THOUGHTS ABOUT THE PROBLEMS OF THE ENFORCEMENT OF THE ‘POLLUTER PAYS’ PRINCIPLE

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1. Environmental Policy and Legal Basis of the 'Polluter pays' Principle

The general regime of environmental liability at Community level – after the Green and White Papers – was introduced in 2004.² Previously, liability questions were subject to the regulations of the Member States in line with the subsidiarity principle. There are several key factors why Community level liability rules had to be enacted: firstly, economic actors could exploit differences in Member States’ regulations in the hope of avoiding liability; secondly, national legislation did not ensure that the environmental clean-up could be attained after contamination; thirdly, not all Member States adopted legislation to address liability questions and therefore the ‘polluter pays’ principle might be injured.³

The objective of the Directive – namely, to establish a common framework for prevention and remedying of environmental damage at a reasonable cost of society – cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, regarding the scope of the Directive and the extent of its enforcement. The prevention and remedying of environmental damage shall be implemented through the application of the ‘polluter pays’ principle and in line with the principle of sustainable development. Consequently, the fundamental principle of this Directive is that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced.⁴

The Directive basically covers the questions of administrative liability and stipulates its regime, while it does not include criminal and civil liability. Namely, the Directive does not apply to personal injuries; damage caused in personal property or economic loss neither

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does it deal with the rights for such damage. The legal harmonisation of civil liability has not yet been placed on the agenda of the European Union. Although civil liability has not yet been regulated at Community level, it is worth mentioning that as concerns the Directive, it may be orientating regarding the degrees of damage during the enforcement of civil liability.

As regards the implementation of the Directive in Hungary, we can say that there are not too many changes in the general environmental regulations, as compared with the previous situation. Our national liability regime was in compliance with the Community measures. In the framework of legal harmonisation, several definitions have been complemented and amended. Furthermore, the measures of the central budget relating to the environmental damage or the imminent threat of such damage have been clarified. Legal harmonisation efforts have especially affected the Act on the General Rules of Environmental Protection, the Act on Nature Protection, the Act on Waste Management and the Act on Water Management.


6 Accordingly, the definition of environmental damage in line with its definition under Article 2 Sections 1-3 of the Directive has been clarified; the definition of natural resource services in line with its definition under Article 2 Section 13 of the Directive, the definitions of preventive and remedial measures in line with their definitions under Article 2 Sections 11-12 of the Directive, the definition of baseline condition in line with its definition under Article 2 Section 14 of the Directive, the definition of costs in line with its definition under Article 2 Section 16 of the Directive, and the definitions of utilization and emission standard in line with their definitions under Article 2 Sections 24-25 of the Directive have been introduced. Beyond the above written, the act also determines what kind of ‘actions’ shall be taken by the utilizer of the environment. This means the clarifying of the now prevailing regulations of the Environment Act since the basic elements (threat of environmental damage, halting pollution, finishing damaging, responsibility for the damage caused, restoring the state of the environment existing before the activity) have already been stipulated by the Environmental Act. Furthermore, the following amendments are still required: obligation of immediate notification of environmental authorities, obligation of taking preventive and remedial actions, the obligation of preventing further environmental damage and the degradation of natural resources services.

7 Pursuant to Article 8 of the Directive, as a main rule, it is the operator who shall bear the costs for the preventive and remedial actions taken. Accordingly, the central budget will finance the costs of the preventing and remedial actions in cases in which this task may not be devolved to third parties with regard to the secondary liability (of the owner, the possessor/user and the vendee of the real property) implied in Sections 101 and 102 of the Environment Act. Thus the central budget will cover the costs in cases in which the party causing the damage is unknown or is insolvent or is exempted from administrative liability. In the case when the operator is exempted from administrative liability, the costs borne by him – in line with Article 8 of the Directive – will be reimbursed to him by the central budget. At the same time, the Act enables the central budget to cover the costs of preventive or remedial actions in advance in a justified case.

8 Act LIII of 1995 (the Environment Act)

9 Act LIII of 1996

10 Act XLIII of 2000

11 Act LVII of 1995
The regulations of administrative liability have been changed and implemented in accordance with the Directive the most significantly. These regulations primarily involve preventive and remedial measures.

