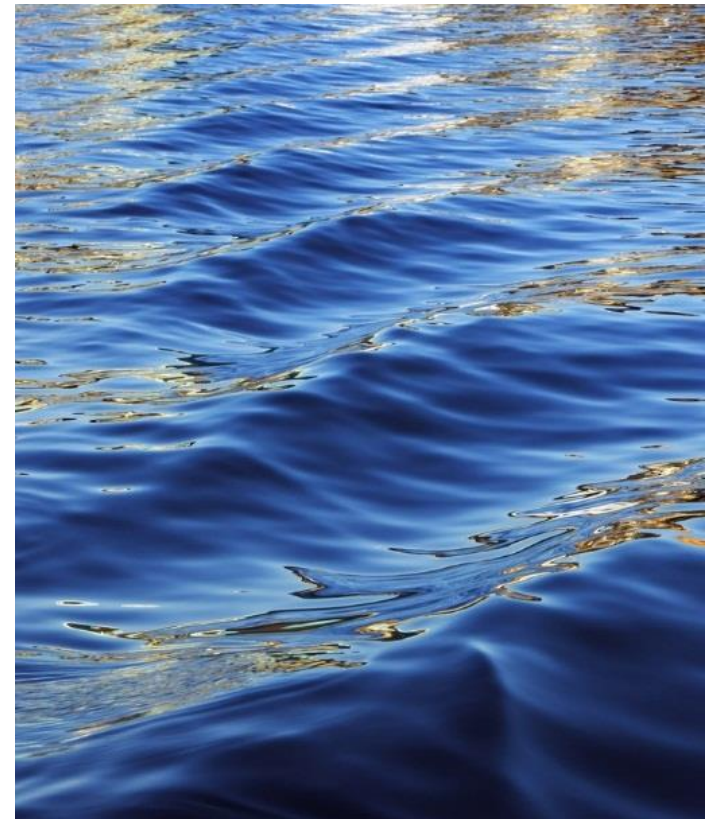




The Environmental Liability Legislation, Moldova

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An Overview (I)

- The draft on Environmental liability is based on the polluter-pays principle on the prevention and remedying of certain types of environmental damage (*protected species and natural habitats, soil and water*).
- The liability legislation is strictly connected with the legislation on field of permits and development risk defences, joint and several or proportional liability. The discussion with MoF on financial security is started.

An Overview , current situation (II)

- two main types of administrative law-based environmental liabilities, which may arise concurrently
- **The first** concerns the need for remediation of damage caused to the environment, limiting its impacts and preventing further damage;
- **The second** type, and one most prominent in Moldovan law, is liability to pay monetary compensation to the State .

An Overview the draft (III)

- Focus on 'restoration in kind' (restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services – see Annex II).
- Breaking new ground on certain difficult technical issues as to how to ensure restoration in kind of damaged natural resources (e.g. 'interim losses').
- Financial security providers (such as insurers), encouraged to develop over time appropriate and affordable products covering environmental liability risks.

Draft Law on EL – Competent authority (EA, EPI)

- **Duties:**

- To establish who caused damage.
- To assess the significance of the damage.
- To determine Annex II remedial measures.

- **Powers:**

- Various powers towards the operator.

- **Procedural safeguards:**

- CA decision to be reasoned, notified forthwith to the operator, who is to be informed of the legal remedies available and their time-limits.

Draft Law on EL - Scope

- Basic features:
 - Two liability regimes:
 - (a) environmental damage/imminent threat when caused by Annex III activities;
 - (b) damage to protected species and natural habitats/imminent threat when caused by non-Annex activities if operator at fault or negligent.
 - Causal link.
- Does not give private parties a right of monetary compensation.

Draft Law on EL – Exceptions

- ELD does not cover damage/imminent threat when:
 - Caused by:
 - (a) an act of armed conflict, hostilities, civil war or insurrection;
 - (b) a natural phenomenon of exceptional, inevitable and irresistible character.
 - Covered by Annexes IV and V International Conventions.
 - Caused by certain activities:
 - Nuclear activities covered by Euratom.
 - National defence/international security/protection from natural disasters.
 - Caused by diffuse pollution (i.e. when no causal link).

