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CEE Soil and Groundwater Contamination Guide

2018

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Introduction

The countries of Central and Eastern Europe share a history of rapid industrialisation during the Soviet era. Unfortunately, they also share the environmental consequences of this period. To some extent, these hazards have been addressed in the past two decades, but the current situation is still far from perfect. The laws that regulate soil and groundwater contamination differ in their complexity and severity across CEE.

In recent years, noncompliance with environmental regulations has become a significant issue for investors and developers. In due diligence processes it is no longer seen as a side issue – it can be the issue. Soil and groundwater contamination means reduced property value and additional costs or obligations for the holder. At the same time, contaminated properties situated in an attractive location are becoming more and more interesting for developers. Hence, the necessity to solve contamination issues in order to facilitate the future development of brownfields.

According to a report prepared by the Joint Research Centre (the European Commission's science and knowledge service), there are an estimated 2.8 million sites in the EU where an artificial surface indicates that polluting activities occurred in the past. A further 170,000 sites are being investigated. This shows the scale of the problem. Western European countries, which have been addressing the issue for at least three decades, are dealing with this by focusing on remediating sites with known contamination. Countries with a shorter history of addressing soil and groundwater contamination, such as CEE countries, need to focus more on identifying contaminated sites.

CMS's Environmental Practice Group is delighted to present the "CEE Soil and Groundwater Contamination Guide" covering the main aspects of the environmental laws that are applicable to soil and groundwater contamination in eight jurisdictions in Central and Eastern Europe. Our guide provides basic information about the current state of affairs, applicable laws, responsibility issues, the measures required under public law to address the issue, regulatory instruments, and any anticipated changes to contamination regulations.

We hope you will find this guide useful. If you have any questions on soil and groundwater contamination or environmental law in general regarding any CEE jurisdiction, please feel free to contact our local experts.



Agnieszka Skorupińska

Counsel

Head of the Environmental Law Practice, CEE and Poland



Bulgaria

By Kostadin Sirleshtov and Raya Maneva, CMS Sofia

Question	Answer
What is the extent of the contamination problem in Bulgaria? How many sites are contaminated? Does the contamination mostly come from past industrial activity or other sources?	The contamination in Bulgaria primarily comes from past industrial activity and is concentrated in industrial sites. The main pollutants are heavy metals, oil products and pesticides. The information provided by the Bulgarian Environmental Agency states that during the period 2005 - 2014, soils in the country are in good environmental condition with respect to heavy metals, metalloids and persistent organic pollutants pollution. Diffuse pollution is assessed by the determination of the heavy metals and metalloids concentrates - Zn, Cu, Pb, Cd, Ni, Co, Cr, Hg, As and persistent organic pollutants - PAH, PCBs, 6 compounds and chlorinated pesticides, 16 compounds in soil samples. The points where there are higher values of heavy metals and metalloids from the maximum admissible concentrations are found in the same settlements of Bulgaria and represent 9.3% of the total number for the country. The pollution with oil products is very limited.
Which laws are applicable for soil and groundwater contamination in Bulgaria?	<p>The main pieces of legislation in Bulgaria on soil and groundwater contamination are: the Bulgarian Soil Act (the "Soil Act"), the Bulgarian Water Act (the "Water Act"), the Bulgarian Environmental Protection Act (the "EPA") and the Liability for Prevention and Remedying of Environmental Damage Act (the "Environmental Damage Act").</p> <p>The secondary legislation adopted on the matter consists of: Ordinance on the investigation, use and protection of the groundwater (the "Groundwater Ordinance"), Ordinance on water monitoring (the "Water Monitoring Ordinance"), Ordinance on the inventory and the investigations of areas with polluted soil, the needed recovery measures, as well as the maintenance of the realized recovery actions (the "Recovery Ordinance"), Ordinance for monitoring of the soil (the "Soil Monitoring Ordinance") and the Tariff on the taxes for water withdrawal, for use of water site and for contamination (the "Tariff").</p>
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	The Soil Act came into force in 2007, abolishing the Protection of Soil Against Pollution Act, which was adopted in 1963. The Water Act came into force in 2000, abolishing the previous Water Act, which was in force since 1969. The EPA came into force in 2002, abolishing the previous Environmental Protection Act, which was in force since 1991. The Environmental Damage Act came into force in 2008 and was adopted to implement Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage. There was no previous Bulgarian legislation on the matter.
Who is responsible for soil and groundwater contamination?	<p>Under the applicable legislation, the following parties are responsible for soil and groundwater contamination:</p> <ul style="list-style-type: none"> - the polluter; - the general legal successor of the polluter; - the owner of the property; - the person in actual control over the property (e.g. tenants, permit holders). <p>The authority may demand the required measures from all of the above-mentioned parties irrespective of whether they have contributed to the contamination or not. The authority shall turn to the party that can most be expected to carry out the measures.</p>

Which measures may be required under public law in order to address issues of soil and groundwater contamination?	<p>Under the applicable legislation, the following measures can be required with regard to soil and groundwater contamination:</p> <ul style="list-style-type: none"> - Preventive measures – the inspection of documents, as well as on-site inspections including observations and measurements, monitoring of the soils, taking samples, etc.; - Remedial actions – taking all practicable steps to control, contain, remove the contaminants and/or both environmental damage factors; developing and implementing projects for the restoration of areas with degraded soils, etc.; - Coercive administrative measures - suspension of the activity of the operators directly related to the occurrence of the environmental damage; denial of access to areas of owners and users; imposition of prohibitions or restrictions on water use, etc.. <p>An administrative order is not required for the obligations to undertake preventive or remedial measures to apply.</p>
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>Under the Soil Act, the permissible content of harmful substances in soils is assessed by reference to three levels of soil contamination: (i) safe concentrations; (ii) maximum permissible concentrations; and (iii) intervention concentrations.</p> <p>Remediation is necessary if intervention concentrations are breached (irrespective of the type of use of land) as well as in some other exceptional cases (e.g. landfill sites).</p>
What are the regulatory instruments of the competent authorities and when may they be applied?	<p>The competent authorities may conduct on-site inspections and/or document examination, which cover: (i) the condition of the soils; (ii) activities which could degrade the soils; (iii) the implementation of: (a) plans and programmes for soil protection, sustainable use and restoration; (b) measures contained in the observations on environmental assessments in environmental impact assessment decisions and in permits issued in accordance with the EPA; (c) investment projects and development proposals.</p> <p>To address detected violations, the competent authorities shall, where necessary, issue mandatory prescriptions by means of stating protocols.</p>
In the event of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	<p>The party which had to undertake measures with respect to soil and groundwater contamination may request compensation from the other parties which are responsible under the applicable legislation. The share of costs to be borne by each party depends on the extent to which each party has contributed to the contamination.</p>
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	<p>The following private law claims might be raised by third parties against persons responsible for soil and groundwater contamination, e.g. by neighbours:</p> <ul style="list-style-type: none"> - Claims for suspension and removal of contamination from their property or, if clean-up measures have been carried out, claims for reimbursement of costs; - Claims for damages in case of intended or negligent violation of life, body, health, property or other rights or of protective laws, as for example a violation of the undertaking to carry out clean-up/ remediation or securing measures; - Claims against operators of certain plants under the EPA. <p>Further obligations may apply under contractual relationship.</p>
Are there any restrictions of the public law responsibility or the private law liability?	<p>The public law liability under the EPA is limited to BGN 1,000,000 (approximately EUR 500,000). The liability under private law claims may be limited due to contributory negligence by the affected party.</p>
Does soil and groundwater contamination attract criminal liability?	<p>Soil contamination and water contamination, which makes these soil or water hazardous to people or animals and plants, or makes them unfit for use for cultural and everyday use, health, agricultural, and other national-economy purposes constitute criminal offences under the Bulgarian Criminal Code when committed intentionally or with negligence.</p>
Are incidents of soil and groundwater contamination registered in Bulgaria?	<p>The Environmental Agency keeps a public register with three main sections: (i) areas with doubts for soil contamination; (ii) areas with proven contamination; and (iii) areas with unpolluted soil.</p> <p>The register contains information about the location, the source of degradation, the type and the area of degradation, a risk assessment and an estimate of the funds spent on the survey and restoration. The register can be accessed online at the website of the Environmental Agency.</p>
Are any changes to the contamination regulation anticipated in the near future in Bulgaria?	<p>We are not aware of any expected changes to the contamination regulation.</p>

