

EUROPEAN COMMITTEE
AT THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA

**EVALUATION OF IMPACT OF
IMPLEMENTATION OF THE PROPOSED
DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL ON ENVIRONMENTAL
LIABILITY**

November 2003
Summary of the Final Report

Prepared by:
Dr. Daiva Semėnienė
Dr. Romas Lenkaitis
Dr. Dalia Foigt
Rasa Ščeponavičiūtė

Center for Environmental Policy
Vilnius

Evaluation of Impact of Implementation of the Proposed Directive on Environmental Liability – Summary of the Final Report

TABLE OF CONTENTS

1. Introduction.....	1
2. Requirements of the Proposed Directive.....	1
3. National legal basis	1
4. Current institutional set up	2
5. Current practice of evaluation and compensation of environmental damage	3
5.1. Overview	3
5.2. Case studies	4
5.3. Environmental support programme	4
6. Evaluation of the impact of the Directive	5
6.1. Impact on institutions.....	5
6.2. Impact on economic entities.....	5
7. Conclusions and recommendations.....	6

1. Introduction

The objective of this study was to assess the impacts of implementation of the proposed Directive on environmental liability with regard to the prevention and remedying of environmental damage (COM(2002)/17) on national and local authorities and economic entities in Lithuania. The study was performed on the basis of the contract with the European Committee at the Government of Lithuania in accordance with the programme of coordination of negotiations with the EU and participation of Lithuania in activities of EU institutions, and evaluation of social and economic impacts. The study was co-financed by the Local pre-accession assistance programme of the Danish Ministry of Foreign Affairs.

2. Requirements of the Proposed Directive.

The purpose of the Directive is to establish a framework of environmental liability based on the "polluter-pays" principle, to prevent and remedy environmental damage. The Directive will apply to environmental damage caused by any of the occupational activities listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities as well as to damage to protected species and natural habitats caused by any occupational activities other than those listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities, whenever the operator has been at fault or negligent.

According to the Directive, the competent authority may require that necessary preventive or remediation measures should be taken by operators in cases of threat of damage occurring or when damage actually occurs. It also provides that the competent authority may take the measures itself in those cases when the operator is not identified, can not or is not required to take preventive or remediation measures. The Directive obliges the operator to take the necessary actions without the order from the competent authority. The operator is also required to inform the competent authority in all cases.

3. National legal basis

Currently, environmental liability issues in Lithuania are covered by the following legislation:

- Civil code
- Law on environmental protection
- Law on water
- Law on waste management
- Law on protected areas
- Law on state control of environmental protection, etc.

In addition, there are several other legal documents, approved by the Minister of Environment, regulating evaluation and compensation of environmental damage.

Evaluation of Impact of Implementation of the Proposed Directive on Environmental Liability – Summary of the Final Report

The law on environmental protection requires users of natural resources (only users) to apply preventive measures when threat to environment appears, or to remove the results of damage (in our opinion term ‘to remove’ does not include restoration of the environment to the baseline conditions). In case of environmental damage the priority is given to monetary compensation i.e. damage is evaluated according to the prescribed methods and must be paid by the violator.

Currently, damage inflicted on the environment is compensated in accordance with the Methodology of calculation of amount of damage inflicted to the environment approved by the Minister of Environment in 2002 (further referred as Methodology).

The Methodology defines the responsibilities of operator and relevant authority in case of environmental damage and establishes procedures for calculation of monetary value of the damage. Required compensation is calculated by multiplying the amount of polluting substances discharged to water bodies, soil or air by the tariff set in the Methodology. The calculated value is then multiplied by the factor defining the category of water bodies or soil which may vary from 0,6 to 1,5.

The main difference between the Lithuanian Methodology and the requirements of the Directive is that the Methodology is based on financial compensation principle, while the Directive requires remediation of the damaged environment.

4. Current institutional set up

The Ministry of Environment is responsible for drafting and approval of legislation for evaluation of compensation for damage inflicted on the environment. It is also responsible for providing financing for clean-up of the damaged sites when the operator can not clean-up the site or is not identified, and when municipalities can not provide such financing. Environmental Protection Agency participates in the preparation of legislation for evaluation of environmental damage, defines the measures for environmental restoration and monitors implementation of remediation measures.

State inspectorate for environmental protection coordinates the activities of the regional departments of environmental protection related to assurance of damage prevention and remediation. The inspectorate also collects and analyse data on environmental damage, compensations, etc.

The regional departments of environmental protection are responsible for evaluation of damage, selection of restorative or clean up measures, evaluation of the site after the clean-up, calculation of monetary compensation. In cases when operator refuses to pay the compensation for the damage, inspectors have a right to bring a claim to a court, and takes part in the court procedures.

The municipalities may provide funding for clean-up of damaged sites from the municipal environmental protection funds in cases, when the operator responsible for damage is not identified or can not take clean-up and restorative measures. Operators are obliged to inform the competent authorities about inflicted damage and, if possible, to restore the damaged environment.

