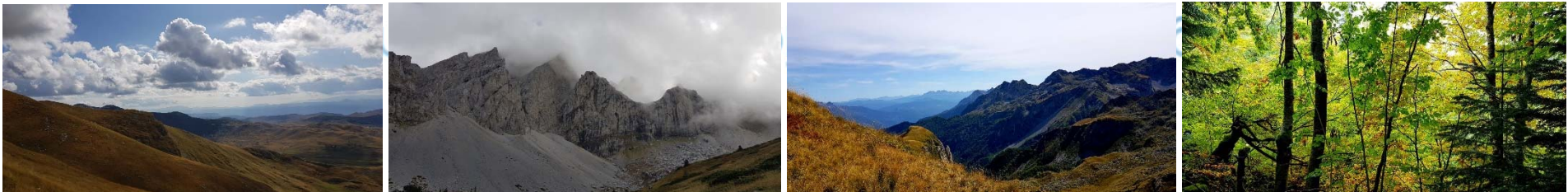




GOVERNMENT OF MONTENEGRO  
MINISTRY OF SUSTAINABLE DEVELOPMENT AND TOURISM

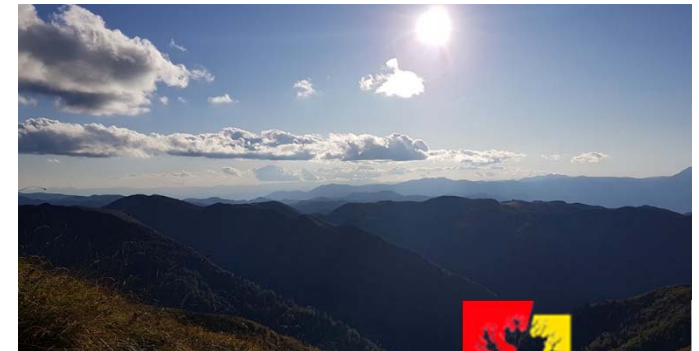
## Environmental liability in Montenegro



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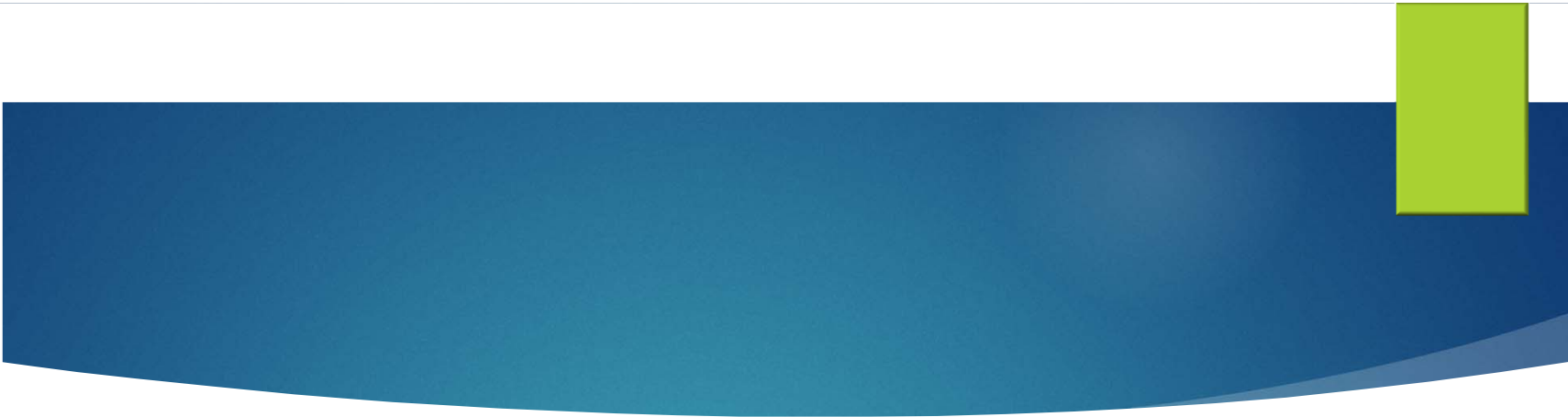
- ▶ The concept of the right to a healthy environment is gaining importance through the development of an environmental law.
- ▶ Montenegro is systematically integrating environmental issues into all economic sectors and decision-making processes, especially since Montenegro is defined by the Constitution as an ecological state and is fully committed to a high level of environmental protection and preservation of its a rich biodiversity.