Key contacts



Kostadin Sirleshtov

Partner

T +359 2 921 9942

E kostadin.sirleshtov@cms-cmno.com



Dimitar Zwiatkow

Partner

T +359 2 447 1315

E dimitar.zwiatkow@cms-rrh.com

Czech Republic

Czech Republic By Lukáš Janíček and Markéta Škvorová, CMS Czech Republic	
Question	Answer
What is the extent of the contamination problem in the Czech Republic? How many sites are contaminated? Does the contamination mostly come from past industrial activity or other sources?	Czech Republic has inherited numerous contaminated sites, so-called 'old ecological loadings', as a negative consequence of past regimes (communist regime), when environmental protection and handling of harmful substances at industrial and other sites were at a very low level. There is disagreement as to the number of sites which are contaminated, but according to the Czech Environmental Information Agency as at 2015 there were 9,242 contaminated sites, of which 4,746 were registered in the Contaminated Sites Monitoring System.
Which laws are applicable for soil and groundwater contamination in the Czech Republic?	The main regulations in the Czech Republic on soil and groundwater contamination are the Act on Protection of Agricultural Land Fund and Decrees on Particularities of the Protection of the Agricultural Land (the " Decrees "), the Water Act and the Act on Integrated Prevention (the " IPPC Act ") and, with regard to responsibility, the Environment Act and the Act on Environmental Damage and its Remedy (the " Environmental Damage Act ").
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The Act on Protection of Agricultural Land Fund and the Decrees came into effect in 1992, 1994 and 2016 respectively. The Water Act and IPPC Act entered into force in 2002, and the Environment Act in 1992 as well as the Environmental Damage Act in 2008.</p> <p>Prior to the above-mentioned laws entering into force, there were only several laws which addressed some specific aspects of soil and groundwater contamination. There was not a similar legal regulation in the field of responsibility that is now governed by the Environmental Act and Environmental Damage Act.</p>
Who is responsible for soil and groundwater contamination?	<p>In general, primary legal responsibility under public environmental laws follows the "polluter pays" principle. Therefore the person who causes the contamination is responsible for it (the responsibility is joint and several where there are several polluters for soil and groundwater contamination).</p> <p>Notwithstanding the above, under particular conditions, environmental laws may impose responsibility on owners and occupiers for contamination which was present prior to the acquisition of the real estate (so called 'old ecological loadings') or on the legal successor.</p> <p>Under the Environmental Act, the polluter can be responsible for causing soil and groundwater contamination, however this is rarely used in practice. Under the Environmental Damage Act which is only used for incidents that happened after August 2008, operators of particular activities listed in the Annex are responsible for causing soil and groundwater contamination (for example operators handling hazardous chemicals).</p> <p>If there is serious threat of groundwater contamination and no administrative order may be imposed upon the polluter or the property owner, then the corrective measures should be taken by the competent state authority. There is a special fund of CZK 10,000,000 (approx. EUR 388,425) for this purpose.</p> <p>If the polluter (especially operators listed in the Environmental Damage Act) ceases to exist without any legal successor, the state shall bear the costs of remedying the contamination.</p>

Which measures may be required under public law in order to address issues of soil and groundwater contamination?	<p>Under the Czech regulation the following measures, among others, may be required with regard to soil and groundwater contamination:</p> <ul style="list-style-type: none"> - Protection measures to prevent or minimise the spreading of contamination; - Corrective measures to restore natural functions of damaged ecosystems or parts of the ecosystem to its original condition; - Substitute performance of the environmental damage if the restoration is not possible or ineffective for serious reasons; - Financial reimbursement of the environmental damage; - Various investigative measures to assess the contamination.
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>In general, the polluter is required to conduct preventive or restorative clean-up measures immediately to control, limit or remove the contamination. The competent authority may then decide on imposing the obligation of clean-up measures.</p> <p>There are no general thresholds to determine the need for clean-up measures. However, the Act on Protection of Agricultural Land Fund and Decrees establish the thresholds of hazardous substances for the declaration of contaminated agriculture soil. If such thresholds are exceeded, the polluter will be obliged to remedy the damage, for instance by soil agro-technical and melioration measures.</p>
What are the regulatory instruments of the competent authorities and when may they be applied?	<p>The competent authorities are able to adopt preventive, control and inspection measures under Czech environmental law.</p> <p>Further, the competent authorities may issue an administrative order to impose obligations upon the polluter to, among others:</p> <ul style="list-style-type: none"> - undertake corrective (restoration) measures; - protection measures; - substitute performance of the environmental damage to provide financial reimbursement; - restrict or stop the operation subject to certain conditions. <p>If the order is not followed, the authority can carry out the necessary measures itself and demand the costs from the responsible party.</p> <p>Additionally, the competent authority may impose a penalty in certain situations, predetermined by law (up to CZK 10,000,000, approx. EUR 388,425).</p>
In the event of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	<p>The Environmental Damage Act provides that responsibility is joint and several where there are several polluters for soil and groundwater contamination. There is no public law regulation concerning compensation claims between the responsible parties. However, in such a case, the party which had to undertake measures may request compensation on a separate civil proceeding from the other parties (polluters) which are responsible.</p>
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	<p>In the event of soil and groundwater contamination, under certain conditions private law claims might be raised by third parties (whose property was contaminated or otherwise affected by the contamination) claim for restoration to its original condition and claim for financial compensation.</p> <p>Further obligations may apply under contracts.</p>
Are there any restrictions of the public law responsibility or the private law liability?	<p>In general, environmental responsibility is not limited under public law with the exception of liberation reasons such as when environmental damage is caused as a result of the fulfilment of the administrative decision.</p>
Is there criminal liability for soil and groundwater contamination?	<p>Soil contamination and water contamination can constitute criminal offences under the Czech Criminal Code when committed intentionally or with negligence.</p>
Are soil and groundwater contamination registered in the Czech Republic?	<p>There is no comprehensive register of contamination in Czech Republic. However, soil and groundwater contamination are monitored in the Czech Republic. A map (updated in 2010) displaying soil contamination sites is available online as well as maps and databases showing to which extent various chemical substances are represented in the soil. With respect to groundwater, the only available maps and databases reflect the presence of chemical substances.</p> <p>For detailed information to be obtained, an application to the Ministry of environment / Ministry of agriculture can be submitted.</p>
Are any changes to the contamination regulation anticipated in the near future in the Czech Republic?	<p>We do not expect any significant changes to the contamination regulation in the near future.</p>

