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Bulgaria

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Legislation

1 Main environmental regulations

What are the main statutes and regulations relating to the environment?

A main principle of the Constitution of Bulgaria is that the state has to ensure the protection and sustainability of the environment, the maintenance and diversity of wildlife and the rational utilisation of the natural wealth and resources of the country. This principle is further developed and implemented in sector-specific legislation through different acts and regulations.

The main statutes relating to the environment are:

- the Environmental Protection Act (EPA), promulgated in State Gazette 91/2002, last amended by State Gazette 42/2011;
- the Waste Management Act, promulgated in State Gazette 86/2003, last amended by State Gazette 30/2011;
- the Biological Diversity Act, promulgated in State Gazette 77/2002, last amended by State Gazette 33/2011;
- the Protected Areas Act, promulgated in State Gazette 133/1998, last amended by State Gazette 19/2011;
- the Soils Act, promulgated in State Gazette 89/2007, last amended by State Gazette 98/2010;
- the Ambient Air Purity Act, promulgated in State Gazette 45/1996, last amended by State Gazette 42/2011;
- the Waters Act, promulgated in State Gazette 67/1999, last amended by State Gazette 35/2011;
- the Fisheries and Aquaculture Act, promulgated in State Gazette 41/2001, last amended by State Gazette 19/2011;
- the Mineral Resources Act, promulgated in State Gazette 23/1999, last amended by State Gazette 19/2011;
- the Protection Against the Harmful Impact of the Chemical Substances and Mixtures Act, promulgated in State Gazette 10/2000, last amended by State Gazette 98/2010;
- the Plant Protection Act, promulgated in State Gazette 91/1997, last amended by State Gazette 28/2011;
- the Protection of Environmental Noise Act, promulgated in State Gazette 74/2005, last amended by State Gazette 98/2010;
- Liability for Prevention and Remedying of Environmental Damage Act, promulgated in State Gazette 43/2008, last amended by State Gazette 98/2010;
- the Administrative Procedure Act, promulgated in State Gazette 30/2006, last amended by State Gazette 39/2011; and
- the Criminal Code, promulgated in State Gazette 26/1968, last amended by State Gazette 60/2011.

2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

At a national level, the EPA transposes EU Directive 2008/1/EC (which replaces Directive 96/61/EC) concerning integrated pollution prevention and control, and establishes a system of integrated

permits. The main purpose of the system is to ensure measures for preventing or decreasing the emission of harmful and hazardous substances into the atmosphere, the water and the soil, together with measures for avoiding waste generation and for waste management. The system of integrated permits applies an integrated approach for control over industrial activities' impact on the environment.

An integrated permit must be obtained for the development, operation and substantial change to new and existing plants (facilities and installations) that conduct highly polluting industrial activities (eg, in the energy, metal, mining and chemical industries, waste management, etc). In principle, the integrated permit is a mandatory condition for the issuance of a construction permit for development of the facilities or installations. However, if the installations have obtained a positive decision on the environmental impact assessment confirming the application of 'best available techniques', the permit is required at a later stage, before putting the facilities and installations into operation.

The competent authorities – the director of the Executive Environment Agency or the relevant Regional Inspectorate of Environment and Water (RIEW) – issue the integrated permit, which must contain the obligatory measures for protection of the air, the water and the soil, and must be based on the concept of best available techniques (BAT). The implementation of BAT aims to reduce the impact on the environment, and to guarantee that the operator applies the best international practice in the respective industrial field when the plant commences operations.

The integrated permit is issued for an indefinite term; however, the competent authority is authorised to review the conditions of permits once every eight years or at any time in certain cases (eg, in cases of significant pollution of the environment caused by the installation, or planned changes in its operation, or substantial changes occurring to the BAT, etc).

In any case of planned changes in the operation of the installation, the operator has the obligation to inform the minister of environment and waters and the director of the Executive Environment Agency. Thus, the respective competent body shall review the conditions and terms of the permit and further issue amended requirements or conditions for operating the installation pursuant to the planned new circumstances of operation.

By obtaining the integration permit the operators (companies) can avoid applying for separate permits needed pursuant to the Waste Management Act and Waters Act in order to operate with hazardous waste, handle certain non-hazardous waste, discharge water and discharge wastewater into surface waters.

3 Soil pollution

What are the main characteristics of the rules applicable to soil pollution?

The Soils Act regulates social relations with regard to conservation, sustainable use and restoration of soils in different types of areas –

urban areas, agricultural areas, forest areas, protected areas and damaged areas to recover. The Soils Act reflects contemporary European politics and trends set in the Thematic Strategy on Soil Protection.

The Soils Act covers basic principles of conservation, use and restoration of soils, namely: application of integrated ecosystem approach, sustainable forest use, priority of preventive controls to prevent or reduce impairment of soils, application of best practices, information of the public on environmental and economic benefits of soils protection from damage, as well as measures for soil conservation.

In accordance with the Thematic Strategy on Soil Protection, the Soils Act provides different types of soil damage such as erosion, acidification, salinisation, sealing, reduction of soil organic matter, contamination and landslides. For the purpose of conservation and sustainable use of soil, remediation measures and bans on certain activities were introduced by the Act.

With respect to liability for contamination of the land, the main principle is that the ‘polluter pays’. It means that the polluter:

- is liable for the clean-up of the contaminated site;
- should compensate third parties for the pollution caused;
- must remove the damages already caused; and
- cease to pollute further.

If the polluter fails to restore the soil to the condition required, the competent authorities may impose fines or a penalty on the polluter.