## ENVIRONMENTAL LIABILITY SYSTEM

- ▶ A high level of environmental protection is set as one of the priority objectives of the European Union, which realization requires, among the others, the establishment of a system of liability for environmental damage.
- ▶ One of the preconditions for achieving sustainable development, in accordance with the requirements of basic environmental principles, is the establishment of an appropriate normative framework, which will **also prescribe sanctions in case of violations of legal norms**.
- ▶ The framework for the European Union's **environmental liability** system is established through Directives 2004/35 / CE (**environmental liability**) and 2008/99 / EC (Ecocrime Directive).



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- ▶ Directive 2004/35/EC 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 (ELD);
  - ▶ **LAW ON ENVIRONMENTAL LIABILITY WITH REGARD TO ENVIRONMENTAL DAMAGE** („Officiall Gazette of MNE", No. 027/14, 055/16 );
  - ▶ Adopted in 2014;
  - ▶ Consultation process;
  - ▶ Insurance companies.



- ▶ The Law governs the manner and procedure for establishing environmental liability as well as the application of preventive and remedial measures to prevent and remedy environmental damage.
- ▶ Legal and natural persons who have caused, by the occupational activities or other acts, environmental damage or any imminent threat of such damage, **shall be liable for such damage and shall carry out measures to prevent and remedy the damage** in accordance with the Law.



## PRINCIPLES OF ENVIRONMENTAL DAMAGE COMPENSATION

- ▶ Compensation of environmental damage shall be based on the following principles:
- ▶ 1) the **'polluter-pays' principle**, according to which a legal and natural person which has caused the environmental damage or the imminent threat of such damage, shall compensate the damage by conducting preventive measures and remedial measures at its own expense;
- ▶ 2) **the mandatory insurance principle**, according to which a legal and natural person whose occupational activities or other acts present a risk for human health and/or the environment, shall provide insurance against liability for the environmental damage.



## ENVIRONMENTAL DAMAGE

Environmental damage means damage caused to:

- ▶ **protected plant, animal and fungi species (the protected species) and natural habitats, which has a significant adverse effect on reaching or maintaining the favourable status of protected species and natural habitats;**
- ▶ **waters**, which has a significant adverse effect on the ecological, chemical and quantitative status and/or ecological potential of waters, including ecological status of sea waters as established by the law governing the waters;
- ▶ **land**, as a result of the direct or indirect introduction in, on or under land, of substances, preparations, organisms or micro-organisms that create a damage that represents a significant risk for human health.



## NOTWITHSTANDINGS

Such damage does not include damage to:

- protected species and natural habitats, which results from occupational activities or an act by an operator which was authorized by a license or an approval from the relevant administrative authorities in accordance with the law governing the nature protection;
- waters, which results from the implementation of measures for alleviation of consequences on water bodies affected by sustainable activities representing public interest, provided it was not technically feasible or financially viable to choose environmentally more favourable option.





## SCOPE

The Law applies to:

- ▶ **environmental damage and any imminent threat** of such damage caused by the occupational activities or acts listed in the Law;
- ▶ damage to protected species and natural habitats caused by any occupational activities other than those listed in (Article 7) of the Law and any imminent threat of such damage occurring by reason of any of those listed activities, whenever the operator has been non-compliant with laws, professional standards or internal operating rules, or negligent;
- ▶ damage and any imminent threat of damage caused by **pollution of a diffuse character**, where it is possible to identify individual operators whose activities have caused such damage or imminent threat.
- ▶ **Legal and natural persons shall not be entitled to monetary compensation** as a consequence of environmental damage or of an imminent threat of such damage under this Law.