Key contact

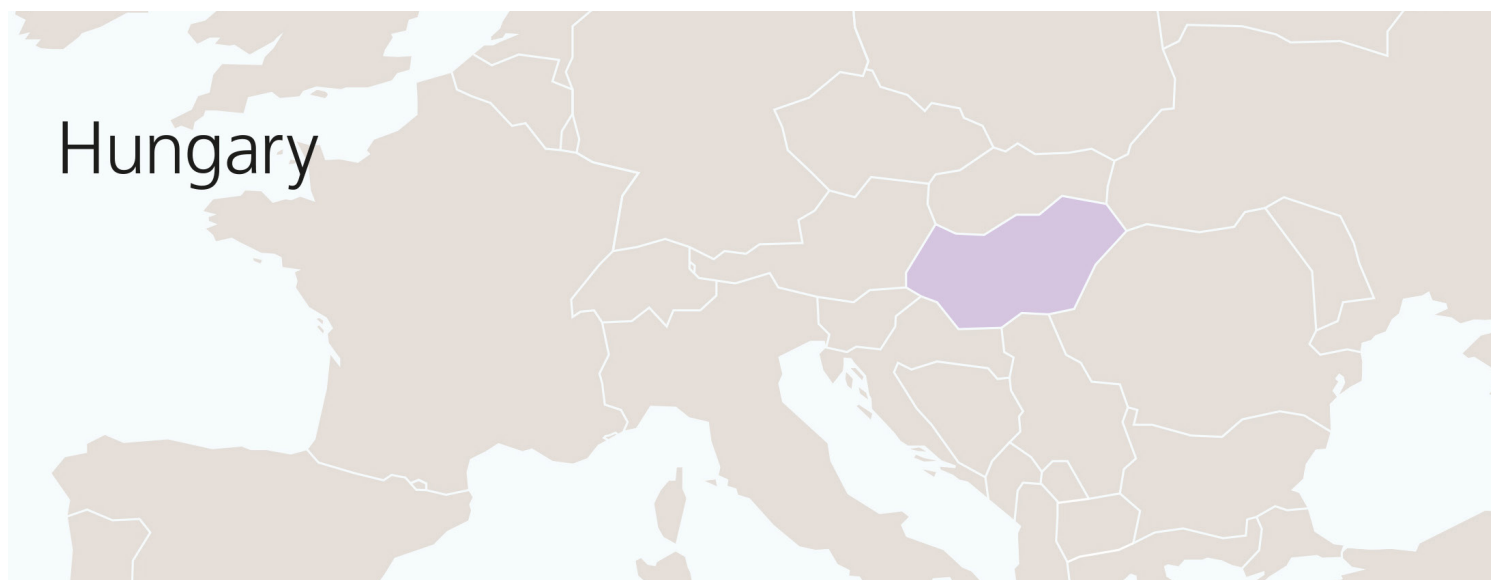


Lukáš Janíček

Partner

T +420 296 798 833

E lukas.janicek@cms-cmno.com



Hungary

By Gábor Czike and László Jókay, CMS Budapest

Question	Answer
What is the extent of the contamination problem in Hungary? How many sites are contaminated? Does the contamination mostly come from past industrial activity or other sources?	Hungary has inherited numerous contaminated sites mostly as a result of contaminating industrial activity carried out several decades ago, however contamination history differs from site to site. According to the National Environmental Protection Program adopted in 2015 for the period between 2015 and 2020, there are approximately 1,100 known and registered contaminated sites, however the actual number of contaminated sites may be significantly higher.
Which laws are applicable for soil and groundwater contamination in Hungary?	<p>The main regulations in Hungary on soil and groundwater contamination are include: the Environmental Protection Act; the Water Management Act; the Governmental Decree on the Protection of the Groundwater ("Government Decree"); and the Ministerial Decree on the Thresholds Necessary for the Protection of Groundwater and Measurement of Contamination ("Ministerial Decree").</p> <p>In addition, there are several ministerial decree level legal regulations applicable in respect of soil and groundwater contamination, which regulate the technical aspect of delineation, measurement and remediation of the contamination.</p>
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The EPA came into force in 1995, the Water Management Act in 1996, the Government Decree in 2004 and the Ministerial Decree in 2009.</p> <p>No unified, comprehensive legislation for environment protection had existed in Hungary prior to the adoption of Act on the Protection of the Human Environment in 1976. Prior to 1976 provisions regulating (also) environmental protection were set out in various types and levels of legislative measures that only covered fragmented issues on an occasional basis, without having any general legal concept or guiding principles. Act on the Protection of the Human Environment set out detailed rules regarding liability for the violation of provisions concerning environment protection. In 1995, the EPA replaced the previous legislation and entered into force on 19 December 1995.</p>
Who is responsible for soil and groundwater contamination?	<p>The EPA establishes the fundamental rules of the civil law and administrative liability for using the environment. Accordingly, anyone who uses the environment is obliged to: (i) abide (or stop) endangering or damaging the environment; (ii) provide the authority with all necessary information if the environment becomes damaged or endangered; (iii) mitigate the damage to the environment; (iv) restore the natural state of the environment; (v) and bear all the costs of restoration or prevention and to bear the liability for damaging the environment.</p> <p>EPA provides for a presumption of the owner's liability and on the other hand a joint and several liability of the owners and users. The owner may be released from the presumed liability if it can provide unequivocal evidence that it was not him who caused the environmental pollution as well as the names of the actual user of the property. On the basis of the published court decisions it is clear that the owner may name not only a current user as the person causing the damage, but also an occupant who used the polluted property in the past prior to the acquisition by the current owner.</p>

Which measures may be required under public law in order to address issues of soil and groundwater contamination?	<p>Beyond the general legal obligations and guidelines, the detailed rules of remediation procedure are set out by the Governmental Decree. According to the rules of the Governmental Decree, there are three phases of remediation, which may be repeated if necessary:</p> <ul style="list-style-type: none"> - fact finding phase; - remediation intervention (i.e. remediation actions); and - monitoring, throughout and after the above phases. <p>Under the applicable laws certain measures can be required with regard to soil and groundwater contamination due to soil contamination, including:</p> <ul style="list-style-type: none"> - measures to restrict or terminate the contamination and to establish proper measures of intervention, or to prevent or minimise the spreading of contamination; - investigation measures to assess the extent of the contamination, the resulting risks and the necessary measures to be taken; and - monitoring measures to assess whether there is a need for modifying the previously applied approaches.
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>The Ministerial Decree, among other legal regulations, sets forth certain threshold values for concentration levels of contaminating substances, on the basis of which it can be determined whether soil or groundwater is deemed contaminated (the “B Threshold”).</p> <p>The environmental authority determines - in its resolution on closing the fact-finding investigation phase - the target contamination threshold (the “D Threshold”). This must be achieved as a result of the remediation in order to prevent any damage to health, ecosystem and the environmental elements. The D Threshold is to be determined on the basis of several factors, including the B Threshold applicable for the contaminating substances, the natural level of concentration of the substances in the area prior to the contamination in question, the best available remediation method, etc.</p>
What are the regulatory instruments of the competent authorities and when may they be applied?	The competent environmental authority may conduct its own investigations in relation to endangerment, pollution or damage of the soil and groundwater. It has the right to undertake preventive or remedial measures in connection with the contamination at the cost of the responsible party. The authority may also order the responsible party to prepare a remediation intervention plan, which is to be reviewed and approved by the environmental authority. In such case the remediation shall be carried out on the basis of the approved remediation plan by the liable person.
In the event of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	<p>There are no public law regulations regarding compensation claims that can be raised between the responsible parties.</p> <p>The Civil Code provides that if there is more than one party being responsible for the contamination their liability for damages against third parties are joint and several. The liability for damages for internal compensation claims between such responsible parties shall be determined on the basis of their respective culpability.</p>
W Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	<p>The following private law claims might be raised by third parties against persons responsible for soil and groundwater contamination, e.g. by neighbours:</p> <ul style="list-style-type: none"> - in the event of the presence of imminent danger, the endangered person may request the court to (i) prohibit such person from continuing such conduct, (ii) order the person imposing such danger to take sufficient preventive measures, and (iii) order the person imposing such danger to provide sufficient guarantee; - claims for protection of possession against the party responsible for contamination; - claims for damages caused by the contamination (strict liability); - claims for damages where the conduct of the polluter is in conformity with the applicable environmental regulations, but damage is nevertheless incurred (e.g. due to the loss of value of a neighbour's real property). <p>Further obligations may apply under contractual regulations.</p>
Are there any restrictions of the public law responsibility or the private law liability?	There are no restrictions of the public law responsibility. Under the Civil Code, in cases of exceptional circumstances, the court may award damages in an amount lower than the amount of the total loss.
Is there criminal liability for soil and groundwater contamination?	The Hungarian Criminal Code regulates the act of ‘ Environment Offense ’ as a criminal act, which may be committed by any person responsible for the pollution by any means of the earth, the air, the water, the flora and fauna and their constituents, resulting (i) in their endangerment; or (ii) damage (sanctions differentiate on the basis of the extent of the damage). Pollution shall mean the introduction of contaminants into the earth, the air, the water, the flora and fauna and their constituents exceeding the emission limits laid down by law or by decree of the competent authority. The crime may be committed intentionally or with negligence.
Are soil and groundwater contamination registered in Hungary?	There is no special soil and groundwater contamination public register in Hungary. However, the information about any long-term environmental damage identified over real properties is entered into the land register.
Are any changes to the contamination regulation anticipated in the near future in Hungary?	There are no indications of any major changes to the applicable environmental regulations related to soil and groundwater contamination in the foreseeable future.