Pursuant to the Environment Act, the operator is obliged to prevent or finish pollution, to inform authorities about pollution, to mitigate and restore damage and to prevent further damage, moreover,

- as a primary recovery obligation he is obliged to restore baseline condition of the environment,
- as a complementary recovery obligation he is obliged to substitute the damaged natural resource by a suitable natural resource and natural resource services by suitable natural resource services,
- as a compensatory remedial obligation he is obliged to take all the necessary actions until the remedial measures have finished, which are necessary for the temporary substitution of the damaged natural resource or natural resource services, and finally to bear costs.

Environment protection agency may require preventive, remedial measures to be taken or it may take them itself or get someone to do them and furthermore, if necessary it will decide on the order of restoration. The agency may require the user of the environment to give information. In case of an environmental damage having been determined in a legally binding resolution, the environment protection agency - besides obliging the user of the environment to take remedial measures – will also prescribe that a restraint on alienation and encumbrance shall be registered in the land register on the properties of the person obliged to take remedial measures which may provide adequate security to cover the costs of the remedial measures.

Environmental protection strategies, goals and means are determined in environmental policies at international, European Union and national levels. Naturally, environmental policies of different levels are in compliance with each other and harmonize. Principles of vital importance are laid down in the environmental policy of the EU, which determine the direction of environmental actions. This can be traced nationally in the governmental strategic directions (environmental policy) appearing in the National Environmental Protection Programme, its action programmes and in other planning documents.

The goals defined in the National Environmental Protection Programme throw light on the shortcomings, which need to be changed and developed. Some of them are as follows:

- in the framework of the establishment of a suitable, motivating sanction system, it is worth considering defining very strict prejudices with a retarding effect for illegal activities causing damage of high priority to the environment, to raise the extents of fines and environment loading fees and to expand the scope of criminal, administrative and civil law liability.
- it needs to be examined whether it is possible to establish a system which favours the users of the environment who attest law abiding behaviour (like users of EMAS)
- the self-regulating means of environment users (administrative contracts, voluntary agreements, company environmental programmes, etc.) need to be surveyed with

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12 No. 96/2009 (XII.9.) Parliament Resolution on the National Environmental Protection Program for the period of 2009-2014
the aim of improvement. Besides ensuring the necessary level of protection, with
the aim of technical simplification, it is reasonable to revise whether it is necessary
to maintain the system of permission or in some cases a more efficient system of
registration would be better.

- it is necessary to consider that the state should delegate several tasks defined by
legal regulations (acts, government decrees) definitively and with the obligation of
provision to non-governmental agencies, social organisations or public domains.

- it is required to examine whether the now working, but costly legal institutions
may be exchanged without injuring environmental interests by other legal
constructions (etc. financing damage restorations in the circle of governmental
liability, the role of the system of green-tax – deposit fee during the enforcement
of waste management obligations)

While improving the regulatory system, the following principles, aspects shall be
considered decisive:

- Based on the traditional principles of environmental protection, the ’polluter pays’
and the ’user of the environment pays’ principles, and the ’principle of prevention’
shall be enforced with regard to both the producers and the consumers.

- Eco-efficient, innovative sectors requiring labour and adequate to national
conditions shall be emphasized in order to contribute to the strengthening of
competitiveness.

- The enforcement of environmental aspects shall gradually be expanded from the
production process to the whole life cycle of the product (from planning, insuring
resources to the end of the useful life cycle of the product, or its recycle, the use of
the product having become waste) and thus the economic regulators shall be
determined. The reimbursement of the real costs of the use of the resources shall
be decisive during the formation of the concrete taxation policy measures.

- The system of securities to be given by the polluter in order to remedy the
environmental damage caused by the economic activity shall be widened.

The costs of environmental damage, environmental load and the use of natural resources
are rising and thus have a great impact on the economic performance, the possibilities of
growth and their costs. There is a need for the application of instruments which assure that
the costs of environmental load, environmental contamination or the remedy of
environmental damage shall partly be borne by the causer and by this means community
sources can be discharged. This goal is served by taxes and fees (’negative incentives’),
which intend to compel environment loaders, polluters and damage causers to abandon
their activities and to incite economical management of natural resources. The direct and
indirect assistance (’positive incentives’) support the execution of environment-conscious
activities, measures and investments. Such special economic means is the trading of
contamination rights (e.g. emission trading) and the system of securities. The above
described economic regulators are present in the national environmental policy; however,
they do not contribute to the effectiveness of environmental aspects properly.