Generally, the polluter is the person who causes pollution; however, if in a specific case the polluter could not be determined by the competent authorities (eg, could not be found, does not exist any more or is unknown), the property owner or the tenants of the land would be liable for the contamination. The owner or the tenant of the contaminated land will be held liable regardless of whether or not he or she was aware of the contamination.

The Soils Act sets forth the monitoring approach as a part of the national environment monitoring system. The law provides for self-monitoring of the soil by the operators of a manufacturing plant (installations) and the assignors of investment proposals (investors) for which an environmental impact assessment is conducted.

4 Regulation of waste

What types of waste are regulated and how?

The Bulgarian Waste Management Act is harmonised with the relevant EU directives in the waste sector, such as Directive 2008/98/EC on waste, Directive 91/689/EEC on hazardous waste, the directives related to waste landfill, packaging and packaging waste, waste from electrical and electronic equipment, batteries and accumulators waste, etc. Furthermore, the Waste Management Act transposes the UNEP’s Basel Convention on Transboundary Movement of Hazardous Wastes and their Disposal, to which Bulgaria is a party. Pursuant to the provisions of the Waste Management Act, ‘waste’ is defined as any substance, object or part of an object that the holder discards or intends or is required to discard, and that belongs to at least one of the categories specified in the law (eg, residues from industrial activities; residues from pollution abatement activities; any materials, substances or products whose use is prohibited by law; etc).

The Waste Management Act differentiates four types of waste: household, industrial, construction, and hazardous waste. The Safe Use of Nuclear Energy Act regulates the management of radioactive waste and spent nuclear fuel as a specific type of waste.

Different regimes apply in respect to the treatment of hazardous and non-hazardous wastes. Any person who manages (collects, transports and performs temporary storage, pre-treatment, recovery and disposal) hazardous waste has to obtain a permit under the Waste Management Act or an integrated permit under the EPA.

Certain regulations issued on the basis of the Waste Management Act refer to the same regime to be applied to the person or entities that are engaged in the storage, collection and treatment of special kinds of waste, such as metal packaging, accumulators, batteries and electronic appliances.

Only a registration document is required for persons or entities that perform collection, transportation and temporary storage of non-hazardous wastes. In such cases, no additional permit is required.

An exception of the required permits and the registration procedure represents the licence regime for performing trading activities with non-hazardous ferrous and non-ferrous metals. The most recent amendments to the Waste Management Act (as of April 2011) provide that the activities with non-hazardous ferrous and non-ferrous metals shall be performed only at sites which are located in areas designated for production and storage activities under general zoning plans, at ports for public transport with national and regional significance and at objects of national railway infrastructure for economic purpose. The law provides that each site must meet the legal requirements on protection of human health and the environment. The law establishes a nine-month period from the enactment of this provision (until 12 January 2012) for bringing the sites licensed for commercial activities with ferrous and nonferrous metals into accordance with the new requirements.

The competent authorities responsible for waste treatment and issuance of permits, registration documents and licences are the RIEW or the MOEW.

As a rule, all the persons handling waste activities or whose activities generate waste (including persons who place on the market any products that after use form ordinary waste) must provide information to the Executive Environmental Agency. Furthermore, the said persons or entities must keep waste reporting books as well as provide the competent authority with annual reports on waste.

According to the Waste Management Act and in line with (EC) Regulation No. 1013/2006 on shipments of waste, the shipment of waste within the European Community with or without transit through third countries, the import or export of waste into the Community from or to third countries and the transit of waste through the Community on the way from and to third countries must be performed in compliance with the terms and procedures established by the said Regulation. The said provisions applied as of the beginning of 2009. Further, (as of June 2010) the Waste Management Act introduced mechanisms for prevention and control over the shipment of waste, together with rules for imposing coercive administrative measures and pecuniary sanctions in cases of breach of the Regulation.

The Waste Management Act provides that the MOEW must keep public registers of permits issued (ie, the registration documents). In addition, the law regulates the maintenance of additional special public registers related to the persons who:

- place batteries and accumulators on the market;
- place electrical and electronic equipment on the market; or
- perform activities under Regulation No. 1013/2006.

The Act stipulates the imposing of monetary penalties on persons who do not fulfil the obligation for registration with the relevant register or provide false information under the registration procedure.

5 Regulation of air emissions

What are the main features of the rules governing air emissions?

The principles for protection of the ambient air, prevention of pollution of the ozone layer and climate change are established initially with the EPA. Further, they have been developed within the Ambient Air Purity Act, which refers to determining the indicators and norms for the quality of the ambient air, as well as to restrictions on emissions. Pertinent regulations establish the permissible levels of air pollution caused by different activities (eg, construction, transportation,

public utilities, mining, agricultural activities, etc) or by operation of new installations.

The Ambient Air Purity Act establishes the requirements for installations using volatile organic compounds released in the ambient air. According to the legal provisions, the use of any volatile organic compounds in new or existing installations must be carried out on the basis of an integrated permit (where one is required under the EPA) or a permit issued by the MOEW. Furthermore, the regulatory authorities may impose special measures for continuously reducing the air pollution in sites with higher levels of contamination. Also, persons who distribute or place liquid fuel on the market are subject to strengthening controls.

In line with the adopted EU Regulation No. 1005/2009 on the substances that infringe the ozone layer and EU Regulation No. 842/2006 on certain fluorinated greenhouse gases, the competent authorities (the minister of environment and waters or persons authorised by him) are entitled to control compliance with the requirements of the said legislative acts through various powers, such as:

- gaining unhindered access to the inspected sites;
- requesting information and documents;
- issuing mandatory prescriptions for the limitation and prohibition of certain substances and products for sale on the market; and
- imposing fines and sanctions on persons handling the ozone-violating substances and fluorinated greenhouse gases

The control of, management of and requirements for substances harmful to the ozone layer provided in government Decree No. 254/1999, last amended in State Gazette 15/2007, aim to gradually decrease and discontinue the usage of such materials.

