INTERNATIONAL INSURANCE LAW ASSOCIATION/ AIDA
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Topic IV - POLLUTION INSURANCE - METHODS, COVERAGE AND BENEFICIARIES

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QUESTIONNAIRE
Introduction

The topic relating to environmental damage insurance covering losses resulting from pollution was selected by AIDA's Brazilian Chapter for discussion during the World Congress to be held in Rio de Janeiro, in October 2018.

Such choice was justified by the growing frequency and intensity of environmental damages worldwide that sometimes affect entire communities and stop the production of goods and the supply of basic public services. History has been disclosing events of great impact relating to chemical industries (such as Seveso/1976 and Bhopal/1984), to oil industries (such as black tides from oil spill in several locations, and Exxon Valdez in the Gulf of Alaska/1989), to nuclear industry (such as Three Miles Island, Chernobyl), and, recently, the explosion at Deepwater Horizon in 2010, in the Gulf of Mexico, that produced a significant repercussion.

In Brazil, environmental pollution has been raising great awareness and discussions, particularly in view of the last relevant event occurred in Mariana city (State of Minas Gerais), in November 2015, resulting from the collapse of the Fundão dam, that spilled 50 million cubic meters of mine wastes downstream, contaminated the Doce River in its whole extension, and caused huge environmental, social and economic impact to populations and cities.

This context requires an analysis on how national legislations address the matter, as well as on the contribution provided by the insurance industry to either remedy or mitigate the impact from environmental damages. The local reports shall be particularly useful to the assessment of an issue whose perceptions may vary on a significant basis, depending on national legal and administrative peculiarities. Please prepare your report in such a way as to submit the information as required for a correct and full understanding of the answers to the questions made herein.

This questionnaire contains only indicative questions. Please try to inform all the issues you may deem as important to the study of the topic, in the light of your country's scenario. Any information and comments shall be relevant. As the purpose of this questionnaire is to know the situation in your country, we kindly ask you to provide answers that specifically refer to such scenario.

PRELIMINARY REMARK:

Please note that the questions under "1. Environmental Legal Aspects" relating to liability issues are aimed at ensuring a better understanding of the pollution insurance law and practice

in different countries. Answering those questions is left to the sole discretion of the national reporter who may freely choose to answer only questions relating to insurance law aspects (i.e. to questions from "2. Legal aspects on environmental insurance policies" to "7. Academic development").

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1. Environmental legal aspects (answer is optional)

1.1. Which are the major general rules on civil liability arising from environmental damages in your country?

The liability for environmental damage in Greece may be civil, administrative[1] or criminal[2]. There are three legal sources applicable to environmental civil liability:

a. The Framework Law for Environmental Protection L.1650/1986, as amended**, (the Environmental law)** provides in article 29 that: *"[A]ny natural person or legal entity, causing pollution or other environmental degradation shall be liable for compensation, unless it proves that the damage results from force majeure; or that it has been caused by an act of a third party who acted fraudulently "*.
b. The **Civil Code** may apply to environmental claims through: a) the general provisions on torts (especially article 914) and b) the provisions on protection of personality (articles 57 and 59). The protection of personality extends to both communal and environmental goods (such as open air, sea water, seashore, land, etc).
c. **The Presidential Decree 148/2009 (PD)[3],** transposing the Directive 2003/54 on environmental liability for the prevention and remedy of environmental damage (**ELD**)[4], introduces a *sui generis* general authorizations to public authorities to act in regard to environmental issues.

The above three legal sources supplement each other, which may contribute to the complexity of the issue in practice.

The Environmental Law, apart from criminal and administrative liability, provides for liability of any individual or legal person who causes pollution or other degradation of environment. Although it does not restrict that damage is paid only to private persons, in practice the State, so far, usually applied administrative measures or criminal charges, rather than claiming the damage on the bases of the Environmental Law or the Civil Code.

The PD obliges the State to organise administrative environmental protection and to authorise state authorities to supervise relevant economic entities in regard to their implementation of environmental protection and remediation measures as well as payment of prevention and remediation costs. These

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[1] Laws 1650/1986 and 4014/2011 regarding administrative sanctions.
[2] Laws: 743/1977 (article 13); 1650/1986 (article 28), 4037/2012 (article 61) implementing Directive 2005/35/EC (L255) *on ship-source pollution and on the introduction of penalties for infringements, including criminal sanctions*), amended by the D 2009/123 / EC (L280), as well as article 1 - 9 L. 4042/2012, implementing D 2008/99/EC.
[3] As amended by article 28 § 3 L. 3889/2010; article 22 L. 4014/2011; article 31 Common Ministerial Decision No 48416/2037/E.103/2011 [B'2516], adding Annex III.
[4] L. 143/56. This Directive has been amended twice, by EU L. 102/2009 and L 178/2013. The PD does not include the amendments of the ELD.

authorities may, under certain circumstances, be obliged to perform the necessary measures (or appoint a third person to perform them), and refund the respective costs from such liable persons. The costs of prevention measures and the cost of remediation are paid to the State funds while the responsible authorities are obliged to use them for the respective prevention and remediation. The PD does not regulate compensation for environmental damage suffered by individuals or legal persons, which is regulated by the Environmental Law and the Civil Code. The PD lists the activities[5] triggering - in case of environmental damage - a no-fault liability[6] of any performer of such activities (the operator) and provides for a fault liability of other polluters who do not exercise activities included in this list.