2. Determination and Limitation of the ’Polluter Pays’ Principle

We could find the ’polluter pays’ principle in the EU environment policy even in the
first action programme and since then it has always been present among the principles.
Moreover, the importance of this principle is proved by the fact that it is even included in the primary legislation and named by OECD\textsuperscript{13} as a principle of environmental policy. In accordance with it, the costs of the damage to the environment shall be borne by the causer of the damage, the polluter. In different interpretations, the polluter pays principle can mean the costs of the enforcement of the prevailing regulations or the costs of remedying the caused environmental damage (external costs).

The theory of economics worked out the ‘polluter pays’ principle in the 1970s in order that the costs of environmental pollution shall be allocated between the industry and the consumers, thus the state of the environment can be sustained at an adequate level and at the same time, the so called concealed assistances provided by the state for the polluters, which deform competition at the market, can be abolished. The ‘polluter pays’ principle is a fundamental principle of environmental policies these days, which practically determines that the costs of preventing and remedying environmental damage shall be borne by the polluter.\textsuperscript{14}

This establishment is confirmed by the Preamble of the Directive,\textsuperscript{15} which says that according to the ‘polluter-pays’ principle, an operator causing environmental damage or creating an imminent threat of such damage should, in principle, bear the cost of the necessary preventive or remedial measures. In cases where a competent authority acts, itself or through a third party, in the place of an operator, that authority should ensure that the cost incurred by it is recovered from the operator. It is also appropriate that the operators should ultimately bear the cost of assessing environmental damage and, as the case may be, assessing an imminent threat of such damage occurring.

When interpreting the ‘polluter-pays’ principle, we come across a complex definition. It is worth starting from a definitive statement during interpretation. The principle is basically composed of two words: the ‘polluter’ and the ‘pays’ compound, on the basis of which we need to define and confine a personal circle and a scope of activity.\textsuperscript{16}

The definition at Community level in the interpretation of the Commission: ‘polluter is the person who directly or indirectly damages the environment or who establishes

\textsuperscript{15} Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage Preamble (18)

Although the prescriptions of the Preamble of the Directive are referred to, it does not mean that it would be of less importance than a stipulation of the operative part of law. On the one hand, the Preamble of the Directive fulfils the reasoning obligation of law which comprises the determination the evidence of facts, aims and legal grounds. On the other hand, the Preamble is a legal document which is to be enforced in its own right. Namely, the obligations of national authorities are determined not only by the operative part of the Directive but also by the aims set in the Preamble. The role of the preambles of community legal norms is different from the method of the national legislation. See in more details: Temple Lang, John.: The Duties of National Authorities Under Community Constitutional Law; European Law Review, Vol. 23,No.2, April, 1998, 124-125.pp.
circumstances which lead to such damage." The European Commission has also declared that "the notion of polluter ... does not affect stipulations on the liability of a third party", which makes it possible to determine the polluter on one side, who is obliged to bear the costs of prevention, and the third party on the other side, who is liable for contamination and therefore is obliged to pay damages. Consequently, a legal regulation becomes possible according to which the circle of the 'polluter pays' principle may be divided into bearing costs and liability. An example for this can be found in the national regulation of waste management based on the 'polluter pays' principle.

Pursuant to the Directive, ‘operator’ means any natural or legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity." The operator (polluter) whose activity has caused the environmental damage or imminent threat of such damage is financially liable.

In the national environmental law, in some cases the polluter pays principle is used in a broader circle. Pursuant to Article 101 of the Environment Act anyone whose activity or negligence endangers, pollutes or damages the environment shall bear liability. This means that the national law defines the notion of damage causer in a broader sense and uses a strict, no-fault, so called objective liability regime independent of the damage causer’s fault, which does not examine the damage causer’s fault (whether intentional or negligent) even in cases of damage caused to protected species or natural habitats.

