



Applying the Polluter-Pays Principle to environmental compliance assurance in the Eastern Partnership: a regional meeting

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Comparative Analysis of Legal Environmental Liability Provisions in Armenia, Moldova and Georgia

Dr Colin Mackie

Associate Professor in Business Law, School of Law, University of Leeds (UK)

Structure of Presentation

1. Summary of policy underpinning polluter-pays principle.
2. Overview of environmental liability provisions in the laws of Moldova, Armenia and Georgia.
3. Comparison of approaches, focusing on (i) implementation of polluter-pays principle (ii) payment of 'compensation' to state and (iii) use of 'Funds' for environmental protection measures.

1. The polluter-pays principle (PPP)

PPP firmly embedded in environmental liability laws of many nations.

EU Environmental Liability Directive (hereafter ELD), is based on it.

ELD seeks to make those who cause environmental damage pay to *prevent* it or, if this is no longer possible, to *remedy* it.

ELD does not require polluters to pay compensation to the state.

2a. Environmental liability legislation in Moldova

Two types of administrative law-based environmental liabilities:

1. need for **remediation** of damage caused to environment, limiting its impact & preventing further damage, and
2. liability to pay **monetary compensation** to State [*Note: often this is to be paid into the state-managed, 'National Ecological Fund'*].

Methodologies, which use **equations/formulae**, establish sums to be paid by way of compensation to state as opposed to technical/scientific assessment.

2b. Environmental liability legislation in Armenia

Two broad categories of environmental liability laws:

1. Direct laws: regulate use of a specific type of natural resource, creating **offences** and, in turn, liabilities where laws are breached (e.g., *Law of Flora*).
2. Indirect laws: provide detail on consequences of breaching direct laws, such as setting out **formulae and tariffs** to establish level of 'damage' to the environment (i.e. compensation payable to state) (e.g., *Tax Code*).

Water Code and *Subsoil Code* provide for creation of '**Funds**', financed through payments from resource users, for protection of these natural resources.

2c. Environmental liability legislation in Georgia

The *Law on Environmental Liability* entered into force on 1 July 2022.

Intended to **transpose ELD** and is based on PPP.

Deals with prevention, mitigation & measures to be taken if environmental damage or significant environmental damage occurs (e.g., remediation).

Polluters must also **'compensate'** (i.e., pay compensation to the state) for causing damage in accordance with a procedure established by a subordinate law.

Law establishes **'Environmental Programme'** on environmental measures (i.e., a 'Fund').

3a. Comparison: alignment with PPP

Georgia's *Law on Environmental Liability* implements PPP **explicitly**.

More **implicit** conception of PPP in Moldovan and Armenian law.

In Moldova and Armenia, under *certain* laws, polluters may be liable for damage caused to environment and be required to prevent it, carry out remediation & pay compensation to state.

But lack of **clear** and **consistent** requirements to prevent & remediate environmental damage, as provided for by ELD/Georgian law.

3b. Comparison: reliance on methodologies & formulae

The need for polluters to provide **compensation** to state for damage caused to environment prominent in all three jurisdictions, *though not under ELD itself*.

Difference with Georgia's approach is need to compensate **builds upon** ELD's requirements to prevent & remediate environmental damage (i.e., it *adds* to ELD).

In Moldova & Armenia, **methodologies/formulas** used to calculate compensation.

Used as a **proxy** for scientific determination of level of damage to natural resources caused by polluter; unlikely to reflect *actual* damage caused to environment.

3c. Comparison: reliance on ‘Funds’

Funds, financed by state and polluter contributions, play a central role in systems of environmental liability in all three jurisdictions, *though not ELD itself*.

They have potential to **run counter to true aim of PPP** and so purpose of ELD.

Fund will breach PPP where it **‘subsidises’** prevention or remediation costs or meets claims for bodily injury or property damage caused by polluters.

But funds can be designed/structured to ensure compatibility with PPP.

4. Conclusion

Georgia implemented ELD into its domestic law, giving strength to PPP and its policy rationales.

Implicit conception of PPP in liability laws of Moldova and Armenia but lack of consistency in need for companies to prevent & remediate environmental damage.

Primary focus is ensuring polluters provide compensation to state for environmental damage, with reliance on use of formulae and tariffs to determine 'damages' payable.

Georgia's experience shows us that (i) strict requirements of ELD and (ii) need for polluters to pay compensation (damages) to state, *can* exist in harmony.

Thank you for your attention

Any questions?

c.mackie@leeds.ac.uk