Evaluation of Impact of Implementation of the Proposed Directive on Environmental Liability – Summary of the Final Report

5. Current practice of evaluation and compensation of environmental damage

5.1. Overview

According to the data provided by the State Inspectorate for Environmental Protection, about 15000 cases of violation of environmental regulations are registered in Lithuania every year. Damage to the environment is evaluated in approximately 1000 cases (7% of all cases). Data on evaluation and compensation of environmental damage are provided in Table 1.

Table 1. Evaluation and compensation of environmental damage

Year	Violations	Brought to court	Evaluated damage and economic sanctions		Evaluated environmental damage		Compensation, thou. Litas
			cases	thou. Litas	cases	thou. Litas	
1996	17 856	18	1 441	5 296	1 270	4 609	4 061
1997	1 704	24	1 572	8 788	1 281	6 218	5 238
1998	18 389	34	1 617	7 038	1 291	5 484	4 659
1999	18 540	60	1 598	6 468	1 171	442	3 449
2000	15 778	35	1 550	2 637	982	1 276	2 723
2001	15 131	36	1 527	6 980	922	6 361	3 070
2002	17 853	89	1 983	32 923	1 406	32 315	5 480
2003 I pusem	8 487	37	928	3 632			1 947
Total	105 251	296	11 288	70 131	8 323	56 704	28 681
Average	15 035	42	1612	10 018	1 189	8 100	4 097
Damage to the environment and compensation excluding fire of used tyres in UAB "Egapris"							
Total					8 322	31 354	28 681
Average					1 189	4 479	4 097

Source: State Environmental Protection Inspection

The total evaluated damage during the period 1996 to 2002 w 56.7 million Litas corresponding to average annual damage of approximately 8.1 million Litas. Compensations paid by the operators during the same period were approximately 4.1 million Litas per year on average.

It should be noted that almost half of the total evaluated damage was caused by the fire at the storage site of used tyres owned by the Egapris company. Considering that it was not a typical case and excluding it from calculations, average annual environmental damage was approximately 4.5 million Litas and average compensation paid by the operators makes 91 % of the evaluated damage.

On the other hand, compensations paid by the operators make only part of the total expenses related to environmental damage, costs of remedial measures in accordance with the mandatory instructions of the regional environmental protection departments should also be added.

5.2. Case studies

Two cases of environmental damage were studied in order to get more clear understanding of the situation.

Railway accident

About 59 tonne of Diesel fuel were spilled on the soil during the railway accident in Vaidotai railway station on October 24, 2002.

The railway company has taken immediate measures to clean-up the site and collected 52.7 t (about 90 %) of spilled Diesel fuel during 30 days following the accident. Sampling of soil after the clean-up revealed that approximately 5.9 t of spilled Diesel fuel remained in the soil.

The costs of investigation and remediation measures were 193.8 thou. Litas. On the basis of the Methodology for calculation of damage, the regional department of environmental protection evaluated that the railway company should pay additional 695.5 thousand Litas compensation for 10 % of Diesel fuel which was not collected.

According to the Directive operator that has caused damage must restore the environment to the baseline condition. In case if full remediation is not possible, operator is obliged to take complementary and compensatory measures. It is hardly possible to evaluate the costs of needed complementary and compensatory measures, however, it is most probable the they should be lower than the compensation required for remaining soil contamination.

Fire at used tyre storage site

The fire at the storage site of used tyres in Trakai district happened on August 2, 2002. It was evaluated that approximately 3 thousand tonne of used tyres were stored at the site, collected from various industries and organisations. After the fire the site (1.75 ha) was contaminated with rubber waste, fire residues, steel cord and polluted sand used for extinguishing the fire.

According to evaluation on the basis of released air pollutants made by the Trakai environmental protection agency, damage inflicted on the environment was 25.35 million Litas.

From the perspective of the Directive, the immediate action following the fire should have been remediation of the site and return of the damaged natural resources (e.g. biodiversity) to baseline conditions. Possible costs of these actions could be several hundred thousand Litas. It may be expected that the cost of remediation carried out in accordance with the criteria of the Directive would be many times less than required compensation evaluated in accordance with the Lithuanian legislation.

5.3. Environmental support programme

Compensations for environmental damage paid by the operators are directed to the Environmental support programme. Revenues of the Programme in 2001 were 3.95

Evaluation of Impact of Implementation of the Proposed Directive on Environmental Liability – Summary of the Final Report

million Litas including 3.1 million Litas compensations for environmental damage. Expenses of the Programme were 2.62 million Litas, however, only 407 thousand Litas were used for remediation of damaged sites.

6. Evaluation of the impact of the Directive

6.1. Impact on institutions

As transposition of the requirements of the Directives comprise a wide range of issues. The amendments of Law on Environmental Protection, Law on State control of Environmental Protection will be needed. In addition a legal document on evaluation of damage done to environment and selection of primary, complementary and compensatory measures for remediation of damage to water, soil, protected species and natural habitats. This document should be approved by the Ministerial order.

Evaluated transposition costs may be in the range from 50 to 100 thousand Litas.