Apart from the above three legal sources, some specific types of Environmental liability are regulated by other sources such as the International Convention on Civil Liability for Oil Pollution Damage of 1969 as amended (CLC) and the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage) caused by tanker vessels resulting from the escape or discharge of cargo oil, and International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention 2001 – L. 3393/2005), providing for direct claim against the insurer, as well as the other respective EU legislation.[7]

1.2. Please describe the main characteristics and objectives of environmental civil liability in the light of national legislation and court precedents.

1.2.1. How are environmental damages described under the law?

The Environmental Damages are clearly defined only in the PD but are limited to the scope of application of the PD, i.e. prevention and remediation measures and costs. Subsequently, the Greek legal theory when referring to the term "Environmental Damage" refers only to the limited definition of the PD, although the PD does not apply to compensation of environmental damage caused to any private individual or legal person (article 4.4 of the PD). Thus, no private person may claim any damage using the PD as legal basis. It may, however, initiate a procedure before the respective State authority, to request prevention and/or remediation measures.

According to article 2 of the PD, the Environmental Damage means:

"(a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species.

[5] According to article 4 of the PD its shall apply among others to environmental damages caused by any occupational activities listed in Annex III of it, as well as to any imminent threat of environmental damage occurring by reason of any of those activities. The activities included in Annex III are divided in 12 categories concerning a wide range of areas.

[6] According to the PD the liability of polluter to cover prevention and intermediation costs presuppose only that his exercising occupational activities listed in Annex III which caused environmental damages and any imminent threat of such damages (article 4). Liability based on fault applies to the damage occurred from operator exercising activities other than those included in the list.

[7] Directive 2004/35/EC *on environmental liability for the prevention and remedying of environmental damage* as amended. Other Directives based on the polluter pays principle are Directive 2006/21/EC *on the management of waste from extractive industries* (codf. Waste Framework Directive); Directive 2006/118/EC *on the protection of groundwater against pollution and deterioration issued based on Water Frame Directive (WFD) 2000/60* establishing a framework for Community action in the field of water policy; Directive 2006/12/ EC *on waste*. See also Directive 2008/56/EC *establishing a framework for community action in the field of marine environmental policy* (Marine Strategy Framework Directive) and US Clean Water Act 33. US. C

The significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in the PD; Damage to protected species and natural habitats does not include previously identified adverse effects which result from an act by an operator which was expressly authorised by the relevant authorities in accordance with provisions implementing Article 6(3) and (4) or Article 16 of Directive 92/43/EEC or Article 9 of Directive 79/409/EEC or, in the case of habitats and species not covered by Community law, in accordance with equivalent provisions of national law on nature conservation.

(b) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies; and

(c) land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms;

Damage means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly."

Damage, according to the PD, is harming the society as a whole, because the environment is a supreme social good which need to be protected from any harmful intervention. Therefore, such damage is considered to be against the State, and may be considered as a sui generis damage, having social and public character.

The Civil Code fails to define environmental damage and liability for such damage, but environmental claims may be based on the general provisions of the Code on damages and indemnification (e.g. in case of causing death or bodily injury, material damage, moral damage etc).

The Environmental Law also fails to provide general definition of environmental damage but it imposes general obligation to indemnify damage caused by pollution and other degradation of environment, and defines these two terms as follows:

Pollution: the presence of pollution in the environment. As pollution is defined any kind of substance, noise, radiation or any other kind of energy, in quantities or for duration that could create negative consequences for the health, the living beings or to the ecosystem or any other material damages that could make the environment suitable for any normal use; and

Degradation of environment: any pollution or any other kind of alteration to the environment, due to human activities, that may have negative consequences to the ecological balance, quality of life and people's health, to the historical and cultural heritage to aesthetic values.

1.2.2. Who may be (either directly or indirectly) made liable?

Pursuant to the PD (article 3 and 4) the operator performing the activity dangerous for the environment may be held liable for the environmental damage. The operator may be any natural or legal person, private or public legal entity, who operates or controls the occupational activity or 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.

The Law 743/1977 on protection of maritime environment and regulation of similar issues, provides for a unique case in regard to the sea pollution from petrol (CLC 1969 and its 1975 and 1992 protocols), according to which, the owner of the ship is liable for the damage and not the one who operates the ship, the charterer, the operator or the people that are acting upon order from any of the above, due to a contractual relationship.

In practice there may be complex legal issues if there are several co-liable entities, such as in case of liability of both the owner and the operator, or several owners and operators, or in case that some operations are subcontracted.

1.2.3. How is the determination of causal link of environmental damages?

Determination of causal link for environmental damage may be a complex issue. Even in case of strict liability the PD regulates that an operator may be released from liability if it proves that the damage was caused by a third part or occurred despite the fact that appropriate safety measures were in place.

Two doctrines are particularly widespread: a) doctrine of the **potential casual link** and b) doctrine of the **adequate link**. According to the first one, the liability of an operator would be established when the occurred damage may be linked to the liable person with probability, without certainty. In such case the compensation to be paid by that operator would be proportional to the level of probability that his act or omission actually caused the damage. In practice this applied in case of cancer illness due to extensive exposure to asbestos, even if it could not be proved with certainty that the illness was directly caused to the asbestos and from other factors, as the victim of the cancer was a fanatic smoker. The chances are 55% that the illness was due to asbestos and 45% due to smoking, so the proportional liability that was awarded was exact to the percentage that was due to asbestos[8].

Greek legal theory supports the doctrine of **cause adaequata**. Following this doctrine, the damage is compensated if and to the extent that it was caused (there is casual link) by the action or omission of the liable person. The casual link exists if, by applying the general experience of life, the action or omission that caused the damage or the special circumstances of this case was sufficient to create the damage and actually caused the damage in this particular case.