## Exceptions

The Law does not apply to:

- ▶ environmental damage and an imminent threat of such damage caused by an act of armed conflict, war or insurrection, a natural phenomenon or activities the purpose of which is to protect from natural phenomena, to serve national defense or international security;
- ▶ environmental liability for environmental damage governed by special regulations and international treaties;
- ▶ environmental damage that occurred before the entry into force of the Law;
- ▶ environmental damage that occurred immediately after the entry into force of this Law if the event (activity, incident, emission) causing such damage finished before the entry into force of this Law;
- ▶ environmental damage, if more than 30 years have passed since the event, resulting in the damage, occurred.



## Procedure for establishing environmental damage

The environmental damage or an imminent threat of such damage shall be established by an administrative authority competent for the environment (NEPA).

The procedure for establishing environmental damage or imminent threat of such damage shall be initiated by official duty or upon the request of interested public.

**Any person who finds** out that an environmental damage has occurred or that there is an imminent threat of such damage occurring, shall, without delay, inform the competent authority and the relevant inspection authority.



## Method of establishing environmental damage

The competent authority - NEPA , acting by official duty or pursuant to the received request, shall establish:

- whether the reported damage constitutes damage or an imminent threat of damage;
- whether the damage that has occurred or the imminent threat of the damage are environmental damage;
- whether it is possible to identify, on the basis of the inspection control report, the operator who has caused, by his activity, the damage or imminent threat of the damage.



Preventive action

Where there is an imminent threat of the environmental damage occurring, the operator shall, without delay, take the necessary measures as laid down in the protection and rescue plans, in accordance with the law governing protection and rescue (MI).

If the actual situation has not been foreseen by the protection and rescue plan, the operator shall ask the relevant state authority in charge of protection and rescue for the instructions for action in case of an accident.



Preventive action

The operator shall notify the competent authority, relevant inspection authority and the relevant state authority in charge of protection and rescue on the undertaken measures.

In the event of a suspicion of an imminent threat of environmental damage or where the threat has been found to exist, the competent authority shall require the operator to provide necessary information and take necessary preventive measures.



When an imminent **threat of the damage** has not been removed by the preventive measures, the operator shall, without delay, inform the competent authority and relevant inspection authority thereof.

If the **operator fails to conduct** the preventive measures, the competent authority shall take the measures itself, at the cost of the operator.

If the **operator cannot be identified**, the competent authority shall take the preventive measures.

The competent authority shall be entitled to the recovery of the costs of conducted preventive measures referred to in paragraph 8 of this Article within five years from the date on which the operator has become known.



## REMEDIAL ACTION

Where the environmental damage has occurred, the operator shall, **without delay, inform the competent authority and relevant inspection authority** and take all necessary remedial measures, in order to limit or to prevent further environmental damage and adverse effects on human health.

The remedial measures are the measures aimed at restoring the damaged waters, land, protected species and natural habitats to their **baseline condition** by way of primary, complementary and compensatory remediation.





## PREVENTIVE ACTION

- ▶ Where there is an imminent threat of the **environmental damage occurring**, the operator shall, **without delay**, take the necessary measures as laid down in the protection and rescue plans, in accordance with the law governing protection and rescue (MI).
- ▶ if the actual situation has not been foreseen by the plan referred to in the protection and rescue plans, the operator shall **ask the relevant state authority** in charge of protection and rescue for the instructions for action in case of an accident.
- ▶ the operator shall notify the competent authority, relevant inspection authority and the relevant state authority in charge of protection and rescue on the undertaken measures.



## COMMITTEE FOR EVALUATION OF REMEDIAL MEASURES

▶ Remedial measures shall be evaluated by the Committee for evaluation of remedial measures, formed by the NEPA.