A special adaptation of the polluter pays principle appears in several special fields of environmental protection, too. For example, without completeness, as regards waste management ‘on the basis of the polluter pays principle, the producer or holder of waste or the manufacturer of the product that became waste shall pay the waste treatment costs or dispose of the waste; the polluter shall be responsible for the abatement of environmental pollution caused by the waste, for the restoration of the state of the environment and the reimbursement of damages including costs of restoration’

As an interpretation of the word ‘pay’ from the polluter pays principle, we can say that it refers to financial reimbursement. Regarding the polluter’s liability, the question may arise that what kind of activities result in liability. The scope of our Environment Act, in line with the regulations of the Directive – from April 30, 2007 - include

"a) living organisms (biotic communities), the abiotic components of the environment and the natural and man-made environment thereof;

20 Opinion of the Environment Act
21 Act XLIII. of 2000 Section 4. paragraph g)
b) pursuant to the provisions of this Act, the activities that utilize, load, endanger or pollute the environment.22

"The scope of the Act shall cover those natural persons, legal entities and unincorporated organizations
a) that have rights or responsibilities in relation to the environment as defined under Paragraph a) of Subsection (1);
b) that perform activities under Paragraph b) of Subsection (1) (hereinafter referred to as "user of the environment")23

During the use of the environment24 the regulations are laid down according to the character of the use. The system of licensing, compelling and penalizing stipulated in the Environment Act is based on the three basic notions25 of the Environment Act, namely, environmental pollution – threat to the environment – environmental damage. Activities or negligence connected with these notions form the basis for the application of the polluter pays principle. Namely, the principle can be connected with all types of activities which either result in lawful use of the environment or involve unlawful, that is polluting activities. Accordingly, the responsibility implies a series of conducts on the basis of which the user of the environment is obliged to take measures and which involves conformity with legal regulations from precaution to damages. These are basically – but in all cases – activities demanding financial performance. These financial performances appear directly as external liability towards third persons, generally towards authorities, or indirectly in the circle of the activities of the user of the environment attaching to the development of a definite system of conditions.

There are different tendencies - in connection with the extent of financial fulfilment – how to define the ‘polluter pays’ principle. Accordingly, we can define it in a narrow and broad sense. The ‘polluter pays’ principle in the narrow sense means the notion involving costs necessary for preventing and supervising pollution. The ‘polluter-pays’ principle in the broad sense means the notion that implies beyond the costs of preventing and supervising pollution, the compensation and taxes26, payable on the use of the environment, the costs of the cleaning up the pollution and paying for the damages.27

22 Act LIII. of 1995. Section 2. Subsection (1)
23 Act LIII. of 1995. (the Environment Act) Section 2. Subsection (2)
24 9. “use of the environment” means an activity involving the utilization or loading of the environment or a component thereof; 4. “utilization of the environment” means causing changes in the environment and making use of the environment or any of its components as natural resources;
6. “environmental impact” means the direct or indirect emission of a substance or energy into the environment; Section 4 of the Environment Act
25 7. "environmental pollution" means loading a component of the environment above the emission standard;
10. “threat to the environment” means the imminent threat of environmental damage;
13. "environmental damage” means any measurable adverse and significant change in the environment or any environmental media which may occur directly or indirectly, or any measurable impairment of a natural resource service which may occur directly or indirectly; the Environment Act Section 4
Pursuant to the Directive, "The prevention and remedying of environmental damage should be implemented through the furtherance of the ‘polluter-pays’ principle, as indicated in the Treaty and in line with the principle of sustainable development. The fundamental principle of this Directive should therefore be that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced."\(^{28}\)

The costs applied and prescribed by member states differ and concerning external and internal cost bearing measures, users of the environment in some member states may enjoy competitive advantage, while those in other member states may suffer competitive disadvantage.

The polluter pays principle is basically an economic principle, which - as regards its impact and consequences – conforms to the principle of liability. It often appears a synonymous notion. The proclaimed principle of the Environment Act is the principle of liability. Users of the environment shall be liable for the environmental impacts of their activities as defined in this Act and as regulated in this Act and other legal regulations.\(^{29}\)

The liability for environmental impacts implies the possibility of having to take the lawful and unlawful consequences, which appear at the polluter pays principle, namely, the application of the financial means of environmental protection and the legal liability, too. Chapter ‘The Basic Principles for the Protection of the Environment’ of the Environment Act includes the principle of liability in the broader sense namely the performance of all kinds of conducts, activities and obligations implies liability similarly to the ‘polluter pays’ principle.