A specific monitoring system (as part of the national monitoring system) and controlling regime is applicable to polluters discharging airborne polluted emissions into the ambient air. The operators of large industrial plants (eg, in the mining industry, combustion plants, metal processing plants, etc) must obtain an air emission permit from local regulators.

Various coercive administrative measures are in force, such as suspending or limiting the activities of operators' installations, limitation of the operators' access to the installations, and others, that shall be taken in cases of accidents caused by the actions or inactions of operators, immediate danger of pollution or damage to the environment and damage to the health and property of people, etc.

Under the EPA, all persons or owners of motor vehicles that pollute the ambient air, damage the ozone layer and cause climate change shall pay a one-time eco-fee.

The recent amendments in the Ambient Air Purity Act (in force as of 3 June 2011) transpose part of the requirements of Directive 2009/126/EC on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations.

6 Climate change

Are there any specific provisions relating to climate change?

To implement the global climate change policy in the national context, Bulgaria has ratified the UN Framework Convention on Climate Change in 1995 and the Kyoto Protocol in 2002. Under the Kyoto Protocol, Bulgaria must reduce greenhouse gas emissions by 8 per cent in the years 2008 to 2012, in comparison to ambient air emissions in 1988.

Bulgaria started implementing procedures under EU Directive 2003/87/EC introducing the European Union emissions trading system (EU ETS) since 1 January 2007. The Directive's provisions are implemented by the Bulgarian EPA. The coordinating authority for the implementation of the Directive in Bulgaria is the MOEW.

Under the requirements of the EPA, all plants performing an activity that falls within the scope of the Directive 2004/87/EC (eg,

energy activities, metal processing, mineral industry operations, cellulose and paper production) must obtain a permit for greenhouse gas emissions issued by the MOEW, which is the competent authority. As a rule, no plants (installations) may undertake any of the above-mentioned activities without holding a permit.

The permit includes a detailed description of the plant, the methodology and frequency of monitoring requirements relating to the reporting of emissions and the obligation to return (surrender) the allowances. The issued permit is for an indefinite term and contains requirements for monitoring the emissions and preparing an annual report on the emissions.

All operators of installations that have received a permit are required to provide to the responsible authority a monitoring plan and annual monitoring report on emissions released from the installation during the preceding year. The annual report must be prepared pursuant to certain directions and formats and is subject to verification. Furthermore, each operator has the obligation until 30 April of each year to surrender to the competent authority (by presenting a verification report) a specific number of allowances equal to the total amount of the emissions released from the installation during the preceding calendar year. Any operator who fails to return the required quantity of allowances by 30 April of each year to cover its emissions during the preceding year shall pay a pecuniary penalty of exceeded emissions of 200 levs for each tonne of CO₂ equivalent that has not been surrendered. The payment of the sanction does not release the operator from the obligation to surrender the missing quantity of allowances in the next calendar year.

With the amendments to the EPA as from 2010 Directive 2008/101/EC of the European Parliament and of the Council amending Directive 2003/87/EC was implemented with the EPA in order to include aviation activities in the EU ETS. Furthermore, the Act established the legal framework for Bulgaria's participation in international trading of assigned amount units (AAUs) under article 17 of the Kyoto Protocol through introducing a national green investments scheme. The National Trust Eco Fund has thereby been assigned as the leading authority in the implementation of this scheme.

The recent amendments of the EPA (in force from 3 June 2011) concern the partial implementation of the following directives:

- Directive 2009/29/EC amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community for the reason of introducing the trading allowances greenhouse gases emissions during the third EU ETS period 2013-2020; and
- Directive 2009/30/EC amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC with the aim of reducing greenhouse gas emissions per unit of energy of the entire lifecycle of fuels for transport. The transposition of the Directive's texts refer to the obligations of producers and importers of liquid fuels to reduce greenhouse gas emissions, the ways to achieve this reduction of such emissions, as well as the obligations for reporting on greenhouse gas intensity of the delivered liquid fuels in the country.

Further, the Act states that for the period 2013-2020, the distribution of free greenhouse gas allowances of plants other than generators of electricity and plants for capture of carbon dioxide shall be carried out in accordance with the decision of the European Commission to determine the validity throughout the European Union of transitional harmonized rules for free allocation of emission allowances.

Pursuant to the requirements of EU Regulation No. 2216/2004 of the European Commission, a national register for maintaining registration of the issuance, ownership, transfer and cancellation of greenhouse gas emission permits is managed by the Bulgarian Executive Environmental Agency.

7 Protection of fresh water and seawater

How are fresh water and seawater, and their associated land, protected?

Under Bulgarian legislation, both fresh water and seawater and their associated land may be publicly or privately owned. Exceptions are internal waters, territorial sea and mineral waters, which are exclusive state property. The Constitution explicitly provides that the resources and the property may be subject only to public ownership rights (owned by the state). Such property includes the seashore, beaches and waters. Therefore, the right of use of such property by private entities could be obtained only by signing a concession contract with the respective state or municipality authorities. The relevant legislative acts, such as the Waters Act, Maritime Spaces, Inland Waterways and Ports Act and Concessions Act, clearly distinguish between public and private ownership over water and its associated land.