▶ The Committee shall consist of experts in individual areas of the environment, representatives of the competent authority, the Ministry and relevant environmental institutions, and representatives of other relevant administrative authorities.

▶ The Committee shall evaluate the proposed remedial measures, give the opinion and propose new remedial measures if the proposed measures cannot ensure restoration to the baseline condition.

▶ The Committee members cannot be the persons who participated in the preparation of proposed remedial measures.

▶ The cost of work of the Committee shall be borne by the operator.



## MAKING DECISION ON THE APPROVAL

The competent authority shall decide on giving approval to the proposed remedial measures within five days from the receipt of the Committee's opinion.

Complaint against the decision be filed to the Ministry.

Types of remedial measures:

Primary, complementary and compensatory.



## Types of remedial measures

- ▶ **Primary** remediation is any remedial measure which removes the damage and returns the damaged natural resources or their function to baseline condition.
- ▶ **Complementary** remediation is any remedial measure taken in the cases when the primary remediation does not result in fully restoring the damaged natural resources and/or services, with a view to ensuring similar natural resources and/or services at the same or alternative site.
- ▶ **Compensatory** remediation is any action taken to compensate for losses incurred by damaging the natural resources which are no longer able to perform their ecological functions or to provide services to another natural resource or to the public.



## IMPLEMENTATION OF REMEDIAL MEASURES

If the operator fails to implement the determined remedial measures, those measures shall be carried out by the competent authority at the cost of the operator.

Remedial measures shall be carried out by the competent authority also if the operator cannot be identified.

The competent authority is entitled to the recovery of the cost it has incurred in relation to the remedial measures within five years from the date on which the operator has been identified.

The operator who is unable to carry out the preventive and remedial measures itself, may hire a legal person to prevent or remedy the environmental damage.



## AUTHORISED LEGAL PERSON

- ▶ Preventive and remedial measures may be taken by a legal person which meets the requirements with respect to the staffing and equipment (authorised person).
- ▶ The competent authority shall decide whether the requirements have been met.



## PREVENTION AND REMEDIATION COSTS

- ▶ An operator causing environmental damage or creating an imminent threat of such damage shall bear the cost of the necessary preventive or remedial measures, according to the „polluter-pays“ principle.

### Mandatory insurance

- ▶ The operator performing the occupational activity or acts shall **provide insurance against liability for the environmental damage and an imminent threat of such damage** under the Law and the law governing insurance, or shall provide another instrument of financial security.

### Transboundary pollution

- ▶ In the event of **an environmental damage or an imminent threat of such damage**, which may have **significant adverse effects on the environment of another state**, the Ministry shall inform the other state of the environmental damage or the imminent threat of such damage and the measures taken to remedy the damage.



- ▶ In the event of an environmental damage or an imminent threat of such damage in another state, which may have significant adverse effects on the environment of Montenegro,

the Ministry may require all relevant information about the damage or the imminent threat of the damage; it may make recommendations for the implementation of preventive or remedial measures and it may seek to recover the costs.

### Data being public

- ▶ The data on the implementation of preventive and remedial measures, the data on insurance against liability for the environmental damage and an imminent threat of such damage, and the data on transboundary pollution **are public**, except for the data identified as confidential by way of special regulations.





## ▶ CHALLENGES

- ▶ Implementation of the Law –(2014);
- ▶ Defining the environmental liability;
- ▶ The lack of the administrative capacities (the number of the administrative staff) NEPA and EI;
- ▶ Operator/Insurance/Inspections;
- ▶ The amount of the insurance;
- ▶ Administrative procedure takes time,
- ▶ The number of cases (increased number)...



▶ STATISTICS

▶ ELD in Montenegro

▶ 2015 -1

▶ 2017-3

▶ 2018-3

▶ 2019-5 cases have started



Recommendations

- ▶ Joint activities will improve the implementation;
- ▶ Raising awareness;
- ▶ Capacity building (workshops, round tables, ...);
- ▶ Better understanding of ELD improves implementations...





Thank you for your attention!

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