If there is more than one person liable for causing the damage, they would be either jointly and severally or proportionally liable. Pursuant to article 12 of the PD, if several operators are liable for the damage articles 926 and 927 of the Civil Code would apply. The Civil Code establishes joint and several liability of all operators, regardless weather they acted together, in the same time, or subsequently. The same applies if it may not be established whose activity actually caused the damage. Once the damage is

[8] See *Feess E., Muehlheusser G.*, *Wohlschlegel A.*, "Environmental liability under uncertain causation", Eur J Law Econ 2009, p. 133 following. (Antigoni Pinakidou, Dissertation, Aristotle University of Thessaloniki, 2011).

paid to the damaged person, the operators may claim compensation among themselves proportionally to their contribution to causing such damage.

1.2.4. Does your legislation provide for strict or fault-based environmental liability?

The Greek legislation provides for both types of environmental liability. The Environmental Law provides for the strict (objective liability), the PD provides for both types of liabilities (strict liability for certain risk and fault liability for all other risks) while the general provisions of the Civil Code apply only to the fault based liability.

In case of the Environmental Law, the damaged person should prove only the damage that has occurred and that it was caused by actions or omissions of the operator (liable person).

In order to apply 914 of the Civil Code, damaged person should prove actual fault of the operator. That may be either willful action or omission or the result of negligence.

The PD establishes strict liability for certain activities (such as from operations of installations for which approval of environmental conditions is required; certain waste management operations, all discharges into the inland surface water which require prior authorization), and fault liability for all the other cases. For the strict liability, it is sufficient to establish a casual link with the actual or potential damage. The liable operator will be released from liability if he evidences the lack of this casual link or in case of some other general exceptions. The general exceptions to liability in the PD include: a) if the environmental damage was caused by the act of war, civil war, revolution, unavoidable natural phenomenon whose results was impossible to effectively reduce, force majeure; activities necessary for national defense (article 5), and b) the act or omission of a third party caused the damage, damage occurred despite the suitable safety measures, or the operator acted or omitted to act during his normal business routine in order to comply with a mandatory order or command from a public authority and this lead to an actual or potential damage (article 11).

1.3. Are there peculiarities regarding environmental damages resulting from pollution? If so, are there differences in the legal treatment to air, soil or water pollution?

There are no differences in legal treatment of the air, soil or water pollution, only the measures which should apply could differ. However, as certain risks are regulated by specific legal acts, such as international agreements, the legal regime that applies to these rules may differ. For example the following activities and damages have been excluded from the PD because they are regulated by international treaties: damages that occurred due to sea transfer of dangerous and toxic substances; pollution from leak in the oil tank of a ship; petrol pollution; transport of dangerous good by road, by train and by boats inside the country, see transport of nuclear material and nuclear disaster.

1.4. Which are the governmental entities in charge of authorizing and supervising activities that produce environmental impacts or pollution?

We can distinguished several governmental entities performing different tasks related to the supervision of the activities which may cause environmental damage. For instance, some governmental authorities will be in charge for issuing operation licenses, also for controlling whether the necessary conditions have been fulfilled before the beginning of operations; other authorities, particularly those whose authorizations were established by the PD, are competent for the supervision and enforcement of sanctions if they find a violation of the environmental law and the terms of the licenses.

1.4.1. What is the scope of activity of these entities?

(see below, under 1.4.2)

1.4.2 How do they operate, and on which legal grounds?

I. Licensing authorities

The relevant legislation include: law 4014/2011 on Environmental licensing of works and activities; the Ministerial Decision 1958/12 which classifies, transposing the relevant EU law, all the works and activities that could have influence on the environment, and thus require environmental licensing; and the Ministerial Decision 167563/13 (Official Journal 64/B/13) which describes procedures and criteria of environmental licensing. The economic operations are divided into categories and subcategories, depending on the severity of environmental impact they may case. The main categories are A (may cause serious impact) and B (could potentially have local and not significant effect to the environment). The competent authority for licensing is determined on the basis of the category of activity. Thus the respective license may be granted through a Joint Ministerial Decision or a decision of the General Secretary of the County (Περιφέρεια). Documents necessary to be collected in order to obtain these decisions are obtained from various authorities.

II. Supervision Authorities

The Inspectorate of Environment, Building construction, energy and mining (ΣΕΠΔΕΜ) inspects, coordinates and supports all the services at central and regional level, aiming to enforce environmental, urban and mining policies, suggests appropriate environmental fines, supports the energy efficiency and conservation as well as the enforcement of environmental responsibility (Presidential Decree 100/2014). Each county has its own environmental department that follows up all relevant actions and proposes fines, if applicable.

The Ministry of Environment and Energy and the counties are competent for the implementation of the PD. More specifically:

a. **Ministry of Environment and Energy**, when the actual or potential damage effects natural recourses or services of nationwide significance and their protection or management are within the competence of the Ministry or when the actual or potential damage is affecting natural recourses that are exceeding the geographical limits of one Country or are affecting the territories of other neighboring EU Member State.
b. **Counties**, when the actual or potential damage affects natural recourses or services located within their administrative limits and are not covered under a).