The Bulgarian Waters Act provides measures for:

- reducing water pollution;
- protecting surface and ground waters and the waters of the Black Sea;
- terminating pollution of the marine environment with natural or synthetic materials; and
- reducing and ceasing discharges, emissions and discharges of harmful substances.

One of the main principles established is that the polluter pays the costs of measures to prevent, mitigate and reduce pollution and the costs of restoring damage.

Bulgaria, as a member of the EU, has implemented the EU Water Framework Directive 2000/60/EC into the national Waters Act and into numerous relevant regulations. With regard to water protection, the law establishes a permit system. A permit is required for individual water consumption, for water site use permission (publicly owned) and for wastewater discharge. All permits must comply with the statutory emission norms for the permissible content of dangerous substances in the water. A competent authority issues the permits for a definite term. Usually, the competent authority is the respective regional basin directorate; however, in certain cases it is the MOEW.

The right to use privately owned water is generally reserved to the owner of the land. Thus, use of private water requires consent by the landowner concerned, together with compensation paid to him or her. No permit is required for common use of publicly owned waters (eg, bathing, recreation, water sports, etc).

Pursuant to the environmental legislation, all waters and water sites shall be protected against depletion, pollution and damage with a view to maintaining appropriate water quantity and quality and a healthy environment, conserving ecosystems, preserving the landscape and preventing economic detriment. The protection and respective measures are implemented under special programmes for reduction of water pollution approved by the MOEW.

The EU Directive 2007/60/EC on the assessment and management of flood risks had been also transposed into the Bulgarian Waters Act, which respectively provides for implementation of a long-term planning approach for the reduction of flood risks.

8 Protection of natural spaces and landscapes

What are the main features of the rules protecting natural spaces and landscapes?

The main objective of the rules regarding natural spaces is the protection of biodiversity in ecosystems and the preservation of natural processes as well as of typical or remarkable natural features and landscapes. The Protected Areas Act specifies six main types of protected natural areas, which depend on their management scheme: reserves, national parks, natural landmarks, managed nature reserves,

nature parks and protected landscapes. The protected natural spaces include forests, terrestrial and aquatic areas.

The provisions of the Act establish different protection regimes depending on the type of protected natural area. In general, construction, industrial and some business activities are prohibited or restricted in protected areas. The law imposes fines from €2,500 to €25,000 on any person who conducts prohibited or restricted activity (construction activities) in protected natural areas and violates the established protection regime.

Bulgaria was among the first countries that signed the European Landscape Convention in Florence, and further ratified it in 2004. At present, many regulations (spread in different laws) address the protection and sustainable development of the landscape in Bulgaria. Most of the provisions are aimed at protecting the natural aspect of the landscape.

The most important measure for protecting specific components of the landscape in Bulgaria is their designation as being protected: the protection of the natural component of the landscape is provided by the Protected Areas Act and the protection of the cultural component of the landscape is regulated under the Monuments and Museums Act, although these laws do not explicitly mention the term 'landscape'.

Different key measures related to the protection of the landscape in Bulgaria have been provided as follows:

- the environmental impact assessment procedure under the EPA, as one of the procedure's main objectives is to ensure adequate public participation in decisions that affect protection and management of the landscape;
- the development of a national ecological network provided for in the Biological Diversity Act. Pursuant to it, the 'long-term conservation of biodiversity, geological and landscape diversity' is one of the main objectives of the national ecological network;
- the reclamation of land under the Protection of Agricultural Land Act, which aims to restore damaged sites as close to their natural state as possible in order to carry out their functions; and
- preventive structural protection pursuant to the Spatial Development Act aimed at the protection of areas that have high natural landscape, ecological and cultural value but are not declared as protected by a special act.

9 Protection of flora and fauna species

What are the main features of the rules protecting flora and fauna species?

Bulgaria has implemented Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (FFH Directive and Natura 2000), Directive 79/409/EEC on the conservation of wild birds, and is a party to all major international treaties and conventions governing biodiversity conservation.

The Biological Diversity Act aims to preserve protected Bulgarian flora and fauna species and the development of biodiversity.

Bulgaria developed a national ecological network as part of the European ecological network Natura 2000, which includes certain areas and territories designated as protected. The protected areas allow protection and recovery of the natural habitats of species (as listed in attachments 1 and 2 to the Biological Diversity Act). If a project is to be realised in such protected areas, it would be subject to a conformity assessment in view of the site's conservation objectives. The conformity assessment must therefore be carried out in parallel with the environmental impact assessment procedure under the EPA.

The Biological Diversity Act provides that the plant, animal and fungal species of wild flora, fauna and mycosis of Bulgaria must be conserved in situ by means of, among others, conservation of the habitats in the National Ecological Network, placement of the species under a protection regime or regulated use regime, etc. Furthermore, two separate forms of protection exist: status as a protected on the territory of Bulgaria flora and fauna species explicitly listed in

attachment 3 to the Act, and the regime on protection and regulated use for the flora and fauna species listed in attachment 4. As a rule, actions such as hunting, collecting plants, destroying places used for reproduction by animals and possession and trade of species beyond the borders of Bulgaria are strictly prohibited.

A special regime is provided for the import and export (including the transportation and trade) of specimens of species referred to in attachments A, B, C and D to article 3 of Regulation 338/97 on the protection of species of wild fauna and flora by regulating trade. Such activities shall be carried out in observance of the special EU regulatory provisions and of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

10 Noise, odours and vibrations

What are the main features of the rules governing noise, odours and vibrations?