Chapter 'General Basis of Legal Liability'\(^{30}\) gives the more precise regulations of the ‘polluter-pays’ principle, according to which a polluter of the environment will bear liability for the impact of his activities on the environment according to the Environment Act, as well as according to criminal and civil law, and regulatory and administrative provisions. Consequently, the liability principle also implies legal responsibility. Legal liability is the negative evaluation of a relation between an unlawful conduct and a requirement defined by a legal rule passed by the society. The basic goal of liability is to make the person testifying unlawful behaviour refrain from similar conducts in the future by the application of prejudices. The condition - upon which the liability is determined in all cases - is the unlawful conduct, the breach of obligation (objective element). The educational function can be fulfilled if the prejudice is applied against the person conducting the breach. During the interpretation of the ‘polluter pays’ principle we can make the conclusion that it cannot be regarded as a synonym of the principle of liability in the

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\(^{28}\) Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, Preamble (2)


\(^{30}\) Environment Act Article 101.
the case when the liability principle is defined as a legal responsibility (unlawful conduct) in the narrower sense.

3. **The Questions of State Responsibility**

The improvement of the regulations of the environmental law in Hungary has accelerated for the past decade as a result of the legal harmonisation obligation in relation to the European Community. Basically, two main directions of regulations concerning the effects on the environment have been established: the direct (permitting-forbidding) and the indirect (economic) methods of regulating. The basic of both regulatory methods is influencing the polluter’s behaviour as a result of which the person liable insures the prevention of pollution and the moderation and execution of the environmental damage. Several new fields of the regulatory system of environmental protection have been established and some others have been amended, renewed. At both national and Community levels, it is still necessary – with keeping the achievements of the newly established system – to harmonize the legal fields of the environmental law and to assure the conditions of the enforcement and application.

In the West-European states it has already become a practice that operators are obliged to form provisions for liabilities and charges. There are many solutions for those who perform dangerous activities to provide securities which may be of obligatory or voluntary character. The aim of an environmental insurance policy is the same in every case that is to provide a guarantee for the restoration of potential environmental damage and at the same time it means an economic influence on the reduction of environmental load. The introduction of obligatory insurance would also solve the problem, namely that companies having caused environmental damage are exempted from liability for remediating environmental contamination by declaring themselves bankrupt.

Pursuant the Environment Act the ‘polluters of the environment shall be required to provide an environmental security and may be required - under the conditions set out in specific other legislation - to obtain environmental liability insurance for the financing of clean-up operations for any unforeseeable environmental damage that may result from their activities. Polluters of the environment may set aside provisions for environmental protection purposes as specified in the relevant government decree for any environmental liabilities they may have or are certain to have in the future.’

Pursuant to the Environment Act, the user of the environment and also the manager of waste, (a new element is that not only the manager of dangerous waste but also the manager of waste in the amount which increases the level set in the government decree on the obligation of waste registration or the owner of such waste) is obliged to form securities for potential environmental obligations foreseeable at the licensing of the activity. He may be required to take out an insurance policy for remediating environmental damage which cannot be foreseen. The Act clarifies the provisions for liabilities and charges, too.

The government stipulates the activities, the forms and extents of securities, the conditions of their use, the rules of pay-off and their records and the regulations of environmental insurance policies by a decree. This Act lays down the legal basis for

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31 *Act LIII. of 1995. (Environment Act) Article 101. Section (5)*
32 *Opinion of the Environment Act*
environmental liability insurance policy in Hungary. At present because of law insufficiency there is no obligatory environmental protection insurance policy adjusted to company activities, however, the polluter is liable for environmental damage on a no-fault, objective liability basis even in Hungary.

Other legal regulations like the Act on Nature Protection and the Act on Waste Management also prescribe the obligation of forming environmental protection securities. The government decree about this does not yet exist, although, there are some plans for it. On the basis of the government decree proposal we can state that the aim of the environmental protection securities is to contribute to the execution of environmental protection obligations related to the restoration of potential environmental damage and the abolishment of such activity/establishment. The environment protection security may be a bank guarantee provided by a financial institution, an amount of money deposited at a financial institution administered and tied up on a separate bank account. The type of the security may be chosen by the person obliged to be insured in his request for permission, in which the authority prescribes the obligation of providing a security. There is a need for a security to be provided by
- operators performing an activity with a significant risk for the environment;
- operators of establishments with a significant risk for the environment;
- managers of waste dumping sites;
- users of the environment in the event of environmental damage for remedial measures.

The obligations for providing a security are determined by environmental protection, nature protection and water conservancy agencies in a resolution, in which they give permission the activity with a significant risk for the environment, the operation of such establishment or waste dumping site. In the event of significant environmental damage, the agencies prescribe security providing obligations in their resolutions ordering remedial measures.