Key contact



Gábor Czike

Partner

T +36 1 483 4819

E gabor.czike@cms-cmno.com



Dr Péter Simon

Partner

T +36 1 483 4829

E peter.simon@cms-cmno.com

Poland

Poland By Agnieszka Skorupińska and Karol Jaworecki, CMS Poland	
Question	Answer
What is the extent of the contamination problem in Poland? How many sites are contaminated? Does the contamination mostly come from past industrial activity or other sources?	Although some contamination in Poland has its source in the industrial activity from the early 20th century, it was primarily during communist times where most sites became contaminated. In particular, there is a concentration of contaminated sites in the Silesia-Cracow region in South Poland where most of the industrial activity was focused. Poland's environmental situation has improved since the end of the communist regime, which has been accompanied by a decreased emphasis on heavy industry and increased government awareness of environmental issues. It is difficult to assess the number of contaminated sites. The publicly available information only concerns the sites where contamination was discovered and reported to authorities, and it is widely acknowledged that the realistic figures are significantly higher.
Which laws are applicable for soil and groundwater contamination in Poland?	<p>The main regulations in Poland on soil and groundwater contamination are:</p> <ul style="list-style-type: none"> - the Environmental Protection Law ("EPL"), - the Act on environmental damage prevention and remediation ("EDA"), - the Regulation on the manner of conducting the soil surface contamination assessment ("Soil Surface Assessment Regulation"), and - the Regulation on the criteria and manner of assessment of the condition of the unified groundwater bodies ("Groundwater Standards Regulation").
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	The EPL came into force in 2001, whereas the EDA came into force in 2007. However, the current contamination liability scheme was shaped anew in 2014 and subsequently new soil quality standards and new sampling requirements were added to the scheme in 2016.
Who is responsible for soil and groundwater contamination?	<p>The entity liable for the contamination depends on whether the contamination is of historic nature or whether it is a new contamination, i.e. environmental damage.</p> <p>Under the EPL, the soil surface (including soil and groundwater) contamination that occurred before 30 April 2007 or results from activity which was terminated before this date is referred to as „historic soil surface contamination”. Liability for historic soil surface contamination is, as a rule, based on the „holder of land liability” principle. This means that if there is any historic contamination, the „holder of land”- i.e. the owner of the land or another entity disclosed in the land and buildings register as the holder of land - is responsible for it. Thus, any new entity which becomes the holder of land and its name is entered into the relevant land and buildings register such entity becomes liable to take care of the historic contamination regardless of who in fact caused the historic contamination.</p> <p>Soil surface contamination caused on or after 30 April 2007 is referred to as „new environmental damage” under the EDA and is based, as a rule, on the „polluter pays” principle. This means that the entity using the environment who caused the new environmental damage is liable for the remediation.</p>

Which measures may be required under public law in order to address issues of soil and groundwater contamination?	<p>Under the EPL, it is necessary to remediate the historic soil surface contamination (including groundwater). However, as of 2014 Polish law provides also for other possibilities of dealing with contamination on the basis of risk assessment such as:</p> <ul style="list-style-type: none"> - limited remediation (including self-attenuation); - release from remediation obligation; - postponing the remediation until the closure of the IPPC site. <p>Under the EDA, the polluter is obliged to take preventive measures for anticipated environmental damage and undertake clean up measures once the new environmental damage occurs. With respect to historic soil surface contamination and new environmental damage it is possible to apply other solutions on the basis of risk assessment including:</p> <ul style="list-style-type: none"> - limited remediation (including self-attenuation); - release from remediation obligation; - postponing the remediation until the closure of the IPPC site. <p>Additionally, under EDA it is possible to forego further remediation actions with respect to water if the performed measures are considered to be sufficient or the costs of further clean-up measures are disproportionate to the environmental benefits.</p>
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>Clean-up measures are required when the maximum allowable substances concentration in soil is breached. The currently binding soil quality standards (the thresholds) are set forth in the Soil Surface Assessment Regulation. The soil standards differ depending on the type of use for the property as prescribed in the local zoning plan or – in absence thereof – land register. The list of contaminants contained in the said regulation is not exhaustive. Thus, if a contaminant is not mentioned in the regulation but occurs in the soil, special risk assessment must be performed.</p> <p>There are no legally binding quality standards as far as groundwater contamination is concerned. In practice, the substances present in groundwater are often compared with the standards set forth in the Groundwater Standards Regulation.</p>
What are the regulatory instruments of the competent authorities and when may they be applied?	<p>The authority may request to test the property which was previously used for activity that may have resulted in historic soil surface contamination or the property where a direct threat of environmental damage or the environmental damage occurs.</p> <p>If it is confirmed there is a need for remediation, the costs of the remediation will be recharged to the responsible person. However, if it cannot be performed by the responsible person under the circumstances, the remediation will be performed by the authority.</p>
In the event of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	<p>Polish contamination law does not provide for special compensation claims that may be raised by a responsible person who performed remediation against another party under the public law. However, contamination law provides for joint responsibility of the holder of the land and other party that has caused historic soil surface contamination. Additionally, the parties involved in the contamination case may raise compensation claims under the general rules of civil law.</p>
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	<p>In the event of soil and groundwater contamination, the following private law claims might be raised by third parties, e.g. by neighbours:</p> <ul style="list-style-type: none"> - Tort-based claims for damages against operators of industrial plants set into motion by “powers of nature”. - Tort-based claims for restitution of condition of environment or ceasing operation in case of unlawful influence over natural environment. <p>Further obligations may apply under contractual regulations.</p>
Are there any restrictions of the public law responsibility or the private law liability?	<p>There are no restrictions of the public law responsibility. Neither are there any specific restrictions of the private law liability. Only general restrictions such as prescription period apply.</p>
Is there criminal liability for soil and groundwater contamination?	<p>Soil contamination and water contamination can constitute criminal offences under the Polish Criminal Code. The penalty depends on whether the act was committed intentionally or not.</p>
Are soil and groundwater contamination registered in Poland?	<p>Yes, currently there are two central contaminated sites registers: (i) historical contamination register and (ii) direct threat of environmental damage and environmental damage register. Both contain information on the properties where the contamination was discovered.</p> <p>For access to the register, an application to the competent local authority is required.</p>
Are any changes to the contamination regulation anticipated in the near future in Poland?	<p>There are no changes to the regime in the legislative pipeline. However, there are some new developments such as a list of potentially historically contaminated sites that need to be prepared by local authorities early October 2018. If the given site is entered into the list an obligation to test such property may be imposed.</p>