The Bulgarian Protection Against Environmental Noise Act complies with the provisions of the adopted major EU Directives covering noise in the environment (Framework Directive 2000/14/EC, Directive 2002/49/EC). However, most of the rules regarding noise, odours and vibrations are dispersed among numerous laws and regulations, such as the Health and Safety at Work Act (for noise control at work), the Health Act (for noise control in residential and public buildings), the Spatial Development Act (requirements for limitation of noise during construction) and regulations related to the implementation of the mentioned acts issued by state or municipal authorities.

The measures provided for reducing and preventing noise, odours and vibrations in the environment caused by industrial plants (installations) are part of the conditions of the issued integrated permit (see question 2). The operator of a plant that may cause disturbance through noise, odours or vibrations has to apply for an integrated permit. The issued integrated permit is a precondition for obtaining a construction permit for the plant. In principle, the plant must comply with the conditions for emission limitations provided in the permit. Furthermore, the operators of such plants must perform self-monitoring and inform the competent authorities of noise, odours and vibrations emissions in the environment. On the other hand, the competent authorities may inspect how reasonable emission levels are at any time. If emission levels are exceeded, the competent authority may stop the plant operation together with imposing a financial sanction on the respective operator.

Under the Protection of Environmental Noise Act, special strategic maps of environmental noise must be prepared and approved for agglomerations, major roads, major railways and major airports within the territory of the country. The strategic noise maps are subject to review and revision if necessary every five years after the date of their approval by the competent authorities.

The law differentiates the responsible competent authorities with regard to the preventive, continuous and subsequent control executed as follows:

- noise in the environment – the minister of health and the respective Regional Health Inspectorate directors;
- industrial installations and facilities – the MOEW together with the RIEW directors;
- road vehicles using public roads with respect to environmental noise – the minister of interior;
- aircraft and rail vehicles, and major airports with respect to the environmental noise they emit – the minister of transport; and
- noise protection considerations in the design and performance of construction works – the minister of regional development and public works.

11 Liability for damage to the environment

Is there a general regime on liability for environmental damage?

The Liability for Prevention and Remedying of Environmental Damage Act (as of 29 April 2008) implements Directive 2004/35/EC on environmental liability with regard to the prevention and remedy of environmental damages. In compliance with the Directive's requirements, the law determines the framework for environmental damage liability and provides for the prevention and remedy of environmental damages based on the 'polluter pays' principle and the principle of sustainable development. The law regulates the entire regime on liability for prevention and remedy of environmental damages, including the clarification of different liability aspects (eg, administrative or civil) and providing the financial mechanism for ensuring the operator's liability when environmental damages are caused.

Within the meaning of the law, environmental damages are defined as damage to protected species and natural habitats with significant adverse effects, damage to water and water bodies and soil damage, which is any land contamination that creates a significant risk to human health. The law provisions shall not apply in the case of environmental damage where more than 30 years have passed since the emission, event or incident resulting in the damage occurred.

The law introduces preventive measures to be taken if an imminent threat of environmental damage has occurred as a result of the plant's operators carrying out certain activities. Also listed are the remedial measures (including immediately informing the relevant competent authority) that must be undertaken by the operator. In order to ensure the proper execution of preventive and remedial measures, the Act provides the following four types of financial liability that may be imposed on operators implementing certain categories of activities listed in attachment 1 to the Act:

- ecological insurance policy (commencing 1 January 2011) that the plants shall pay with respect to its level of risk; such insurance policy shall be concluded to the benefit of the MOEW, as its main aim is to insure the operator's liability and cover the risk of creation of an imminent threat or occurrence of environmental damage. The minimum insurance coverage may not be less than 50,000 levs;
- bank guarantee;
- mortgage of corporate immovables; or
- pledge of receivables, moveable things or securities.

In principle, the controlling functions are assigned to the MOEW, directors of the Regional Inspectorates of Environment and Water, national parks and basin directorates. The respective competent authority may impose coercive administrative measures related to the occurrence of environmental damage (eg, cessation of the operator's activity).

12 Environmental taxes

Is there any type of environmental tax?

Under Bulgarian environmental legislation, some specific taxes are provided, together with the state or municipal taxes due for different administrative or technical services and the taxes established for issuance of permits, licences, etc. All provided specific taxes are collected by the Enterprise for Management of the Environmental Protection Activities, and are expediently used for improving the environment.

The EPA sets out the payment of an eco-tax for motor vehicles that, due to their construction, operation or fuel usage cause air pollution, harm the ozone layer or damage the climate. The purchaser of such a vehicle pays a one-time eco-tax upon initial registration of the vehicle.

The Waste Management Act introduces a product tax for entities that place products on the market that generate ordinary waste after use.

The Ambient Air Purity Act establishes taxes of 22 leva per tonne that shall be paid by the end-users of fuel oil and heavy fuel oil with a sulphur content exceeding 1 per cent, as well as taxes on liquid fuels produced or imported by such entities. The tax is aimed at reducing the pollution caused by transport and energy-intensive activities.

The Water Act provides that taxes can be collected for water use and use of bodies of water. The newly adopted changes in the Tariff for Water Use and Use of Bodies of Waters and Pollution which shall apply as of 1 January 2012 provide drastic increase of the fees and taxes collected for water use.

The Protected Areas Act imposes a visitors' tax for visits to protected territories that are publicly owned by the state.

Presently, as of 1 October 2011, a new environmental tax on the use of plastic (polymer) bags with thickness under 15 microns shall apply. The regulation shall discourage the end consumer from using polymer bags that biodegrade slowly. The respective Regulation provides for a progressive increase of the said environmental tax until 2015.

Hazardous activities and substances

13 Regulation of hazardous activities

Are there specific rules governing hazardous activities?