With the introduction of environmental protection securities the personal liability of the causers of environmental damage and the ‘polluter pays’ principle could be enforced more efficiently because the users of the environment will be obliged to provide for an amount of money in advance as a guarantee for the restoration of environmental damage. There appeared as a practical problem that those liable for environmental protection did not perform their obligations adequately and the costs of environmental damage had to be borne by the central budget because of the lack of securities.

The institute of environmental protection securities has already been introduced in several member states like in Spain, Holland and Finland and their systems may be used as an example for forming the related Hungarian regulations.

In Hungary an insurance policy is taken out to cover accident-like evenst, but while the oil bursting is accident-like, the oil leaking is regarded as damage. Insurance policies generally cover only the costs of remedial measures, namely the clearing up of the contaminating material, but they do not cover the restoration of the damage caused in the environment. However, the coverage exists only when a third party hands in a demand, because in Hungary the insurance policies know the notions of own damage and damage caused to a third party, but the environment or the environmental agency does not belong under either category.

The role of securities and the possibility of their application is not only a question of administrative law; we can find an adequate use of these institutions in the field of civil
law, as well. We must state, however, that the practicality of the use of these institutions in either administrative or civil law is rather low. Pursuant to Section 115 subsection 3 of the Hungarian Civil Code an owner may demand the termination of illegal intrusions or influences and, in the event of the presence of imminent danger, the endangered person shall be entitled to request the court to restrain the person imposing such danger from continuing such conduct and/or to order such person to take sufficient preventive measures and, if necessary, to provide a guarantee. [Section 341. subsection (1) of the Civil Code].

The prescriptions of termination, prohibition for the future, the obligation for taking preventive measures and providing securities are all prejudices for preventing the environmental damage to happen, and moreover, they are the most suitable for this. A regards their conditions, they are objective. They sanction the endangering, the abnormal process as a result of which the damage occurs. Since the restoration of the contaminated, especially the destroyed environment is either impossible or cost so much, that the damages (or fines) do not help, the prejudices shall play a much greater role in the prevention or mediation of environmental damage. This is only possible if both those suffering the damage and the courts pay much more attention to these regulations. However, at present we can say having regard to the judicial practise in cases of operators performing polluting activities courts do not order prohibition from activities or obligations of providing securities as sanctions. Ib in court of law, in the contradictory proceedings the objective conditions of the imminent threat of damage would be better testified and established. Regardless of this, it seems that this role is regarded by the society as a means that can be used during administrative supervisory agency. In cases of environmental danger not only the relation of private interest contra private interest may appear in connection with the scope of the activities of the operator, like a production activity of high priority, and also as an effect of danger on the society. In such a relation, economic interests may always influence the decision on environmental protection.

The activities of the government aimed at environmental protection are multirole including making law, establishing and operating institutions, and enforcing national and community legislation. One part of these tasks is the state liability, when the state holds secondary liability for the consequences of environmental contamination.

The environmental responsibilities of the Government include – among others – cleaning up the consequences of environmental damage or environmental emergencies if this responsibility may not be diverted to another party and providing cover for the state's liability for environmental damage and to pay for such liabilities.33

The central budget covers the costs of preventive and remedial measures in connection with environmental damages, in the cases where it cannot be charged to others, reimburses – in defined cases - the costs of preventive and remedial measures in connection with the prevention or mitigation of environmental damages and advances the costs of preventive and remedial measures in connection with environmental damages in the cases where immediate intervention is required.34

The Environment Act clarifies the regulations relating to the central budget’s financing in connection with environmental danger and contamination. Pursuant to Article 8 of the Directive the polluter shall bear the costs of preventive and remedial measures as a main

33 Environment Act Article 41 Section (5) Paragraphs c) and d)
34 Environment Act Article 56. Section (1)
rule. Accordingly, the central budget will cover the costs of the preventive and remedial measures only if the costs cannot be charged to others with regard to the secondary liability (of the owner, the possessor/user or the vendee of the property) defined in Sections 101 and 102 of the Environment Act. Thus the central budget will finance the costs of the preventing and remedial actions in cases which the party causing the damage is unknown or is insolvent or is exempted from administrative liability. In the case when the operator is exempted from administrative liability, the costs borne by him will be reimbursed to him by the central budget. In the case when the costs of the preventing and remedial actions could not be devolved to third parties because the user of the environment or the owner of the property was unknown and these persons become known at a later date, they are obliged to bear the costs of the actions taken.