Draft Law on EL – Prevention

- **Prevention**

- Imminent threat of damage => operator to take preventive actions.
- Operator to inform the competent authority (CA) if threat persists.
- Powers of CA towards the operator: “getting the work done”.
- Discretionary subsidiary action by the CA.

Draft Law on EL – Remediation

- Remediation
 - Operator to inform the competent authority (CA) if threat persists.
 - Operator to take emergency containment/mitigation measures.
 - Operator to take remedial measures.
 - Powers of CA towards the operator : “getting the work done”.
 - Discretionary subsidiary action by the CA .
- Operator to develop and propose remediation plans to CA for approval.

Draft Law on EL – Costs (Art. 8)

- Operator to bear the costs of preventive and remediation actions under the draft Law on EL, except when:
 - third party causation (despite the fact that appropriate safety measures were in place);
 - compliance with a compulsory order or instruction emanating from a public authority; or
- RM decides to introduce:
 - Permit defence, and
 - Development risk/state of the art defence .

Draft Law on EL – Cost & time-limits

- Cost allocation in cases of multiple party causation
 - Proportional vs joint-and-several liability.
- Limitation period for recovery of costs
 - To be initiated within five years from the date on which those measures have been completed or the liable operator, or third party, has been identified, whichever is the later.
- Overall time-limit
 - The draft Law does not apply to damage, if more than 30 years have passed since the emission, event or incident, resulting in the damage, occurred.

Draft Law on EL – Request for action & review

- Interested natural and legal persons entitled to request CA to take action.
- If prima facie case supported by relevant data, CA to investigate and made a decision as to action is warranted or not, taking into account views of the operator concerned.
- Procedure optional in cases of imminent threat of damage.
- Is ensured the access to a court/other independent and impartial public body to review CA's behaviour.
- Existing national procedure rules (administrative, penal, civile) are in force and applicable.

Draft Law on EL– Financial security & transboundary damage

- Financial security:
 - MoE and MoF are in the discussion how to develop the financial security instruments and markets.
- Cooperation with EU Members states:
 - Where damage affects or likely to affect several affected states, duty on those to cooperate to ensure preventive action and/or remedial action is taken.
 - Duty to provide sufficient information to the other affected states.
 - Affected state may recommend preventive/ remedial measures & seek to recover costs incurred.

Draft Law on EL –temporal application

- Transboundary rules:
 - The draft law has no retrospective effect: it does not apply to:
 - damage caused by an emission, event or incident that took place before entering the law in force,
 - damage caused by an emission, event or incident which takes place after entering the Law in force when it derives from a specific activity that took place and finished before the said date.
 - The regulation on calculation the cost for environmental damages (14 rules) are in process of elaboration, will be approved by the Governmental Decision.

Draft Law on EL – Annexes I and II (I)

- Annexes

- Annex I

- How to assess significance of damage that has adverse effects on reaching or maintaining the favourable conservation status of habitats or species.

- Annex II

- Common framework to be followed in order to choose the most appropriate measures to ensure the remedying of environmental damage.
 - Remediation of damage to water or protected species or natural habitats: achieved through the restoration of the environment to its baseline condition by way of primary, complementary and compensatory remediation.

Draft Law on EL – Annex II (II)

- Annex II
- Remediation of damage to water or protected species or natural habitats
 - “Primary” remediation: any remedial measure which returns the damaged natural resources and/or impaired services to, or towards, baseline condition.
 - “Complementary” remediation: any remedial measure taken in relation to natural resources and/or services to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources and/or services.
 - “Compensatory” remediation: any action taken to compensate for interim losses of natural resources and/or services that occur from the date of damage occurring until primary remediation has achieved its full effect.

Draft Law on EL – Annex II (III)

- Remediation of land damage
 - Measures to be taken to ensure that the relevant contaminants are removed, controlled, contained or diminished so that the contaminated land, taking account of its current use or approved future use at the time of the damage, no longer poses any significant risk of adversely affecting human health.

Draft Law on EL– Annex III

- Annex III: activities subject to strict liability, such as:
 - Installations under the law on Industrial emissions .
 - Waste management.
 - Waste shipments.
 - Releases of polluting substances.
 - Manufacture, use, storage, processing, filling, release into the environment and onsite transport of:
 - dangerous substances & preparations;
 - Plant protection products & biocides.
 - Contained use and deliberate release of GMOs.