The special Act on Protection Against the Harmful Impact of Chemical Substances and Preparations provides the main rules and respective procedures with regard to trade, market distribution, use and storage of chemical substances and preparations, biocide products and persistent organic pollutants.

Certain provisions, effective since Bulgaria's accession to the EU, establish the requirement of obtaining permits and registration certificates with regard to the use and market-placing of biocide products and active substances. In addition, strict prohibitions are established for the production, market distribution and use of persistent organic pollutants. Such pollutants are subject to a national action plan for management drafted and implemented by the MOEW.

Bulgaria has implemented most of the EU legislation related to hazardous substances (eg, Directive 76/769/CEE on the trade and use restraints of hazardous substances and chemical compounds, Directive 98/8/EC concerning the placing of biocide products on the market, etc). Further, the recent amendments of the Act introduce measures for implementation of numerous EU Regulations in the domestic legislation.

With regard to hazardous waste management, see question 4.

14 Regulation of hazardous products and substances

What are the main features of the rules governing hazardous products and substances?

The relevant rules governing hazardous products are provided in the Act on Protection against the Harmful Impact of Chemical Substances and Preparations. The Act applies for all the chemical substances on their own, in mixtures or in products.

The hazardous substances or mixtures envisaged in Regulation No. 1272/2008 are those that meet the criteria with regard to physical hazards, hazards to human health and to the environment (including hazards to the ozone layer) and are divided in the following categories:

- explosives;
- oxidising gases and gases under pressure;
- flammable gases and aerosols;
- flammable liquids and solids;
- self-reactive substances or mixtures;
- substances or mixtures corrosive to metal; and
- sensitising, carcinogenic, toxic to reproduction or dangerous to the aquatic environment and to the ozone layer.

The law introduces conditions for making hazardous substances marketable. Accordingly, hazardous substances must first be classified, packed and labelled in accordance with the special rules stipulated in Regulation 1278/2008 prior to being placed on the market.

A special regulation provides the rules for notification of newly developed chemicals prior to their initial entry on the market. It provides for a range of mandatory laboratory tests to identify any potentially dangerous properties of the substance. The authority responsible for notification is the MOEW.

With regard to biocide products, the Act on Protection Against the Harmful Impact of Chemical Substances and Preparations provides a special regime for their placing on the market upon obtaining a permit or registration certificate (for low-risk biocide products). Such permit or registration certificate is issued by the minister of health.

Both the minister of health and the MOEW, or officials authorised by them, have the power to exercise control over chemical substances and preparations and biocide products. With a view to protecting the environment, public and animal health, they have the right to temporarily prohibit or to suspend the use, placing on the market and import of hazardous substances.

Industrial accidents

15 Industrial accidents

What are the regulatory requirements regarding the prevention of industrial accidents?

In relation to the prevention of industrial accidents, the EPA fully implements the provisions of EU Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (the Seveso II Directive), extended by EU Directive 2003/105/EC.

The EPA outlines the framework for prevention and limitation of industrial pollution and establishes a permit regime for operators of plants and installations using hazardous substances (specified in attachment 3 to the law). The main aim is to prevent and limit the consequences of major industrial accidents for human life and health and for the environment. The EPA requires that an operator must obtain a special permit prior to construction and operation of a new plant or installation, or prior to operation of an existing plant or installation classified as a plant or installation with minor or major hazard potential. Plants or installations are classified as 'with minor hazard potential' or 'with major hazard potential' depending on use of different hazardous substances.

The MOEW has the power to issue permits for the construction and operation of new plants and installations, and further is entitled – in the case of significant alterations of the plants or installations – to review already issued permits, which are for an indefinite time. Operators must file an application for obtaining a permit with an attached report on the major accident prevention policy, a safety report and an emergency plan for the plant or installation. The operators are obliged to disclose information to the public and competent authorities regarding the possibility of a 'domino effect' in the case of industrial accidents, as well as to present the safety measures and planned actions in the event of an accident. Where the operator has planned substantial changes to the plant or installation, it shall review and update the report on the major accident prevention policy and the safety report.

EPA provides strengthened control to prevent major accidents and limit their consequences. The control is carried out by the MOEW. Furthermore EPA accurately transposes the requirements of the Seveso II Directive related to the control over the risk of major accident hazards involving dangerous substances.

Environmental aspects in transactions

16 Environmental aspects in M&A transactions

What are the main environmental aspects to consider in M&A transactions?

Pursuant to Bulgarian legislation, the important environmental aspects to consider are related to historical pollution (eg, contamination of land, water (if performing water discharge), air (if there is exceeding of established emission limitations) and waste disposal activities). Any sanctions imposed by authorities, required permits or licences, accidents and breaches of environmental law, etc, should be considered important. Therefore, comprehensive 'environmental due diligence' and, if needed, 'technical due diligence' must be performed in order to establish whether the targeted plant or installation complies with all material or formal environmental requirements. Furthermore, the environmental due diligence should be focused on past contamination on the target company's property as well as caused contamination of other (neighbouring or previously owned) properties.

Importantly, the proximity of protected areas should be taken into consideration. As such areas are subject to various restrictive measures, intended to safeguard the biological diversity therein, stricter licensing requirements, zoning and building restrictions may be applicable (which might impede or restrict further enlargements of the facilities).

The main difference between an acquisition of shares and an acquisition of assets (real estate transaction) refers to the possibility for reallocation of environmental liability.