Key contact



Agnieszka Skorupińska

Counsel

T +48 22 520 83 36

E agnieszka.skorupinska@cms-cmno.com



Romania

By Varinia Radu, Ramona Dulamea, Daniela Popescu, CMS Romania

Question	Answer
What is the extent of the contamination problem in Romania? How many sites are contaminated? Does the contamination mostly come from past industrial activity or other sources?	<p>Romania has inherited numerous contaminated sites as a result of the communist industrial revolution. Contamination history and ownership issues differ from site to site.</p> <p>According to the "<i>National Strategy and National Action Plan for the Management of Contaminated Sites in Romania</i>"¹, in Romania there are 1,393 contaminated sites, of which 1,183 are potentially contaminated and 210 are known as being contaminated². Decontamination costs were estimated at Euros 8.45 billion.</p> <p>Recently listed³ major contamination sources reveal that there are various causes for the contamination including, chemicals (fertilizers, pesticides) used in agriculture, household and domestic products, heavy metals, lack of modernization of sewerage works oil & gas exploitation, etc.</p>
Which laws are applicable for soil and groundwater contamination in Romania?	<p>The main regulation on soil and groundwater contamination is the Government Emergency Ordinance on the environment protection (the "GEO").</p> <p>The environmental legislation also contain separate sectorial regulations, as follows:</p> <p>(i) Soil and subsoil</p> <ul style="list-style-type: none"> - Government Decision on the methods of investigation and evaluation of the soil and subsoil pollution; - Government Decision regarding the rehabilitation of the areas where the soil, subsoil and terrestrial ecosystems have been affected; - Ministerial Order for the approval of the Regulation on Environmental Pollution Assessment. <p>(ii) Water: The Water Law (the "Water Law")</p> <p>The EU Environmental Liability Directive has been implemented through the Government Emergency Ordinance no.68/2007 (the "GEO 68/2007").</p>
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The GEO and the Water Law have become effective respectively since 2005 and 1996. Previously, the soil and groundwater contamination was regulated through laws on environmental protection (first law on environmental protection was enacted in 1973 and repealed in 1995, whilst the first water law was enacted in 1974).</p>
Who is responsible for soil and groundwater contamination?	<p>Under Romanian law the polluter is responsible for contamination. The polluter means any operator which is understood as a natural or legal person governed by public or private law, exercising or having control of a professional activity or, where provided by law, which has been invested with control over the technical functioning of such an activity, including the holder of a regulatory act for such an activity or the person who registers or notifies such an activity.</p> <p>This being said, the responsibility may be attributable to:</p> <ul style="list-style-type: none"> - the actual polluter, whilst in case of multiple polluters, the liability is joint and several; - the parent company or the consortium leader, should the polluter be part of a group of companies; - the owner of the property; - the person performing an economic activity on the property; or - be predetermined under privatization contracts with respect to „historical contamination“, etc. <p>With regard to the known historical contaminated sites, the remediation measures are undertaken either by the Government and/or the private entities currently controlling such sites (e.g. as provided under a range of privatization contracts whereby the investor has undertaken various remediation measures against future reimbursement from the Government).</p>

Which measures may be required under public law in order to address issues of soil and groundwater contamination?	<p>Whether in case of imminent or occurring environmental damage, within 2 hours upon occurrence, the operator shall inform the competent environmental authority and shall immediately control, isolate, eliminate or otherwise manage the contaminating factors, in order to limit or prevent the spread of environmental damage and any adverse effects on human health.</p> <p>If the primary remedies do not lead to the restoration of the environment to its original state, additional complementary or compensatory remediation measures shall be pursued.</p>
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	Whenever the concentrations of one or more soil pollutants, exceed the prescribed legal limits, clean-up measures are required. The threshold values regarding allowed concentration levels for several substances are contained in the secondary legislation. The respective regulation distinguishes between " <i>alert threshold</i> ", which if exceeded, triggers in depth examination of the underground pollution, and " <i>intervention threshold</i> " which, if exceeded, triggers clean-up measures.
What are the regulatory instruments of the competent authorities and when may they be applied?	<p>In the event that a contamination of the soil or groundwater occurs, the competent environmental authority may:</p> <ul style="list-style-type: none"> - require the operator to provide additional clarifications / information about any damage occurred and the pursued remediation measures; - require the operator to act, control, isolate, eliminate or to otherwise manage the pollutants and/or any other contaminating factors, in order to limit or prevent the spread of environmental damage and any adverse effects on human health. If the operator does not comply with the instructions issued by the authority, the authority can either carry out the necessary measures itself and demand the costs from the responsible party or sanction the latter (contravention fine); - require the operator to take the necessary remedial measures; or - in some cases perform the necessary remedial measures, instead of the operator.
I In the event of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	Based on the " <i>polluter pays</i> " principle, the GEO stipulates that any operator committing a pollution act, bears the damages and the correlative costs of remediation measures. However, in accordance with the GEO no. 68/2007, if several operators have caused the environmental damage, such parties are jointly and severally liable for the costs of reparatory measures. Should, for any reason, had only one operator exclusively pursued remediation measures, such operator shall be entitled to proportionally request reimbursement from the other joint and several liable operators.
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	<p>In the event of soil and groundwater contamination, the following private law claims might be raised by affected third parties, e.g. by neighbours:</p> <ul style="list-style-type: none"> - claims for removal of contamination from their property or, if clean-up measures have been carried out on the polluter's behalf, claims for reimbursement of costs (according to the Civil Code); - claims for damages in case of failure to comply with the legal obligations to prevent or combat pollution (according to GEO 68/2007), as for example a violation of the undertaking to carry out clean-up / remediation or controlling contingent measures; - further obligations may apply under contractual regulations.
Are there any restrictions of the public law responsibility or the private law liability?	<p>The operator shall not be obliged to bear the cost of the reparatory measures, whenever the environmental damage:</p> <ul style="list-style-type: none"> - is attributable to a third party, if the appropriate safety measures were already taken by the operator which may be entitled to compensations from the respective third party; or - has occurred as a result of compliance with a mandatory provision or instruction issued by a public authority, other than those issued by the authority due to a pollution attributable to the respective operator. <p>There is no regulatory threshold of public law liability. The liability under private law claims may be restricted due to contributory negligence by the affected party or may be limited under various contractual provisions.</p>
Is there criminal liability for soil and groundwater contamination?	Soil contamination and water contamination may constitute criminal offences and hence may trigger criminal liability for individuals or entities. The criminal offences, whether committed intentionally or with negligence, are not only prescribed in the GEO, but also provided for in other special sectorial laws (e.g. the Water Law, the Criminal Code, etc.).
Are soil and groundwater contamination registered in Romania? If yes, please provide information on the register, the access to the register and the consequence of a registration.	<p>The list of sites with potentially contaminated soil is published by the National Agency for Environmental Protection, however the list was last updated in 2014.</p> <p>Under a new bill regulating the management of potentially contaminated and contaminated sites, the National Inventory of potentially contaminated sites list will be updated and published on the website of the National Agency for Environmental Protection.</p> <p>In terms of pollution, the water quality monitoring tasks belong to National Authority „Romanian Waters (the "ANAR"), whilst the monitoring of the quality of potable water is under the responsibility of the Public Health Authority. Water quality is pursued according to the structure and principles of the <i>Integrated Water Monitoring System in Romania</i>, whilst ANAR publishes annual reports on water quality.</p>
Are any changes to the contamination regulation anticipated in the near future in Romania?	In June 2018, the Government approved a bill regulating the management of potentially contaminated and contaminated sites. Currently the bill is under the standard parliamentary procedure. The bill proposes the introduction of the obligation for local public authorities to identify potentially contaminated sites. Another provision concerns the drafting of the methodology investigation of potentially contaminated sites and contaminated sites, and a methodology for remediation of contaminated sites.

Key contact



Varinia Radu

Partner

T +40 21 407 3870

E varinia.radu@cms-cmno.com

¹ Approved by the Government in 2015

² Inventory performed in 2007-2008

³ In August 2018, ANAR has published the report on "2017 Synthesis on the water quality", whereby several contamination sources were listed.