In addition the Ministry of Environment and Energy established an independent coordinator for the prevention and rehabilitation of environmental damages (ΣΥΓΑΠΕΖ). This office is competent to supervise and control the enforcement of the PD and the coordination of actions of the competent environmental authorities both in national and local level, and other competent authorities of the strict or broad public sector, if they have any powers regarding the enforcing of environmental legislation. In order to support the work of ΣΥΓΑΠΕΖ an advisory committee is established for the prevention and rehabilitation of environmental damages titled Committee for the Rehabilitation of Environmental Damages (ΕΑΠΕΖ). Similar advisory committee should be established in every County (ΠΕΑΠΖ), with the authority to provide the following proposals: appropriate prevention measures; rehabilitation actions and measures; approval of the expenses for prevention and rehabilitation actions, and any issue on enforcement of Environmental liability, upon which the General Secretary of the Country requests consultation. The Ministry of Environment and Energy may assign or finance research and generally ensure the necessary scientific support for defining the actions of prevention and rehabilitation of environmental damages, to achieve the scope of the PD and to facilitate the work of ΣΥΓΑΠΕΖ. Similar competence is assigned to the General Secretaries of each County.

The Special Agency of Environmental Inspectors (ΕΥΕΠ) may conduct regular or special investigations to ensure that the operators' obligations are enforced either by the agency's initiative or by complaint submitted to the agency. ΕΥΕΠ may outsource part or the totality of investigations to other scientific agencies or other specialized private or public agencies, if they can contribute significantly to the accomplishment of this project.

In addition, there are other authorities authorized to supervise specific activities which may cause environmental damage as regulated by specific law such as, the Greek Management Hydrocarbon Company, the mining authorities, the port authorities, etc.

1.5. Is there a legal system of procedural mechanisms in case of environmental offenses?

According to the Environmental law, the Criminal Code, the Criminal Procedure Code, the Administrative Procedure Code and other relevant laws regulating offences and specific types of operations, administrative penalties may be imposed both to the liable persons and to the liable legal entities, while criminal charges may be imposed only on the liable persons.

1.5.1. Who is in charge of keeping the environmental protection?

A criminal procedure may be initiated ex-officio by the competent Public Prosecutor or after a report of the police, other authority, an individual, legal person, or association. Similarly, the administrative procedure may be initiated ex-officio or after a proposal of any person.

1.5.2. How does this system work?

Competent civil courts and administrative courts and authorities should ensure the proper application of the relevant legislation and enforce them to liable persons.

In addition, there is a procedural mechanism established by the PD (article 8) which provides that in case of immediate environmental damage or after its occurrence, the operator immediately takes any appropriate prevention measures and immediately informs the competent authority for all the details of the damage that has occurred. The Ministry of Environment and Energy may, upon receiving a proposal of ΣΥΓΑΠΕΖ, issue a decision imposing additional prevention measures to the operators. The competent authority may, at any given moment: demand respective information from the operator; request immediate fulfillment of necessary measures; provide the operator with written order to apply such measures, or undertake other measures. Furthermore, the competent authority may take necessary prevention measures if the operator cannot be identified or the operator is not liable to undertake all the necessary expenses or to authorize or demand third parties to execute the aforementioned prevention measures.

According to the PD, ΕΥΕΠ should perform regular environmental inspection of the operators and their activities (article 16).

2. Legal aspects on environmental insurance policies (answer is required)

2.1. Is there a specific legal framework to regulate environment insurance policies? If so, please describe such legislation, as well as the major features thereof.

As environmental insurance is still not compulsory insurance in Greece, the law does not regulate main provisions of environmental insurance policies. There is only a general provision of the Insurance law regarding Environmental Insurance which applies to voluntary private insurance policy if the parties failed to regulate the issue differently. In case of voluntary private insurance other general insurance provisions would also apply. They are often not imperative provisions and the parties may opt to regulate the specific issues otherwise.

Pursuant to the Greek Insurance Contract Law 2496/1997 **(ICL)** article 23 - insurance *of environmental damages*

1. *Unless agreed otherwise, insurance of environmental damage includes the costs of rehabilitation of the natural environment, including the costs of collecting waste and debris resulting from the occurrence of the insured risk.*

The insurance indemnity shall be paid covering the actual costs, if the event that caused the damage was indeed sudden and unexpected.

Article 25 - *Civil liability insurance* of the same ICL regulates:

Civil liability insurance includes the costs arising directly from the rejection or satisfaction of third-party claims from the policyholder, arising from acts or omissions, for which insurance coverage has been agreed. The insurance coverage is not provided if the policyholder or the insured acted fraudulently.

2.2. In the event of a negative response to the question 2.1, please inform if there is any administrative rule, or any other kind of legal regulation that applies to environmental insurance policies. In this case, please describe such regulation, as well as the major features thereof.

N/A.

2.3. Does the law provide for compulsory environmental insurance?

The ELD in Article 14 (Financial Security), provides that:
"1. Member States shall take measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under this Directive."

PD in article 14 -Financial Security introduces a higher environmental protection than required by the ELD providing that:

1. *Operators, which exercise occupational activities within the scope of this Decree in order to cover their liability, may make use of any kind of financial security (such as private insurance and other forms of financial guarantees). This may be achieved by means of appropriate economic and financial institutions, including financial mechanisms in the event of insolvency. In this case, the insurance or other forms of financial securities shall cover, to the maximum possible extent, the remediation of the probable environmental damage with reasonable cost and conditions.*
2. *From 1 May 2010, occupational activities listed in Annex III must be covered by a financial security system (private insurance or other types of financial securities) through the appropriate economic and financial institutions including financial mechanisms in the event of insolvency. Decisions of the Minister of Environment, Physical Planning and Public Works[9] and any other competent Minister shall define the exact timetable for each category to affiliate to these schemes, taking into account the "art. 14.2" report of the EC Commission of the said Directive.*

Thus, the Greek legislator has opted for the compulsory coverage of the environmental liability for some activities, by means of financial guarantees, such as private insurance, although it was not obliged by the ELD. It should be noted that the compulsory coverage already exists for managing of the hazardous waste in compliance with the Ministerial Decision 113588/2006. The activities listed in the Annex III of the PD include: Waste management by procedures requiring authorization or made available to landfills or incinerators; Waste management of the extractive industry; Disposal of materials in inland surface waters or groundwater, in accordance with Directives 76/464/EEC and 80/68/EEC and respective national legislation; Discharging or diverting pollutants into surface or groundwater, pumping and retention of water (L. 3199/2003 and PD 51/2007); production, use, storage, treatment, burial, release into the environment and transport within the perimeter of the business, of dangerous substances and preparations, plant protectors and biocidal products; transport of dangerous or polluting commodities;

[9] Now the Ministry of Environment and Energy

Emissions into the air polluting substances of the Joint MD No 15393/2332/2002 (GG B 1022/05.08.2002) etc.