In the case of company shares acquisitions (including cases of corporate restructuring), the environmental liability may not be reallocated. Thus, the target company will remain liable for the environmental damage that occurred before the acquisition. The same principle applies for the privatisation deals: upon privatisation the privatised companies are liable for damages to the environment resulting from past acts or omission to act. In real estate transactions, the environmental liability of the seller for damages caused before the transaction will not be transferred to the purchaser if the breach of environmental law is made prior to the purchase. However, one has to assess whether the assets – the object of the purchase – were contaminated prior to the transaction, and the damages then occurred after the purchase. In this case, the purchaser of such a site may be held liable for the clean-up and remediation, and will be further obliged to permit clean-up measures taken by the relevant authority; this could result in a temporary restriction of land use.

Furthermore, the transfer of all permits to carry out the activity will be required.

In addition, the emission limit values have to be considered (eg, pursuant to the relevant environmental legislation or under the issued integrated permit, etc). If the buyer intends to expand the production (plant) an assessment is necessary whether the target company has enough allowances to cover the increased emissions, resulting of such expansion.

Irrespective of the transaction type – share or asset purchase – it is strongly recommended that the purchase contract reflects the issues for environmental liability for past operations (done by the target company or concerning the asset) based on the findings of environmental due diligence.

17 Environmental aspects in other transactions

What are the main environmental aspects to consider in other transactions?

There are no special environmental aspects to consider in financial projects or IPO. The environmental issues are generally related to the type of the operated business and not to the particular kind of transaction in question.

Based on the applicable regulations, the environmental liability

may be partially reallocated, by corporate restructuring, subject to careful consideration in each particular case.

Upon privatisation, the liability for damages caused to the environment and resulting from past acts or omissions shall be incurred by the privatised companies or by the owners of the self-contained parts concerned. In addition, they shall be liable, at their own expense, for the restoration of the environment.

With regard to real estate transactions, see question 16.

Environmental assessment

18 Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

An environmental impact assessment (EIA) is conducted for investment proposals that involve construction or other activities and technologies that may have a significant effect on the environment. Attachment 1 to the EPA (in compliance with appendix I to article 2 of the Espoo Convention) explicitly lists the activities for which an EIA is mandatory (eg, oil refining, nuclear fuel processing, ferrous metal processing, etc). Attachment 2 to the EPA enumerates the respective activities in relation to which the need to perform an EIA should be assessed (eg, activities in the mining, mineral and energy industries).

The necessity of an additional EIA should be further estimated in case of an extension or alteration of investment proposals covered by Attachment 1 or Attachment 2, which have already been approved or are pending approval, if the implementation of such extension or alteration may lead to significant negative impact on the environment.

The legal effect of the EIA decision shall lapse if implementation of the investment proposal has not commenced within five years after the date of issuance of the said EIA decision.

The environmental impact assessment does not have the nature of a licence; rather, it is a mandatory precondition for issuance of subsequent licences related to the planned implementation of the respective activity, and a prerequisite for construction development and operation of the site.

The EPA provides that the environmental assessment procedure covers not only industrial projects but also non-industrial projects, programmes and plans that are processed and approved by local or state authorities ('strategic' environmental assessment of programmes and plans).

19 Environmental assessment process

What are the main steps of the environmental assessment process?

The EIA procedure generally follows a standard process. First, in the course of pre-investment research, the investor provides written notice of the intended investment to the competent authorities and the public affected. Within 14 days of such notification, the competent authority informs the investor about the necessary actions. Next, the investor must fill out a written request estimating the need to carry out an EIA, and thereafter the competent authority will pass a resolution within 30 days assessing the necessity of conducting of an EIA. The next step in the process involves consultations between the investor and the competent authorities, institutions and public concerned (six to eight weeks), during which the scope, contents and form of the EIA are identified. This is followed by a review of the prepared report on the EIA by the competent authority. The evaluation of the content and quality of the EIA report usually occurs within 30 days. Finally, there is a period for public discussion of the EIA statement. The competent authority will then render its decision on the EIA within 45 days following the public discussions.

The competent authority is the MOEW or the respective RIEW. The environmental impact statement is drafted by experts appointed

by the investor and contains a detailed description of the project, including information on the site, design and size of the project.

The parties involved in the environmental assessment process are the investor, experts from the respective competent authorities, representatives of the host municipality, the public concerned and certain environmental organisations (NGOs, etc).

Regulatory authorities

20 Regulatory authorities

Which authorities are responsible for the environment and what is the scope of each regulator's authority?

In principle, the MOEW is responsible for implementing the state policy for protection of the environment, as well as for introducing European Community regulations and other environmental legislative acts. The coordination, regulation and implementation of the state environmental policies are integrated within such sectors as transport, energy, construction, agriculture, industry, etc, and are carried out through different competent authorities.

The EPA specifies the competent authorities responsible for enforcement of the environmental law. On a national level, the MOEW and the Executive Environmental Agency are competent. On a regional level, the following authorities implement the environmental policies:

- the regional inspectorates of environment and water;
- the basin directorates for water management of the east and west Aegean Sea, Black Sea and the Danube;
- the national parks departments; and
- mayors, municipal authorities and the district governors.

Generally, the administrative agency's power, such as issuing permits and imposing sanctions, is allocated both on the national and regional levels; thus, the directors of each respective authority are responsible.

With respect to environmental subsidies, applications and grants are made through the respective departments of the MOEW.

21 Investigation

What are the typical steps in an investigation?

The regulatory authorities are entitled to control compliance with the environmental legislation. The control function includes preventive measures (to prevent violations of regulations or other laws), current measures (to suspend an ongoing violation) and follow-up measures (to remedy the negative consequences of violations, which may be implemented as an administrative penalty liability). For the effective implementation of controlling functions, the authorities are empowered to investigate any potential breaches of the environmental requirements. If violations are ascertained upon inspection, the competent administrative authority may (depending on the ascertained violation): draw up written statements for the administrative violations and subsequently issue penalty decrees thereto, as well as issue various written prescriptions and orders imposing coercive administrative measures.