Slovakia



Slovakia By Michal Hutan, CMS Bratislava

Question	Answer
What is the extent of the contamination problem in Slovakia? How many sites are contaminated? Does the contamination mostly come from past industrial activity or other sources?	Slovakia has inherited numerous contaminated sites, primarily as a result of the negative impact of past regimes (communist regime), when environmental protection and handling of harmful substances at industrial and other sites were at a very low level. In Bratislava, there is currently an ongoing construction of new „downtown“ (in the location of former communist factories) which has to deal with the issue of contaminated soil. According to the Slovak Environment Agency, there were 2,038 contaminated sites registered in the Register of Environmental Burdens as of 2018.
Which laws are applicable for soil and groundwater contamination in Slovakia?	Multiple acts deal with the issue of contamination and environmental damage in the Slovakia. The main regulation on soil and groundwater contamination is contained in the Act on the Prevention and Recovery of Environmental Damage (the “ Environmental Damage Act ”); Slovak Water Act (the “ Water Act ”); Act on Protection and Use of the Agricultural Land (the “ Agricultural Land Act ”); and Act on Integrated Prevention and Control of the Environmental Pollution (the “ IPPC Act ”).
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	The Agricultural Land Act came into effect in 2004 ; the Water Act in 2004 ; the Environmental Damage Act in 2007 ; and the IPPC Act in 2013 . All of these acts with exception of the Environmental Damage Act replaced previous acts.
Who is responsible for soil and groundwater contamination?	Pursuant to the Environmental Damage Act the operator of the facility is responsible for environmental damage. Pursuant to the Water Act the following parties are responsible for groundwater contamination: - the polluter; - the acquirer of the property (existence or use of which has caused the damage/contamination); - in the case of extraordinary deterioration, the polluter is considered to be the person who operated the facility at the time when the extraordinary deterioration occurred. Under the Agricultural Land Act anyone who damages the agricultural land by his activities with hazardous substances is obliged to immediately take measures to eliminate the damage. Pursuant to the IPPC Act the following parties are responsible for soil and groundwater contamination connected with IPPC plant activity: - the operator of the stationary technical unit in which one or more industrial activities are carried out as well as all other directly related activities (“unit”); - the legal successor of the operator of the unit or incineration plant, waste incineration plant or co-incineration plant; and - the owner of the unit.

Which measures may be required under public law in order to address issues of soil and groundwater contamination?	<p>Pursuant to the Environmental Damage Act the following measures are required with regard to environmental damage:</p> <ul style="list-style-type: none"> - taking all practicable steps to immediately control, prevent the spreading, remove or otherwise handle the relevant pollutants or other deleterious factors; - immediately proposing the corrective measures (restoration, compensation etc.). <p>Pursuant to the Water Act the following measures can be required with regard to groundwater contamination:</p> <ul style="list-style-type: none"> - corrective measures or coverage of associated costs; - immediate measures – urgent reporting to the relevant authorities; removing the causes; the immediate implementation of measures to prevent further spread of pollution; - measures to eliminate the detrimental consequences of extreme deterioration of water – e.g. restoration of the affected area, etc. <p>Pursuant to the Agricultural Land Act the following measures can be required with regard to contamination of the agricultural land:</p> <ul style="list-style-type: none"> - measures to eliminate the damage; - penalty of up to EUR 995; however in the case of a polluter that is a legal person or natural person-entrepreneur a penalty of between EUR 1660 and EUR 166 000 per hectare of the agricultural land. <p>Pursuant to the IPPC Act the following measures can be required with regard to soil and groundwater contamination:</p> <ul style="list-style-type: none"> - necessary measures to remove the pollution and return the site to its original state; - measures to eliminate, control, isolate or reduce the amount of hazardous substances.
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>In general, preventive or restorative clean up measures are required immediately from the polluter to control, limit or remove the contamination. The competent authority may then decide on imposing the obligations and clean-up measures.</p> <p>There are no general thresholds to determine the need for clean-up measures. However, the Agricultural Land Act establishes the limit value of the hazardous substances for the declaration of contaminated agriculture soil.</p>
What are the regulatory instruments of the competent authorities and when may they be applied?	<p>The competent authorities are competent to adopt preventive, control and inspection measures under Slovak environmental law.</p> <p>Further, the competent authorities may issue an administrative order imposing on the polluter the obligation to, amongst others, undertake remedial (restoration) measures, protection measures, substitute performance of the environmental damage or to provide financial reimbursement. If the order is not followed, the authority can carry out the necessary measures itself and demand the costs from the responsible party.</p> <p>Lastly, the competent authority may impose a penalty in certain situations, predetermined by law.</p>
In the event of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	<p>According to the Environmental Damage Act if more than one polluter caused the environmental damage, they are responsible for such damage to the extent of their involvement. In the event that division of responsibility is not clear, the competent authority shall decide. Where the extent of their liability cannot be determined, unambiguously or without undue cost, the polluters shall be jointly and severally liable. There are no regulations concerning compensation claims which can be raised between the responsible parties under the public law, but liability may be sought under civil law.</p>
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	<p>In the event of soil and groundwater contamination, the following private law claims might be raised by third parties (whose property was contaminated / or who were otherwise affected by the contamination): claim for restoration to its original condition and claim for financial compensation (e.g. damages, economic losses, etc.).</p> <p>Further more detailed obligations may apply under contractual regulations.</p>
Are there any restrictions of the public law responsibility or the private law liability?	<p>In general, under public law, environmental responsibility is not limited, with the exception of liberation reasons such as where environmental damage is caused as a result of the fulfilment of an administrative decision.</p> <p>In addition, the liability under private law claims may be restricted by contributory negligence by the affected party.</p>
Is there criminal liability for soil and groundwater contamination?	<p>Soil contamination and water contamination can constitute criminal offences under the Slovak Criminal Code when committed intentionally or with negligence.</p>
Are soil and groundwater contamination registered in Slovakia?	<p>The Ministry of Environment holds an information system on environmental damage and imminent threats which provides information on the type of damage, polluter, implemented correction measures and costs incurred for the prevention/correction.</p> <p>In addition, there is a register of environmental burden administered by the Ministry of Environment via the Slovak Environment Agency, where most of the information is also accessible by third parties. This register collects information on environmental burden (originated in the past, e.g. communistic era) that poses a serious risk to human health or groundwater and soil.</p>
Are any changes to the contamination regulation anticipated in the near future in Slovakia?	<p>We do not anticipate any significant changes to the contamination regulation in the near future in Slovakia</p>

Key contacts



Michal Hutan
Counsel
T +421 2221 115 06
E michal.hutan@cms-cmno.com



Peter Šimo
Partner
T +421 2 3214 1414
E peter.simo@cms-rrh.com



Turkey
By Sinan Abra, Yalçın Babalioglu Boso Attorney Partnership (in association with CMS)

Question	Answer
What is the extent of the contamination problem in Turkey? How many sites are contaminated? Does the contamination mostly come from past industrial activity or other sources?	Contamination is a significant problem in Turkey. In terms of soil contamination, the relevant public authority has declared in its Soil Contamination Statistic Report dated 2017 that seven sites have been announced as contaminated sites and only two of the seven sites have been cleaned to date (information on the expenses incurred is not available). The primary source of contamination can be linked to mining and industrial activity in the country.
Which laws are applicable for soil and groundwater contamination in Turkey?	The main pieces of legislation in Turkey on soil and groundwater contamination are as follows: <ul style="list-style-type: none"> - The Environmental Law ("Environmental Law"); - The Regulation on Control of Soil Contamination and Fields subject to the Point Source Contamination ("Soil Contamination Regulation"); - The Regulation on the Protection against Contamination and Harming of Groundwater; - The Water Pollution Control Regulation; and - The Regulation Regarding the Water Pollution Caused by Dangerous Substances.
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	The Environmental Law Act came into effect in 1983; the Soil Contamination Regulation in 2010; the Regulation on the Protection against Contamination and Harming of Groundwater in 2012; the Water Pollution Control Regulation in 2004; and the Regulation Regarding the Water Pollution Caused by Dangerous Substances in 2005. Prior to the enactment of the said pieces of legislation, soil and groundwater contamination issues were regulated under the (now abrogated) Regulation on Control of Soil Contamination and the Water Pollution Control Regulation.
Who is responsible for soil and groundwater contamination?	The principles of responsibility for soil and groundwater contamination are laid out, in principle, under the Environmental Law. To elaborate, under the Environmental Law, a strict liability principle is applicable to those persons and entities contaminating the soil and groundwater, which means that they will be held responsible even if such contamination occurred without negligence.
Which measures may be required under public law in order to address issues of soil and groundwater contamination?	Under Turkish law, all persons and entities are obligated, amongst others, to take measures to: <ul style="list-style-type: none"> - Prevent soil contamination (where a risk of contamination is in question); and - Stop the contamination and eliminate or decrease the effects of such contamination (where such contamination has already occurred). <p>Certain specific obligations are also applicable with respect to the prevention of groundwater contamination. In this respect, all related entities are obligated, among others, to:</p> <ul style="list-style-type: none"> - Prevent groundwater contamination by waste materials; - Preserve clean groundwater; - Perform measurements on the groundwater to determine, amongst others, the extent of a possible contamination; and - Regulate standards for cleaning contaminated groundwater.