However, the above-mentioned Joint Ministerial Decision, for the gradual inclusion of companies in the compulsory environmental insurance coverage and the type of insurance required, has not yet been issued. In the Ministry of Environment and Energy, a working group was set for the adoption of the Joint Ministerial Decision, with the participation of all interested parties.

The main points of the Joint Ministerial Decision project include:
1. An operator of activities listed in Annex III of PD 148/2009, is financially liable for implementing prevention measures and/or remedying environmental damage and shall use means of financial security (private insurance and/or other forms of financial guarantees) issued by the appropriate financial institutions.
2. The operator shall ensure that the chosen financial security or the combination of different types of financial securities cover, to the maximum possible extent, the remedy of possible environmental damage.
3. The covered risks shall include at least the costs of remedying environmental damage to soil and water.
4. Activities of Annex III shall be subject of compulsory insurance. For the classification of the three main categories of environmental damages (high risk, medium risk and low risk) and for the determination of the appropriate level of insurance, the following criteria shall be taken into account:
- classification according to the location of the activity such as: land use - protection zones, distance from the water resources, type and volume of waste, waste treatment methods, indicators for monitoring the waste values, public health impacts, risk of spreading and dispersing pollutants
- classification according to activity's operational risk: compliance with permit (authorization) after environmental impact assessment, prevention policy application, existence of an emergency plan, quality of the environmental protection management system, record of previous infringements of the law, factors which caused damages, possible types of damages, probable extent and intensity of damage, cost of the optimum method of remedial measures.

While the Greek PD imposes the mandatory insurance to these activities (still not applied in practice) the European Commission, although recognizing the need to establish financial security instruments and markets, chooses not yet to set up the establishment of mandatory financial security at the EU level. The European Commission's 12.10.2010 Report, pursuant to article 14(2) of the ELD, concluded that[10]: Due to *"the lack of practical experience in the application of the ELD, the Commission concludes that there is not sufficient justification at the present time for introducing a harmonized system of mandatory financial security. Developments in those Member States that have opted for mandatory financial security, including the gradual approach, and in the Member States that have not introduced obligatory financial security, will have to be further monitored before reliable conclusions can be drawn*"

[10] Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the environmental liability with regard to the prevention and remedying of environmental damage, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0581&from=en

(see p.10). On April 14, 2016, the European Commission issued a working paper[11], reexamining the solution of compulsory financial security, which confirmed the conclusions from the 2010 Report.

Currently there are only 2 specific cases of compulsory environment insurance in Greece:
(1) Liability from oil pollution damage (L. 314/1976, as amended with PD 197/1995 and PD 286/2002 implementing the International Convention on Civil Liability for Oil Pollution Damage of 1969, as amended; and
(2) Liability for managing hazardous waste (Joint Ministerial Decision 113588/725/2006, OJ B' 383/2006, on measures and conditions for managing hazardous waste).

2.3.1. If so, which would be the relevant risks, covered items and limits?
Not regulated yet.

2.4. In case of a legal requirement or regulation, when should an environmental insurance policy be obtained?

2.4.1. In which step of a venture should such policy be submitted under the law?
The moment when the insurance should start in case of environmental damage is not regulated by law. It should, however, be assumed that the coverage should start from the beginning of operations which may cause environmental damage in order to cover the liability of the operator arising from the respective activity. This is supported by the general rules on insurance cover to apply to future risks.

3. Operational methods for pollution insurance (answer is required)

3.1. Which are the pollution insurance's modalities that are offered in the market? Performance bonds or civil liability insurance?

The Greek legislation provides for compulsory insurance for certain environmental risks and for specific coverage. Apart from that it is possible to obtain (or request) either insurance coverage or performance bonds or even combination of those to cover some or all environmental risks. There is, however, difficulty, in case of big accidents particularly if unlimited coverage would be required. The solution may be in creating guarantees' funds as it has been the case for some types of risks.

3.1.1. What kinds of risks should be covered thereunder?

An insurance policy issued to cover liability pursuant to the PD, should cover costs of decontamination of the environment (clean-up and rehabilitation), costs of taking measures to prevent environmental damage (i.e. limiting polluting conditions), as well as costs of evaluating environmental damage risks and other law implementing administrative costs. Additionally, apart from satisfying authority's reasonable claims, costs of rejecting unsubstantiated claims and insured person's trial costs should also be covered.

[11] Commission staff working document - REFIT Evaluation of the Environmental Liability Directive Accompanying the document Report from the Commission to the European Parliament and to the Council pursuant to Article 18(2) of Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0121&from=EN

A policy issued to cover liability pursuant to the Environmental Law should cover compensation for damage caused by pollution or other deterioration of the environment, while the one issued in compliance with the Civil Code would include any damage material or not, as well as the future damage and profit loss. The covered risk should include both damage arising from both a sudden and unforeseeable event and a gradual pollution.