Based on judicial practice, the most frequent case of state financing is when the operator goes into liquidation and environmental load arose from its operation. Pursuant to Section 48 subsection (3) of the amended Act on Bankruptcy Proceedings and Liquidation Proceedings, in the process of liquidation the liquidator shall provide for the protection and safeguarding of the debtor’s assets, such as in particular to sustain the productivity of arable lands, to carry out planting and rehabilitation works in forests, furthermore, the observation of regulations concerning environmental protection, nature conservation and protection of historical monuments, to provide a solution for any damage and contamination of the environment that of which is proven to originate from before the time of the opening of liquidation proceedings by way of cleaning up the damage or contamination during the proceedings, or by selling the assets in question in their state of contamination. Pursuant to Section 57 subsection (2) paragraph c) of the above mentioned Act liquidation expenses shall cover costs in connection with the rational termination of the debtor’s business operations incurred following the time of the opening of liquidation proceedings, furthermore, the costs in connection with the protection of his assets, including the costs of clean-up of any environmental damage and contamination. Pursuant to Section (1) point b) of Act LIII. of 1995, the central budget shall contribute to cleaning up environmental damage in cases in which this task may not be devolved to third parties or the party causing the damage is unknown or its liability for the damage cannot be enforced. Pursuant to Section 12 subsection 2 of No. 106/1995 (IX.8.) Government Decree on the Requirements of Environmental and Nature Protection during Liquidation and Bankruptcy Proceedings, the liquidator shall provide for damage and contamination of the environment that of which is proven to originate from before the time of the opening of liquidation proceedings. This means all the necessary measures to be taken – even in the lack of the debtor’s assets – in order that the elimination of the dangerous waste shall take place on the burden of the central budget. The creditor has the right for eliminating the dangerous waste or having it eliminated at its own cost and the costs may be reimbursed during the liquidation proceedings as a creditor’s demand.35

In line with Article 8 Section 2 of the Directive – pursuant to which - when the competent authority recovers the environmental damage instead of the operator, suitable financial guarantees (e.g. property or other appropriate guarantees of financial security)
shall be established in order that the costs of the remedial actions taken by the competent authority can be reimbursed. At the initiative of the environmental authority, a security over the property on behalf of the Hungarian State shall be added to the land register, in cases where the costs of the preventive or remedial actions have been rectified by the central budget instead of the polluter.

4. Closing Thoughts

The new Fundamental Law in Hungary will enter into force on January 1, 2012, which will extend and strengthen further the constitutional foundations of the Hungarian environmental law, and raise to a higher level the protection of the Hungarian land and natural values. The new Fundamental Law involves the principle of sustainable development, the values of the future generations and the environment with special emphasis.36

The environmental provisions of the Fundamental Law can be divided into two parts. On the one hand, it controls the protection of natural resources with regard to the interests of future generations; on the other hand, it fulfills the conventional ideology about fundamental rights to a healthy environment. The Fundamental Law has drawn up the obligation of the state, according to which the state has to restructure its social and development policy having regard to the environmental protection and its liability for future generations.37

Important achievements of the new Fundamental Law:
- it bears or responsibility for our descendants,
- it regards sustainable development38 as the goal of the entire humanity and with regard to this, it defines Hungary’s tasks within the framework of international cooperation,

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- it recognises and enforces the right of every person to a healthy environment,
- introduces the notion of national heritage and within the framework of this it regards the protection of the natural assets of the Carpathian Basin important,
- emphasises that the management and protection of national assets shall aim to safeguard natural resources in consideration of the needs of future generation,
- it draws up the obligation of protecting and sustaining all natural resources, mentioning biodiversity – in particular native plant and animal species – agricultural land, forests and drinking water and emphasizing the exemption of agriculture from genetically engineered plants and animals,
- as a constitutional rule it lays down that no pollutant waste shall be brought into Hungary for the purpose of dumping,
- it raises one element of the polluter-pays principle to fundamental law level by stipulating that a person who causes any damage to the environment shall be obliged to restore it or to bear all costs of restoration.

However, even the most developed regulations of the Fundamental Law will not be enough to maintain a sustainable society if other elements of the regulatory system, the decisions of economic operators, the values and lifestyle of the members of the society and the consumer decisions will not support the enforcement of the basic principles of the Fundamental Law.