When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	<p>Pursuant to the Soil Contamination Regulation, a clean-up measure will be required, in principle, when the property in question is deemed as a suspected field (<i>şüpheli saha</i>). The procedure for the qualification of such property as a suspected field is regulated in detail under the Soil Contamination Regulation.</p> <p>When a property is deemed as a suspected field, sampling and analysis studies shall be carried out by the relevant public authorities and measurements to determine the extent of the contamination therein.</p> <p>The measurements performed on the said samples will constitute the measured value and this value will be compared with the specific reference values under the Soil Contamination Regulation. Accordingly, the deviation of the measured value from the reference value (calculated by way of the division of the measured value by the reference value) will determine, if there is a contamination on the site and if clean-up measures on the property are required.</p>
What are the regulatory instruments of the competent authorities and when may they be applied?	<p>Turkish public authorities are entitled to conduct environmental inspections at contaminated sites to determine among others, the extent of the contamination and perform any tests and analysis related thereto.</p> <p>As a result of such inspection, the public authorities may request the contaminating entity to initiate clean-up procedures or take other relevant measures to eliminate or decrease the effects of the soil and groundwater contamination present.</p> <p>Alternatively, the public authority may directly take measures to limit or eliminate the effects of an existing contamination and claim the expenses made for such measures from the contaminator. In addition, the said authorities may also issue monetary penalties to the contaminating entity due to having caused such contamination.</p>
In the event of more than one party being responsible for soil and groundwater contamination, are there any compensation claims, which can be raised between the responsible parties?	<p>In principle, the parties that have caused the contamination of soil and groundwater should have joint liability towards claims raised due to such contamination. As such, if a single party among a group of contaminators becomes obligated to pay a certain compensation to a third party or take certain measures to remedy such contamination, then that party should be able to seek recourse from the remaining contaminators for their share of involvement in the said contamination. There are no regulation concerning compensation claims which can be raised between the responsible parties under the public law.</p>
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	<p>In general, the Environmental Law brings forth a strict liability principle for entities / persons involved in the contamination of soil and groundwater. As such, a compensation claim with respect to the damages arising from the said contamination may be raised based on the terms of the Environmental Law. It may also be possible for a party to claim expenses incurred by such party to clean a contaminated area.</p> <p>In addition, the Turkish Code of Obligations also allows a party to claim damages arising from the failure of due operation of certain workplaces (e.g. power plants) which pose significant dangers in their operation. Such claims would also be based on a strict liability principle.</p> <p>In the event that a specific soil or groundwater contamination has occurred but the extent of such contamination is below certain thresholds or limits outlined under the relevant legislation, then, the claims arising from such contamination should not fall under abovementioned legislation. In such case, the following private law claims might be raised, based on the general provisions of law and fault liability:</p> <ul style="list-style-type: none"> - Claims for physical damages suffered due to the contamination of soil and groundwater; - Claims for the expenses assumed by the party that undertook clean-up measures for the contaminated soil and groundwater or other measures to limit the effects of the said contamination (where applicable); - Claims for further compensation for bodily losses, non-pecuniary losses or losses to other rights.
Are there any restrictions of the public law responsibility or the private law liability?	<p>The Environmental Law does foresee certain upper limits for monetary fines applicable in the case of environmental contamination. The highest monetary fine applicable under the Environmental Law, in this respect, is TL 2.431.628 (app. Euro 348,000).</p> <p>On the other hand, the Environmental Law also indicates that the relevant public authorities are entitled to take measures to stop a contamination or decrease its effects and claim the re-payment of these amounts from the contaminators. In this respect, a specific ceiling for the expenses to be incurred by the public authorities for this purpose is not available under the relevant legislation. As such, it is not possible to set an upper limit to public liability exposure of a contaminator.</p> <p>With respect to private law liability, please note that, in general, Turkish law dictates that compensation for damages suffered should not result in the enrichment of the suffering party (which sought the compensation). As such, any compensation amount in this case should be limited with the amounts of the actual damages suffered by the relevant party.</p>
Is there criminal liability for soil and groundwater contamination?	<p>Soil contamination and water contamination can constitute criminal offences under the Turkish Criminal Code when committed intentionally or with negligence.</p>
Are soil and groundwater contamination registered in Turkey?	<p>No, there are no registries in Turkey specifically held for areas with soil and groundwater contamination. However, pursuant to the Soil Contamination Regulation, certain entities are obligated to submit the Information Form with respect to their operations. This form shall be submitted through an online portal, namely the Contaminated Fields Information System (<i>Kirlenmiş Sahalar Bilgi Sistemi</i>) and as a result of such submission, the public authorities shall determine whether a field (where a certain entity is operating) is a contaminated field. As such, while there is not a specific registry with respect to contaminated fields, certain information with respect to contaminated fields is available under the said Contaminated Fields Information System. Please note that the said system is accessible only by the relevant public authorities.</p>
Are any changes to the contamination regulation anticipated in the near future in Turkey?	<p>As the legislation in question was enacted recently, it is unlikely that significant changes will be made to it in near future. However, environment is one of the matters of continuing debate between Turkey and the EU as part of Turkey's accession process and as such, it is difficult to rule out entirely that a possible change in the legislation of the EU will also trigger such a change in the Turkish legislation.</p>