The above provide the variety of types and risks that a policyholder may choose to cover. To mention that it may cover liability insurance risks (e.g. damage caused to property of third persons and their bodily injury or death), property insurance (e.g. covering the property of the operator itself, but also damage due to business closure) or costs (e.g. costs for collecting data, monitoring, supervising and other similar costs).

3.2. Does the law or administrative rule define upper limits for losses or coverage?

The Greek legislation does not provide the upper limit to the liability, thus the parties regulate the upper limit in their insurance agreement in case such liability is not regulated as mandatory. However, the liability of the operator will remain unlimited. There is no upper limit even in case of compulsory insurance of damage caused by hazardous waste.

Exception constitutes the civil liability from oil pollution damage. Following the latest amendments of PD 286/2002, the level of liability limitation for oil spill is 4,510,000 Calculation Units for a ship not exceeding 5,000 Total Costs. When the vessel has a capacity that exceeds this level, for every extra capacity unit of the vessel another 631 Calculation Units shall be added to the total. The established liability may be limited, but the vessel owner cannot use this limitation, if the incident is caused by its personal act or omission. [12]

In regard to the mandatory environmental liability pursuant to the PD, as mentioned the Joint Ministerial Decision has not been issued yet, thus it is not clear whether it will provide for the upper limit or not.

3.2.1. Which are the criteria that should apply to limits' definition?

The level of environmental liability depends on the extent of damage, measures taken to remedy the damage occurred and the company's level of contributing to the materialization of the damage. The assessments of these potential future indicators are used in calculation of the limits.

The environmental insurance policy normally includes an aggregate limit of liability, representing the maximum extent paid by the insurer for the term of the insurance as well as limited liability for each claim/loss and specifically internal limits to each time of risk, legal defense expenses and a budget for measures taken to limit damages. However, it may have only the total aggregated limit.

[12] Furthermore it is provided that in case of nuclear damage, depending on the kind of activity, minor liability can be defined by the State (not under 700 million euros). However, it cannot be under the minimum amount set by the Agreement (art. H L.3787/2009, Chrysoula Pechlivani, Diplomatic postgraduate paper, Thessaloniki 2011, pg 15)

The upper limit is normally determined by the policyholder based on personal evaluation of the risk and on the type of business, the operating mode, the geographic position. The insurance risk depends of the severity and frequency of possible loss. Risk of environmental liability could be defined as of high severity and low frequency. Therefore the policyholder should ensure that the insurance covers an adequate level of compensation, taking into consideration that it shall not jeopardize a great loss (excessive compensation) in return for a negligible profits (cheaper premium). In case the insured sum is not sufficient to cover damages and cost of clean-up, the liable person pays the additional amount from its own resources.

In regard to the mandatory insurance which will be regulated in compliance with the PD, the Ministry of Environment and Energy set up a working group was which should, among other, propose the extent of insurance coverage for this insurance. According to an initial draft we have reviewed, it divides the environmental damages into three categories (high medium and low risk) and also takes into account the following criteria: location (land use - protected zones, distance from the aquatic recipient, type and volume of waste, waste treatment methods, indicators for monitoring the waste rate, public health impacts, risk of spread / diffusion and disperse of pollutants); and activity's operational risk (compliance with conditions for environmental assessment approval decisions (AEPO), prevention policy application, existence of an emergency plan, quality / environmental protection system, precedent of infringements, damage factors, possible types of damages, damages potential extent and level of intensity, cost of the optimum process of remedy measures).

3.3. Is there any difference in the legal treatment to state-owned and private ventures?

No. It would be the breach the general principle of equal law treatment between state-owned and private legal entities according the EU law principles but also in compliance with the Greek Constitution.

3.4. Is there any difference in the legal treatment to fix and mobile facilities?

At national level there is no difference in the legal treatment of fix and mobile facilities. However, risk of environmental damage, triggering liability to remedy, could possibly be evaluated based on this point.

Exception constitutes the abovementioned PD 197/1995 implementing the International Convention on Civil Liability for Oil Pollution Damage. Pursuant to article 1 therein a ship is defined any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo. Thus, pursuant to the relevant law provisions, liability of oil cargo requires mobile facility, either ship or any type of craft as operating as cargo ship.

3.5. Is there any difference in the legal treatment to underground works, mines or underground quarries?

There is no general differentiation in legal treatment of the types of operations including the underground works, mines or underground quarries.

Differences may result in regard whether for some of these activities compulsory insurance would be required. According to the PD some of them may be covered by the mandatory insurance (e.g. related to the waste management) but this would not impose different regime from the other polluters which are not underground. An other approach is that classification into a type of financial security shall not be directly relevant to the Category of environmental permit (A1,A2,B) but to the kind and type of facilities and if there is a possibility of major accident. Also the compulsory minimum limit of insurance coverage, which will determined by a Ministerial Decision, pursuant to Article 14.4 of the PD, will be calculated on the basis of technical criteria and assessment of risks, not necessarily related to the underground character of operations.

3.6. Do insurers use to insert pre-contractual provisions in the policy (pre-contractual disclosure)?

Pre-contractual provisions (regarding the pre-contractual disclosure) are often attached to the policy for evidence purposes only. There is no compulsory inserting of these provisions in the policy but it is not prohibited as well.

3.6.1. Which are the most usual ones?

The pre-contractual disclosure obligation is regulated by article 3 of the Greek Insurance Code, which provides that

1) The policyholder shall disclose to the insurer before the conclusion of the contract any and all information or circumstances of which he is aware, and which are objectively material for the assessment of the risk. He shall also answer every relevant question posed by the insurer. It shall be presumed that the information and circumstances in relation to which the insurer has set clear written questions constitute the sole grounds on which the insurer based its assessment and acceptance of such risk.

