevant to reaching a reasoned conclusion on the significant effects of the project.

Evaluation of the Consequences on the Environment of Certain Projects Law 140(I) of 2005 as amended

The EIA as it stood in 2005 was transposed into Cyprus law by means of the Evaluation of the Consequences on the Environment of Certain Projects Law 140(I) of 2005, which was subsequently amended by Laws 42(I) of 2007, 47(I) of 2008, 80(I) of 2009, 137(I) of 2012 and 51(I) of 2014 (the EIA Law). Cyprus's environmental policy has undergone significant change owing to the increasing alignment of national law with the *acquis communautaire*, and in turn this has created momentum towards environmental protection by making it a prime political priority. Furthermore, in recent years, the relevant authorities have been promoting environmental protection as one of the major goals on their agenda.

The aim of the EIA Directive and, therefore, of the EIA Law is the establishment of a legislative framework to assess the potential effect on the environment of the preparation process of public and private projects, as outlined in Annexes I and II of the EIA Law. The preparation process is to include the stage before an authorisation to proceed with such projects and programmes are granted. The EIA Law refers to plans and programmes prepared and authorised by a public authority in relation to inter alia agriculture, forests, fishing, energy, industry, transport, waste management, water management, telecommunications, tourism and land use. Such projects and programmes may have a detrimental effect on the environment, and must therefore be regulated and assessed. The EIA procedure typically consists of the following stages:

- the developer requests the competent authority to say what should be covered by the EIA information to be provided by the developer (scoping stage);
- the developer provides information on the environmental impact in the form of an EIA report—Annex IV;
- the environmental authorities and the public (and affected Member States) must be informed and consulted;
- based on its consideration of the EIA and the consultations, the competent authority decides whether, and if so what, further measures are needed to protect the environment; and
- stakeholders (including the public) are informed of the decision and can challenge the decision before the courts.

As yet, few cases have come before the courts regarding environmental issues, and in the few cases that have arisen, the environmental issues were peripheral rather than central.

One of these cases¹ concerned a claim regarding expropriation of part of the land on which the applicant's home stood for the purposes of construction of a major road project, as well as compensation for the detrimental effect on the quality of life of the applicant and his family resulting from the proximity of the new road to their home. An environmental impact assessment carried out under the predecessor law to the EIA Law² was taken into account by the court in assessing the impact of the project, in the context of the state's responsibility to minimise environmental harm from projects it undertakes. The court held that the compensation to be paid to the applicant must take account of all aspects of the damage done.

A 2013 case³ in the Supreme Court of Cyprus related to an application for annulment of a decision of the Municipality of Limassol to build an underground car park and to launch a public tender for the award of the project. It was noted that a preliminary environmental impact assessment for the development had been prepared and had been considered by the appropriate bodies. The Supreme Court noted that any project may adversely affect certain interests while being beneficial overall. In this case it held that the balance had been appropriately assessed, that all review procedures had been correctly undertaken and that there was no reason to halt the project. The principle of proportionality must be respected, and a general and vague invocation of environmental impact and effect on amenities of residents is not enough.

Another 2013 case⁴ in the Supreme Court of Cyprus related to an appeal against an order prohibiting development and construction in an area of outstanding natural beauty and environmental sensitivity. The applicant, the owner of large tracts of land in the area concerned, had unsuccessfully applied for planning permission for the construction of individual housing in the area and the action sought the reversal of the decision, claiming that it had effectively been derived of its property, contrary to the Constitution. The Supreme Court noted that environmental protection is an established principle of Cyprus law, which, although not independently emanating from the Constitution, nevertheless enjoys legal protection. The court decided that the applicant had not been deprived of its property. The urban zone which covers the specific area remained unchanged and the applicant had the right to use the property for any permitted purpose.

¹ *Marios Constantinou Yemenaris v Republic of Cyprus via the Attorney General*, App. No.79/2004 (September 22, 2012), District Court of Paphos.

² Evaluation of the Consequences on the Environment of Certain Projects Law 57(I) of 2001 (this was repealed by the EIA Law in 2005).

³ *Nine Applicants v Republic of Cyprus via the Director of the Department of Planning and Housing and/or Environmental Committee of the Ministry of Agriculture and Natural Resources and/or Municipality of Limassol*, App. No.1366/2010 (June 20, 2013).

⁴ *Fontana Amorosa Coast Ltd v Republic of Cyprus*, App. No.8/2009 (September 26, 2013).

Cyprus as a hydrocarbons producer and gas export hub for the region

From an environmental point of view the most significant and potentially sensitive current development in Cyprus is the development of a hydrocarbons industry. Following discoveries of significant gas deposits in the South-Eastern Mediterranean area, the Cyprus Government aims to establish Cyprus not only as a hydrocarbons producer, but as a gas export hub for the region, taking advantage of its location and its geopolitical stability in a volatile region, and negotiations are under way for the development of an LNG compression and export facility costing several billion euro.

Such projects, as well as upstream exploration and exploitation projects, can have a disastrous effect on the environment. The Deepwater Horizon oil spill in the Gulf of Mexico had a long-term impact on the environment and the livelihoods of those in the nearby communities. Consequently, a robust and effective means of assessing potential impacts on the environment and preventing any adverse impact is essential, particularly in the light of the sensitive marine environment around Cyprus.

Other developments

In parallel, environmental considerations are increasingly important in general developments in Cyprus. Until recently, the issue of potential environmental liabilities had rarely been considered in Cyprus, and, as noted above, there is limited case law on such matters. However, most legal documentation, and facility agreements in particular, now includes provisions regarding compliance with best practice in the environmental field.

Conclusion

It is apparent that awareness of the environment has advanced considerably in Cyprus over the past few decades, particularly since Cyprus joined the EU. The increasing use of the EIA Law will consolidate these advances. The manner in which the EIA Law is implemented, and particularly the approach adopted by the competent authorities, will be a critical factor in determining its success. It is important that the competent authorities attain an appropriate regulatory balance, achieving effective environmental protection without imposing excessive regulation and bureaucracy that might stifle foreign investment.