As the basic principles of evaluation of compensation for inflicted environmental damage will be changed including expansion of functions and responsibilities of the competent authorities, inspectors monitoring the operation of industries will require new technical, economic and legal skills. It is evaluated that the costs of extensive training programme for inspectors will be approximately 250 thou. Litas.

According to the Lithuanian Environmental Protection Law, costs of remediation of environmental pollution should be covered by natural or legal persons responsible for inflicted damage. If responsible persons are not identified, costs are covered by the state. It means that the requirement of the Directive for the competent authorities to remediate the damage when responsible operator cannot be identified is already in place.

As operators will be obliged to cover only actually performed remediation work, the Environmental support programme will lose the most part of its revenues. It will be necessary to find new sources of financing the measures currently financed from the Programme (approximately 3 to 4 million Litas per year).

6.2. Impact on economic entities

The requirement to the economic entities to compensate inflicted environmental damage is already in place in Lithuania. However, the value of compensation may change after implementation of the directive as it will be based on the different principles.

Currently, evaluated annual environmental damage in Lithuania is approximately 8 million Litas (4.5 million Litas if non-typical case of fire at the used tyres storage site is excluded). Annual compensations paid by the economic entities are approximately 4.1 million Litas but actual expenses are higher as economic entities are bearing the costs of remediation of environmental damage prescribed by the mandatory instructions of the competent authorities.

After the implementation of the requirements of the Directive, compensation for environmental damage is expected to be simpler and more effective. Economic entities will have to pay for real clean-up or restoration works. According to the opinion of

Evaluation of Impact of Implementation of the Proposed Directive on Environmental Liability – Summary of the Final Report

industry representatives, such principle of damage compensation is more impartial and correct.

It should be expected that expenses of the economic entities after the implementation of the Directive will be approximately the same as the sum of compensations paid for inflicted damage and costs of remediation in accordance with the mandatory instructions of the competent authorities. However it is expected that payers will be different. Economic entities that damage soil or water will pay more for a clean-up and restoration, than entities that infringe biodiversity.

7. Conclusions and recommendations

1. Proposed Directive of the European Parliament and of the Council COM(2002)/17 on environmental liability with regard to the prevention and remedying of environmental damage is based on the principles of prevention and full restoration to the baseline condition. The Directive aims to establish a system of measures for damage prevention in areas, defined in the Directive.
2. The Directive provides that the competent authorities may require the operators to take necessary measures for remediation of damage and restoration of the environment to the baseline condition. Otherwise, the competent authorities may themselves take the necessary remedial measures and recover the costs from the liable economic entity.
3. The Directive distinguishes primary, complementary and compensatory remediation; primary remediation returns the damaged natural resources or impaired services to the baseline condition; complementary measures are needed when primary remediation does not result in full restoration of damaged site; compensatory remediation is needed to compensate for interim losses of natural resources or services that occur from the date of damage occurring until primary remediation has achieved its full effect.
4. The Directive proposes to encourage the use by operators of any appropriate insurance or other forms of financial security and the development of financial security instruments and markets in order to provide effective cover for financial obligations under this Directive.
5. In Lithuania, the damage inflicted on the environment is evaluated in accordance with the Methodology for calculation of environmental damage approved by Minister of Environment, which is based on the amount of pollutants released to the environment and does not take into account the costs of clean-up and remediation measures making the basis of the Directive.
6. Amendment of the Lithuanian legislation establishing the basic principles of environmental protection and monitoring, and compensation of inflicted environmental damage, as well as establishment of clear criteria for remediation the baseline condition are needed in order to implement requirements of the Directive.

Evaluation of Impact of Implementation of the Proposed Directive on Environmental Liability – Summary of the Final Report

7. Institutions required for the implementation of the Directive are in place in Lithuania, however, they should be given more rights including clearly defined right to recover expenses for preventive measures and remediation of damage from the economic entities.
8. The costs of drafting legislation required for transposition of the Directive are evaluated at approximately 50-100 thousand Lit. As the basic principles of evaluation of inflicted environmental damage will be changed, extensive training of environmental inspectors will be needed which may cost approximately 250 thousand Lit.
9. As after the implementation of the Directive operators will cover the costs of actually performed remediation work, the Environmental support programme will lose the most part of its revenues. It will be necessary to find new sources of financing for measures currently financed from the Programme (3 to 4 million Lit per year).
10. Currently, evaluated annual environmental damage in Lithuania is approximately 8 million Lit (4.5 million Lit if non-typical case of fire at the used tyres storage site is excluded), annual compensations paid by the economic entities are approximately 4.1 million Lit but actual expenses are higher as economic entities are bearing the costs of remediation of environmental damage prescribed by the mandatory instructions of the competent authorities.
11. It should be expected that expenses of the economic entities after the implementation of the Directive will be approximately the same as the sum of compensations paid for inflicted damage and costs of remediation in accordance with the mandatory instructions of the competent authorities, i.e. implementation of the Directive will not have a substantial impact on the economic entities.