If the insurer concludes the contract upon written questions, the insurer cannot later rely on the fact that: a) some questions remained unanswered; b) circumstances which were not the subject matter of a question have not been disclosed; or c) an obviously incomplete answer was given to a general question, unless the applicant has acted with intention to deceive the insurer.

2) The insurer cannot rely upon inadequate or defective answers to the questionnaire unless they were supplied deliberately by the policyholder.

The above legal provisions are imperative, thus if a parties agree otherwise such provisions of their agreement would be null and void.

4. Coverage under pollution insurance (answer is required)

4.1. Which are the major covered risks relating to civil liability arising from pollution?

The major covered risks in the third party liability environmental insurances are: bodily injury, property damage, clean up expenses including the cost of rehabilitation / fixing the property that was damaged during the cleaning, costs of remediation of water or land, legal defense expenses.

The major covered risks in the property environmental insurance, which may be attached to the liability insurance policy if the insured is performing operations which may cause environmental damage, or be one of the risks covered by in a property insurance policy of a person not performing such operations but having interest to obtain the respective insurance coverage. It would include payment for the costs for repairing of the property or of its value, costs or cleaning, removing waste, but also interruption of operations, operations loss exposure, loss of rents.

In addition an insurance policy may cover transportation of pollutants as cargo and other specific operations and related risks.

4.2. Which are the major covered guarantees for events arising from pollution?

This issue has not been regulated in the Greek legislation. It is not habitual in Greece to request guarantees for events arising from pollution.

4.3. Which are the major covered operational risks arising from pollution?

The major covered operational risks are fully or partly interruption of operations, temporary or permanent, and the respective profit loss and covering of damages to the operations. A recent example of a profit loss was temporary interruption of operation of a) fishermen and b) numerous restaurants and cafés located at the coast and beaches polluted after the September 2017 oil spill in Athens' Argo-Saronic gulf.

4.4. Does the insurance cover fines?

It does not cover criminal fines. Such cover would not be in compliance with their purpose. It also does not cover fines for the intentional breach of environmental laws and regulations. Such penalties are imposed for the benefit of the public, the violation of which has a social impact, on the one hand, and, on the other hand, its correction serves the demands of the society itself. Insuring such liability would encourage the violations of environmental legislation, due to the positive knowledge of insurance and full coverage against the materialization of such risk.

There is a view that the same should apply to coverage of negligent breach of law by the operator leading to administrative fine. If insurance is provided only in case of negligence, knowledge of having such risk insured would cause a breach of duty of care, contrary to the way a prudent uninsured person would act. This principle could only be a matter of civil liability, because of the nature of administrative and criminal liability. Therefore, according this opinion, an insurance contract for penalty coverage is against the Law. Namely, it would be illegal and void and should not be called civil liability insurance[13].

[13] *G. Koutinas*, Institutional framework and professional liability insurance at https://www.nextdeal.gr

However, insurance companies offer coverage for penalties as part of the D&O insurance policy – Directors and Officers policies, which provide insurance coverage to Managers and Directors of legal entities, from financial losses caused by mistakes or omissions while exercising their administrative/managing duties.

4.5. Is there coverage for individual moral damages, being understood as such any physical or psychological suffering experienced by the victim and/or injury against his/her honor or personality?

Persons who suffered damage may, in compliance with the Civil Code, claim all types of damages, including the moral damage, from the person that caused such damage by breaching of the law and who is liable for the breach (subjective liability). Thus an insurance contract may cover this risk in case of environmental damages as well. The habitual risks covered in Greece are those of bodily injury and property damage, caused by pollution conditions, as well as business closure costs due to pollution conditions.[14]

As this is not mandatory insurance third parties would not have direct claim of damages against the insurer, but only from the operator, and they may claim moral damage as well.

4.6. Is there coverage for collective moral damages, being understood as such any moral injury undergone by a group of certain persons who are interconnected by a fundamental legal relationship or by a same event experienced by all of them, or any injury to non-determinable trans-individual rights?

Not to our knowledge, although it would be possible to agree the coverage for collective moral damage. However, it should be noted that according to Greek national legislation, class actions are not permitted, only exceptionally in the consumer law. Still the unlimited number of individuals may submit a joint lawsuit requesting compensation for damage caused by the same risk. In case of success each of them is awarded an individually specific compensation amount. Subsequently agreeing of coverage for collective moral damage could be justified.

4.7. Is there coverage for punitive damages, being understood as such any penalty levied on the agent of the illicit conduct, in addition to the compensation of damages themselves?

No. Punitive damages are not provided in the Greek legal system, although they are discussed in the Greek legal theory. The lack of national provisions regulating punitive damages, thus guaranteeing their enforceability, creates uncertainty regarding the need for agreeing such damages.

The full member session of the Greek Supreme Court (Olomeleia Areiou Pagou) in the 17/1999 decision, ruled that the penal and punishment character of punitive damages is not violating the Greek public order, unless this compensation exceeds the amount of the average compensation, always dealt

[14] Antigoni Pinakidou, Environmental damage coverage, Diplomatic Postgraduate Paper, Aristotle University of Thessaloniki, 2014

on a case by case basis. Thus, it does not violate the national public order if an award or decision of a national court or an arbitral tribunal provides for such damage. In addition, there are provisions in national law, when compensation may be more than the actual damage occurred.

5. Beneficiaries (answer is required)

5.1. Who is entitled to be beneficiary of losses recoverable under pollution insurance? Any individuals, legal entities, state-owned or private institutions, collectivities?

