



Bilateral Meeting with Armenia

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# **Environmental liability provisions in Armenia: damage prevention and assessment**

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## Structure of Presentation

1. Introduction to EU Environmental Liability Directive (ELD), with focus on its approach to prevention & assessment of environmental damage.
2. Findings on how Armenia's legislation and methodologies deal with (a) prevention of damage (b) assessment of damage, and recommendations to ensure greater alignment with ELD.
3. Other key recommendations for aligning Armenia's environmental liability legislation with the ELD and the polluter-pays principle.

## (1) ELD: an overview

- Administrative liability regime, based on the **polluter-pays principle**.
- Centred upon obligation of **state** to require ‘operators’ who have caused environmental damage or created an imminent threat of it to prevent it or, if no longer possible, to remedy it at their own cost.
- If these costs not allocated to polluters, they will be incentivised to transfer them to environment and/or society (i.e., externalise them).
- Polluter-pays principle, by imposing liability, seeks to correct this market failure by requiring that operators **‘internalise’** these costs.
- **ELD not concerned with payment of compensation to the state or third parties**; its focus is the prevention and remediation of damage.

## (1) ELD: the concept of ‘environmental damage’

According to Article 2(1), ‘environmental damage’ refers to damage to:

- **protected species and natural habitats:** damage that has *significant* adverse effects on reaching or maintaining *favourable conservation status* of protected species or habitats.
- **water:** damage that *significantly* adversely affects *ecological, chemical or quantitative status or the ecological potential* (i.e., status of artificial body of water) of waters concerned, or *environmental status* of marine waters concerned.
- **land:** land contamination that creates a *significant* risk of *human health* being adversely affected due to introduction, in, on or under land, of substances, preparations (i.e, mixtures or solutions composed of two or more substances) or organisms/microorganisms.

## (1) ELD: prevention of environmental damage

- Where damage has not yet occurred but there is an ‘imminent threat’ of it occurring, operator **must take the necessary preventive measures ‘without delay’** (article 5(1)).
- The competent authority (i.e., domestic regulator responsible for enforcing requirements of ELD) is under a **duty** to require that operator takes preventive measures and can issue instructions to it (article 5(4)).
- If operator fails to perform measures, competent authority **may** take them itself and can recover costs from operator (article 5(4)).
- Certain persons affected/likely to be affected by damage entitled to request competent authority take action to prevent it (article 12(1)).

## (1) ELD: assessment of environmental damage

Presence of environmental damage or its imminent threat determined by two thresholds:

- (i) reference concepts must be met (text in *green* on slide 4; and
- (ii) significance threshold must be breached (text in *blue* on slide 4).

The ELD only applies if the (actual or threatened) adverse effects to natural resources are assessed as significant in terms of the relevant reference concept(s) (article 2(1)).

**If either of these thresholds not met, or incident not captured by thresholds, then ELD will not apply; domestic law (*if it applies*) governs scenario.**

## (2a) Armenia: prevention of environmental damage

- Need for resource users to **implement preventive measures** is the most common approach to prevention in Armenia.
- Several laws cater for the need for preventive measures.
  - e.g. under *Water Code*, owner or user of land adjacent to water resources must take measures to **prevent threats to ecological systems** (article 98); regulator has the power to ensure measures are performed and can recover costs of doing so from a wide range of persons (article 117).
- Whilst Armenian laws refer to prevention, often no consistency across laws, obligations sometimes vague, key terms undefined and duties not connected to idea of environmental damage (as per ELD).

## (2a) Armenia: recommendations (prevention)

**Recommendation 1:** embed polluter-pays principle explicitly and prominently in environmental liability regime.

**Recommendation 2:** clear, consistent and legally robust definition of 'environmental damage' (or equivalent, e.g., 'environmental harm') needed.

**Recommendation 3:** rebuttable presumption of a causal link for diffuse pollution.

**Recommendation 4:** need for explicit legal duty for resource users to take measures to prevent damage at their own expense.

**Recommendation 5:** NGOs and other interested parties to have a right to request regulator to take action to prevent environmental damage.



## (2b) Armenia: assessment of environmental damage

- Damage assessment in Armenia may be characterised as an **assessment of the level of damages (or compensation) payable** to the state by resource users.
- *Tax Code* plays central role in assessing level of damage deemed to have been caused by violating environmental laws; specifies compensation payable for exceeding base limits.
- An array of ‘indirect’ liability laws set out **formulae and/or tariffs** for calculating level of compensation to be paid for damage deemed to have been caused to natural resources, i.e. flora and fauna, water, the atmosphere and land, by economic activities.
- **Economic calculations utilised as a replacement (proxy) for scientific determination of the level of damage caused to natural resources based on measurable data.**

## (2b) Armenia: recommendations (damage assessment)

**Recommendation 6:** a more scientific approach to assessment of environmental damage needed, *based on measurable data*, with guidance document to provide requisite technical detail on assessments and elaboration of thresholds for liability.

**Recommendation 7:** equivalency analysis ought to be used to determine type and amount of: (i) natural resources and services lost over time as a result of the damage; and (ii) complementary and compensatory remediation needed to offset that loss.

### **(3) Further recommendations**

**Recommendation 8:** enact a new, standalone law that directly transposes requirements of ELD (as per Georgia, Germany & UK).

**Recommendation 9:** clearer, more explicit connection between direct & indirect liability laws needed.

**Recommendation 10:** mandatory financial security regime.

**Thank you for your attention**

**Any questions?**

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