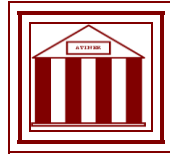


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**Green(Ing) Economy:
The Question of Environmental Liability**

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**Green(Ing) Economy:
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Abstract

When developing policies and tools for green(ing) economy the constituent parameter should be environmental liability with regard to remedying (the restoration of the damaged natural resources towards baseline condition of environmental damage), when environmental damage occurs.

This paper is highlighting this block within the development of activity/process, as well as the issue of historical pollution (which is very often technological heritage from obsolete technologies). The research is more focused on the environmental liability related to the management of waste from extractive industries.

The European Commission adopted a [Report](#) from October 2010 (as well as ongoing analysis) on the effectiveness of the EU Environmental Liability Directive in terms of remediation of environmental damage and on the availability of financial security to cover environmental liability.

The approach is adapted to EU candidate/potential candidate countries/countries in transition, highlighting the importance of clarifying the environmental liability for historical pollution in countries/territories “younger” than the occurred pollution.

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Introduction

A green economy implies the decoupling of resource use and *environmental impacts from economic growth* (UNEP, 2009; COM, 2011; UN-Rio+20, 2012).

Historically (past) contaminated sites have been dealt with mostly through market driven re-development or specific public driven projects. *Remedial measures* must be functionally oriented and must take into account harmful substances, preparations, organisms or micro-organisms, their risk and the possibility of their dispersion. To note that nuclear liability regimes, as well as development and deployment of new energy technologies (like hydrogen safety, safety of CO₂ transportation network, CO₂ storage) are not subject of this analysis.

Examples of environmental liability regimes include:

- Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (*Lugano Convention*, 1993)
- Decision of the Council on the Exchange of Information concerning Accidents Capable of Causing Transfrontier Damage (OECD, 1998)
- Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes and to the 1992 Convention on the Transboundary Effects of Industrial Accidents (2003)
- EU Directive 2004/35/CE of the European Parliament and of the Council on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage (ELD- *Environmental Liability Directive*)
- Globally Harmonized System of Classification and Labeling of Chemicals (it establishes harmonized criteria for classifying substances and mixtures according to their health, environmental and physical hazards). The scheme (2007) is mandated by the United Nations Conference on Environment and Development and operated by the United Nations Economic Commission for Europe.

The Birds and Habitats Directives are also linked to the Environmental Liability Directive which aims at the prevention/remediation of damage to Natura 2000 sites.

UNEP is developing “Guidelines for the development of domestic legislation on liability, response action and compensation for damage caused by activities dangerous to the environment”.

Challenges

Recalling principle 13 of the Rio Declaration on Environment and Development, which stipulates that “States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage”, many countries in the world have national environmental liability legislation. However, many other countries do not have a regime, legislation or policy on environmental liability.

The most relevant elements that are common to the various national programs dealing with soil historical contamination include liability and funding issues. In some countries, the private sector drives and funds the majority of land development and remediation projects. In other countries, there is a hierarchy in terms of liability: polluter, land owner, government and there are specific mechanisms for the protection of innocent land owners (De Sousa, 2001). Several countries have defined specific approaches to assign legal responsibilities, to deal with orphan sites or brownfields, and to combine private with public funding for soil remediation.

In the case of countries which do not have an environmental liability legislation or policy regime in place, it is rather difficult to come up with adequate responses when damages occur like mining operations and dumping of hazardous waste.

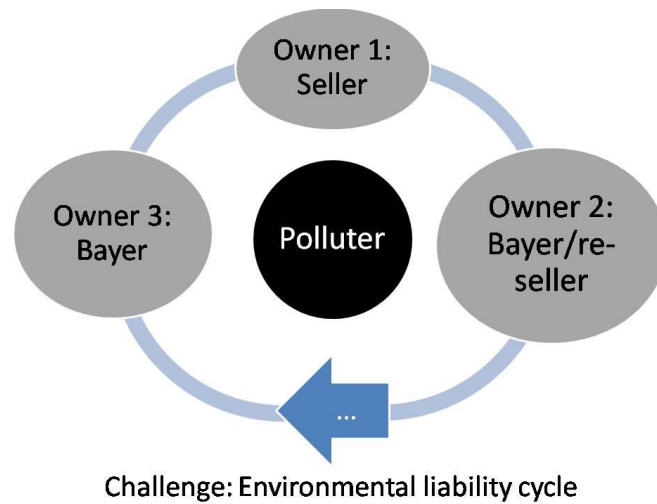
This paper has an intention to highlight the importance of clarifying the environmental liability for historical pollution, especially in countries/territories “younger” than the occurred pollution, as well as in transition from state-controlled industry to private ones. Environmental burdens, left behind by state-controlled industry, have now been transferred over to new owners.

At least answers to two questions should be formulated:

- 1) Can a buyer inherit the pre-acquisition environmental liability in an asset sale or a share sale?
- 2) Can a seller retain the environmental liability after an asset sale or a share sale?

Environmental liabilities for past pollution have to be clearly defined within the legal framework.

In the Republic of Serbia (RS), liability for pollution is grounded on the principle of strict liability – the polluter who causes pollution of the environment is responsible for induced damage pursuant to the strict liability principle (Official Gazzete of RS). For any damage induced by items or activities that increase the danger of damage to the environment, there is a strict liability regardless on the guilt (Official Gazete of FRY). The law contains several provisions related to remediation and restoration of damage. Sub-law is a methodology for creating restoration and remediation projects (except for the project of mineral raw materials exploiting that are regulated by a special regulation). In certain circumstances (for example, when the responsible polluter is unknown), the Government shall issue the restoration plan. If the polluter responsible for pollution is identified later, the body who bore costs of restoration shall request compensation for expenses. In the case of exceeding the prescribed limits of emission and other activities that lead to environment degradation, the polluter is obligated to make and implement a restoration plan, at his expenses (Answers, 2011; EC Progress Reports).



A good research example for Environmental Liability Cycle is the management of waste from extractive industries (Mihajlov A. and H.Stevanovic-Carapina, 2012), as well as historical pollution legacy (some aspects in UNEP, 2002; Mihajlov A., 2010; Mihajlov A., 2011).

The challenge is to deal with numerous cases of privatisations (without a clear specification of environmental liability). And moreover, the ownership sometimes comes back to the state, making environmental liability as the case to deal on *ad hoc* basis.

Concluding remarks

One of the meanings of greening the economy is to re-shape economy and practice, by using appropriate tools towards sustainability.

In that respect, it is important to address environmental liability in a proper way and as early as possible, in order to avoid in future, the remediation of historical pollution of today.

The tough exercise and the analysis in this paper underline the question of environmental liability. In the cases when legally agreed, the process has the challenge of physical/technical state soil/environmental pollution determination in the particular legally requested moment.

In addition, the proper calculation of the financial security covering the environmental liability is the challenge, too. This is also important from the perspective that redevelopment incentives are going towards urban core brownfields.

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