According to the PD the competent public authorities should receive prevention and remediation costs or refunding, in case such authority has undertaken the works itself or by engaging a third person. The prevention / rehabilitation costs will be used only for this purpose, not for the compensation for damage caused to third persons.

Individuals and legal entities (regardless to whether they are private or state-owned) may request compensation for damage caused by pollution or degradation of environment, from the person who caused such damage, on the basis of objective damage regulated by the Environmental Law.

Any damaged person (individual or legal entity) may request compensation for environmental damage, from the person who caused such damage, on the basis of the subjective liability as regulated by the Civil Code. However, collectives as such, would not be allowed to request such damage on behalf of their members, except in certain cases when class action is permitted.

In all the above cases, damage may be requested only from the liable person, who may further recover such claim from his insurer. In case of mandatory insurance, damaged party may claim damages directly from the insurer. Even without having mandatory insurance, the insurance contract may design certain persons as beneficiaries of such policy. This could be the case in an insurance policy issued to cover damage from the PD in which case the state authority could be named as a beneficiary.

6. Market status (answer is required)

6.1. What is the percentage of participation of environmental insurance at the insurance market in its whole?

Data not available.

6.1.1 As regards the figures thereof, what is the yearly participation of premiums collected under environmental insurance?

N/A

6.2. Which are the sectors of economic activity that use to obtain environmental insurance?

Data not available

6.3. During the last 5 (five) years, what is the sum of losses paid by virtue of environmental damages?

Data not available.

6.3.1. What percentage of the aforesaid losses was covered under insurance?

Data not available.

7. Academic development (answer is required)

7.1 Are there research institutes focused on the study of environmental insurance? Please identify them.

No, to the best of our knowledge.

7.2 Are there academic and scientific works produced in the fields of law, economy, environment or other similar area, that specialize in environmental insurance? Please indicate some reference legal manuscripts and books, and the main authors thereof.

There is a rich publication material in the financial sector, dealing with the parameters and factors that may affect the general financial security sector. However, this material primarily focuses on the financial terms related to the structure of the insurance market itself. On the other hand, the subject of environmental insurance has not been addressed by numerous academics or legal researchers. Below is an indicative list provided for your convenience:

- ***Antigone Pinakidou***, "Insurance of environmental damages", dissertation submitted to Aristotle University of Thessaloniki, 2014.
- ***Zoi Theodorikakou***, Insurance liability legislation, as interpreted in common law. Liber amicorum in honor of the ex President of the Conseil d' Etat, Konstantinos Menoudakos, 2016.
- ***Theodoros Lytras***, Environmental pollution and civil liability, Digesta, 3rd vol, 2003, available online at www.digestaonline.gr
- ***Ioanna Koufaki***, The liability of the businesses that operate some activities due to environmental damage, according to EU and Greek national legislation, Nomikon Vima 2014, vol. 62, p. 2240.
- ***Ioannis Rokas***, Insurance Law Essays[3], 2014, p. 138 following, where it is suggested that the insurance of environmental liability could be regulated under article 23 of the Greek Insurance Law (L. 2496/1997)
- ***Ioannis Rokas***, Private Insurance: Insurance Contract, Insurance Corporation and Distributors Law, Sakkoulas Publications, 2005[10].
- ***Kleoniki Pouikli***, "Environmental liability pursuant to D 2004/35/EU – In the edge between innovation and inefficiency", Dikaiosyni (Justice) 2015, vol. 1, p. 405 and "The principle of the one causing the damage is liable to restore the damage and the Environmental liability" Dikaiosyni (Justice) 2016, p. 427.
- ***Kyriaki Nousia***, Environmental liability from sea petrol operations, Perivallon and Dikaio (Environmental Law), 2011, p. 74.
- ***Maria Mylona***, Environmental insurance liability in the Greek legal system, Perivallon and Dikaio (Environmental Law), 2013, p.469.
- ***Miltiadis Miltiadou***, Insurance e in Environmental liability, published by IAC (Insurance Association in Cyprus) 2008.
- ***Panagiotis Matzoufas***, Danger in Environmental Law, Efimerida Dimosiou Dikaiou (Public Law Journal), 2013, p. 544.
- ***Renia Chatzinikolaou - Aggelidou***, The relation between the insurance of environmental liability and the principle that the one causing the damage is liable to restore the damage" Liber amicorum in honor of Ioannis Rokas, p. 1007.
- ***Stavroula Pouli***, The application of the D for the environmental liability in Greece (in theory and in reality, Dikaiosyni (Justice) 2015, p. 32.

- ***Chrysoula Pechlivani***, “Environmental liability insurance under D 2004/35/EU”, dissertation submitted to Aristotle University of Thessaloniki, 2014.

The office of the Cooperation for Dealing with Environmental Damages (SIGAPEZ) has published several very useful papers on the definition of the insurance of environmental liability and the liability itself, available on the website of the Ministry of Environmental and Energy, aiming to inform the public and the public sector agencies to ensure a better implementation of the PD 148/2009.

From the above mentioned papers, closer to the issue this questionnaire is dealing with are: ***Konstantinos Tsolakidis***, “Financial security” and “environmental liability and Latest developments to the insurance market to provide the environmental liability products”; ***George D. Konstantinopoulos***, Issue form the application of the compulsory financial and economic insurance in Greece; ***Margarita Karavasili***, Application of the Directive for the Compulsory insurance on environmental liability, a tool to manage the environmental danger. ***SIGAPEZ’s review*** (October 2013) for the acquired experience on application of the environmental liability in Greece, pursuant to article 28 D 2004/35/EU.