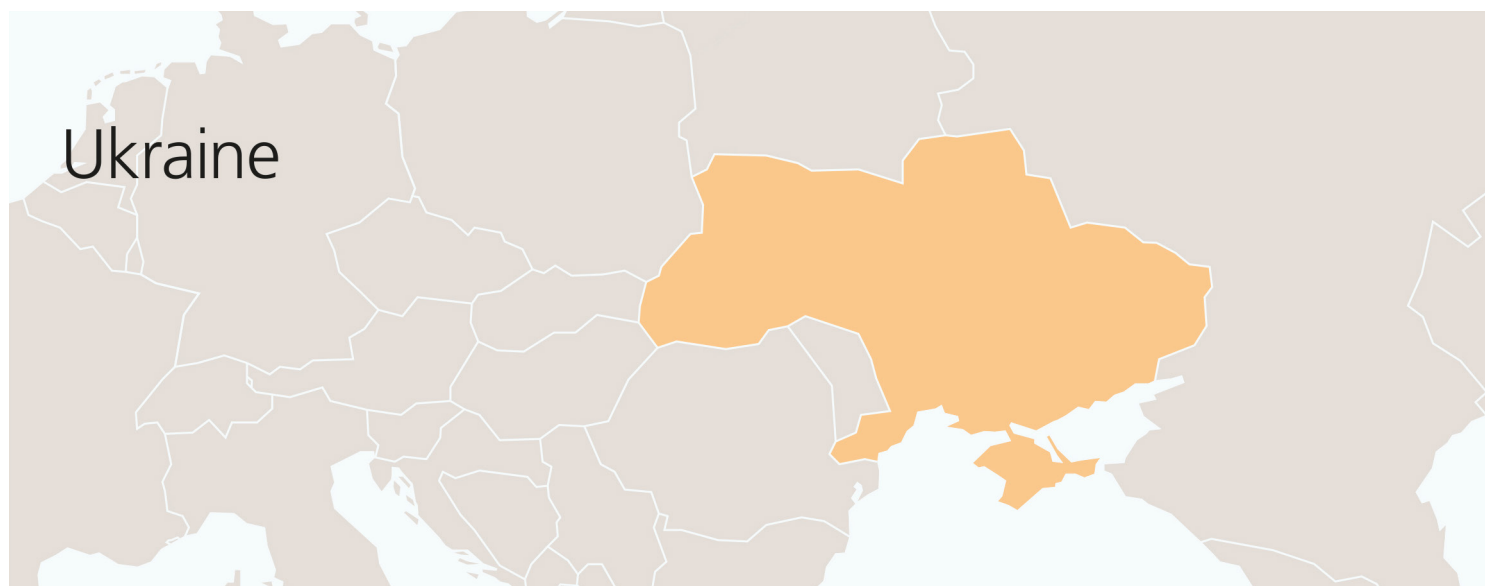
Key contacts



Burcu Boso
Partner
T +90 212 401 4260
E burcu.boso@ybb-av.com



Sinan Abra
Associate
T +90 212 401 4257
E sinan.abra@ybb-av.com



Ukraine

By Volodymyr Kolvakh and Anatolii Doludenko, CMS Ukraine

Question	Answer
What is the extent of the contamination problem in Ukraine? How many sites are contaminated? Does the contamination mostly come from past industrial activity or other sources?	<p>Ukraine inherited a large number of contaminated areas from the USSR times. The most known is the site of Chernobyl nuclear disaster. Due to development of heavy industry and metallurgy there are also numerous contaminated areas around industrial centres (especially in central and eastern parts of Ukraine).</p> <p>According to the estimates of the National scientific centre "Institute of Soil Science and Agro Chemistry named after O.N. Sokolovsky", around 9 million ha of Ukrainian lands are contaminated. Approximately 4.2 million ha are contaminated by radiation, 2 million ha are contaminated with heavy metals and 2.8 million ha with toxic substances.</p> <p>In accordance with the data from the National Reports on the State of Natural Environment there are approximately 200 surface sources and 260 localised places of groundwater contamination registered in Ukraine.</p>
Which laws are applicable for soil and groundwater contamination in Ukraine?	<p>Matters related to protection of environment (including soil and groundwater contamination) are in general regulated by the Law of Ukraine On Protection of Environment (the "Environment Protection Law").</p> <p>More specific regulation for soil and groundwater use, including pollution preventive measures, is envisaged in the Land Code of Ukraine (the "Land Code") and Water Code of Ukraine (the "Water Code") respectively.</p> <p>Separate matters may be regulated by other laws, for instance criminal or administrative liability imposed under the Criminal Code of Ukraine (the "Criminal Code") and Code of Administrative Offences respectively.</p>
When did the laws come into force? Have there been other regulations before the entering into force of the current laws?	<p>The Environment Protection Law entered into force in 1991, the Water Code in 1995 and the Land Code in 2001.</p> <p>Before the above-mentioned laws entered into force, soil and groundwater contamination was regulated by various legal acts adopted in USSR on local or union-wide levels.</p>
Who is responsible for soil and groundwater contamination?	<p>According to the Environment Protection Law, the Land Code and the Water Code a polluter (legal entity or individual) is responsible.</p> <p>The following entities would usually be considered as polluters, unless it will be proven otherwise:</p> <ul style="list-style-type: none"> - the land plot owner or the user; - the owner or the operator of the facilities that caused contamination; - the performer of hazardous and other activities that may cause contamination; - the subsoil user; - the former owner of the property if it was abandoned.

Which measures may be required under public law in order to address issues of soil and groundwater contamination?	<p>Under the Environment Protection Law, the Land Code and the Water Code, the immediate elimination of the consequences of contamination is required in the case of soil and groundwater contamination.</p> <p>In addition, the Land Code establishes that land plots with soils which are contaminated by chemical substances in a way that their usage becomes hazardous for the environment and economically not feasible, are subject to conservation. Activities on conserved land plots must be restricted and land plots must be either forested or alkalised.</p> <p>In turn, the Water Code provides that groundwater decontamination activities shall be carried out at the expense of the polluter taking into account recommendations of central governmental authorities.</p> <p>The Land Code and the Water Code also require the polluter to compensate damages caused to the state by soil and groundwater contamination. Damages are calculated according to methodologies established by respective regulating state authorities. Compensation of damages does not relieve the polluter from other liability (administrative / criminal), its clean-up responsibilities or payment of mandatory state fees and duties.</p>
When are clean-up measures required? Are there any thresholds to determine the need for clean-up measures?	Clean-up measures are required in the event of soil and groundwater contamination that exceed threshold values established by Ukrainian authorities or are harmful for human health or environment. An assessment of the necessary measures will be made on a case-by-case basis.
What are the regulatory instruments of the competent authorities and when may they be applied?	<p>The authorities perform scheduled and unscheduled inspections of entities which undertake activity which pose a risk to the environment.</p> <p>The authorities have the right to request Ukrainian courts to restrict or suspend business activities of an entity in the case of its non-compliance with environment protection legislation or exceeding threshold values for soil and groundwater contamination. The court may also terminate pollutant's title to land, which was contaminated due to the pollutant's breach of environmental regulations.</p> <p>In addition, the authorities can impose an administrative penalty or provide documentary evidence on environmental violations to law enforcement authorities for criminal prosecution of the polluters.</p> <p>Authorities can also perform clean up measures by themselves, but mostly in the case of emergencies.</p>
I In the event of more than one party being responsible for soil and groundwater contamination, are there any compensation claims which can be raised between the responsible parties?	<p>There is no regulation concerning public compensation claims between the responsible parties. However, under the general principle of Ukrainian civil law, if more than one party is responsible for damages, a claim may be raised against either of them. Upon application of the affected party, the court may determine the scope of liability of each responsible party proportional to their fault.</p> <p>A party, which compensated damages caused jointly by itself and other parties has the right of recourse to the other party (-ies).</p>
Which private law claims may be raised against the persons responsible for soil and groundwater contamination?	<p>Third parties, whose rights were infringed by groundwater and soil contamination, may claim from pollutants:</p> <ul style="list-style-type: none"> (i) removal of contamination from their property (specific performance); and/or (ii) reimbursement of damages caused by such contamination in the full amount (including the cost of clean-up measures). <p>However, from the practical standpoint option (ii) is more viable, as enforcement of specific performance can be a complicated and protracted process in Ukraine.</p> <p>Claims for suspension of business activity, which is a cause for soil or groundwater contamination, are generally brought with Ukrainian courts by environmental authorities, which are specifically authorised to initiate such proceedings under the law. The court practice shows that such claims have low chances of success if initiated directly by third parties.</p> <p>Apart from tort claims, liability for contamination may also arise from contracts.</p>
Are there any restrictions of the public law responsibility or the private law liability?	<p>Responsibility of the pollutant under the public law is limited by the maximum amount of fines and methodologies for calculation of environmental damages (including for soil and groundwater contamination).</p> <p>Tort liability under the private law is not limited by law and the default rule is that damages must be compensated in full. However, when awarding damages the court may take into account the market value of the property or other factors.</p>
Is there criminal liability for soil and groundwater contamination?	<p>Contamination of soil or groundwater (whether intentionally or by negligence) can constitute a criminal offence under the Criminal Code if the unlawful use of substances, waste or other materials creates a threat to life, health or the environment.</p> <p>Failure to take measures on the removal of the consequences of soil or groundwater contamination can also be considered as a criminal offence, if it resulted in death or other severe consequences.</p>
Are soil and groundwater contamination registered in Ukraine? If yes, please provide information on the register, the access to the register and the consequence of a registration	There are no public registries for soil and groundwater contamination. However, state authorities must record every instance of contamination that becomes known to them. State authorities have a further obligation to inform population regarding the state of environment, emergencies and disclose such information upon the request of any party (such information may not be classified).
Are any changes to the contamination regulation anticipated in the near future in Ukraine?	In accordance with EU-Ukraine Association Agreement, Ukrainian environmental legislation must be approximated with EU legislation.

Key contacts



Vitaliy Radchenko
Partner
T +380 44 391 7702
E vitaliy.radchenko@cms-cmno.com



Anna Pogrebna
Partner
T +380 44 500 1720
E anna.pogrebna@cms-rrh.com



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