22 Powers of regulatory authorities

What powers of investigation do the regulatory authorities have?

The control powers granted to the competent regulator under the EPA are broad. The competent authority can:

- enter and access a site in order to conduct an inspection;
- require submission of environmental information, documents and written explanations by the inspected entities (eg, operators); and
- make measurements or perform laboratory examinations (or both) and perform analysis (eg, taking samples from the sources of pollution).

When investigating, the competent authorised persons may request and obtain assistance from the state and municipal authorities and other entities. The competent bodies may also impose financial sanctions and coercive administrative measures. Furthermore, the executive authorities and the respective administrations, the organisations, the entities and natural persons are obliged to provide assistance to the regulatory authorities exercising control in performance of the above said functions.

At a national level the said powers are implemented by the MOEW or by authorised officials; and at a regional level by the regional inspectorates of environment and water directors, the basin directorates directors, the national parks directors, the district governors and municipality mayors or by persons authorised thereby.

23 Administrative decisions

What is the procedure for making administrative decisions?

Within the procedure for making administrative decisions, the competent regulator affords the parties an opportunity to inspect the documents under the case file, to take notes and obtain excerpts. The parties have the opportunity to express an opinion on the evidence collected, to submit written requests and objections, to present evidence and to assist the regulator with the collection of further evidence. Furthermore, the law provides parties participating in the proceedings with an opportunity to be heard, if necessary for clarification of the case.

During the decision-making stage, the regulator may:

- require any additional documentation or information by the parties and by any third party not participating in the process;
- assign an expert examination where the clarification of certain matters that have arisen requires special expertise in a sphere that the authority does not possess; and
- conduct an inspection only where the case cannot be clarified through the use of other means for the collection of evidence, etc.

Ultimately, the administrative act should be issued after clarification of all facts and circumstances relevant to the case and consideration of the explanations and objections of the individuals and organizations concerned, should any such explanations and objections have been lodged.

24 Sanctions and remedies

What are the sanctions and remedies that may be imposed by the regulator for violations?

Bulgarian environmental legislation provides strict sanctions and remedies if entities cause pollution to any of the environmental components, do not observe the limitations and prescriptions given in the permits issued or do not perform their activity in line with the environmental requirements. In principle, any breach of the environmental legislation is associated with the creation of the following types of liability:

- coercive administrative measures;
- administrative penalty measures;
- civil liability; and
- criminal liability.

Imposition of sanctions or liabilities aim at deterring polluters, encouraging them to observe the legal provisions and remedying any pollution or contamination caused. Depending on the breach, the competent administrative authorities may impose financial sanctions (eg, fines, including permanent fines) and/or coercive administrative measures (eg, revocation of the environmental permit, closure of installations or activities, limitation of access to the land by the owners and property users).

25 Appeal of regulators' decisions

To what extent may decisions of the regulators be appealed, and to whom?

Any administrative decision is subject to administrative and/or judicial appeal. In principle, there are two types of administrative proceedings - administrative and administrative-criminal ones. The usual term for filing an appeal is 14 days from the rendering of the decision under an administrative proceeding (or seven days as of issuance of the penalty decree in case of administrative-criminal proceeding)..

An administrative act may be challenged, according to administrative procedure, to the immediately superior administrative authority. The grounds of such appeal may be both legal conformity and the expediency of the administrative act. Another option for the appeal of administrative acts is judicial appeal, but only on the grounds of legality. Appeals may be filed with the administrative court of first instance. The highest court for appealing administrative decisions is the Supreme Administrative Court.

The regional courts are competent as courts of first instance for appealing the imposed administrative sanctions. Sanctions may be appealed only on grounds of legality. The administrative court acts as the ultimate instance in such cases. The judicial appeal of administrative acts or decisions issued by government ministers, senior officials or state agencies is made directly to the Supreme Administrative Court.

Judicial proceedings**26 Judicial proceedings**

Are environmental law proceedings in court civil, criminal or both?

The nature of environmental law court proceedings depends on the object or type of the proceedings. Thus, court proceedings may be administrative, civil or criminal.

In Bulgaria, environmental law proceedings are mostly an issue of administrative law (see question 25). The competent authority is the administrative court or the Supreme Administrative Court.

Nevertheless, both civil and criminal courts are competent for environmental law proceedings.

Within the civil law proceedings the court determines the existence and the amount of any damages caused by the breach of the environmental provisions and awards the respective damages to the aggrieved parties.

Non-compliance with the environmental law, intentionally or negligently, may trigger criminal liability and proceedings in the criminal court. Under the Criminal Code, it is a criminal offence to intentionally damage the environment by water, air or soil pollution, dangerous disposal of waste or destroying or harming a protected territory, area, protected plant or animal.

27 Powers of courts

What are the powers of courts in relation to infringements and breaches of environmental law?

In principle, the powers of the courts depend on the nature of the object of the proceedings.

With respect to sanctions imposed for breaches of the environmental law, the civil and administrative courts have the power to declare the nullity of the sanctions appealed, to repeal them in whole or in part, to alter them or to affirm the imposed sanctions.

With regard to a particular environmental offence and the extent of guilt, the criminal court may impose a penalty of up to five years' imprisonment together with a fine. Furthermore, the court may oblige the offender to cover (remedy) all environmental damages caused by the criminal offence.

In both cases, civil and criminal courts may award compensation to the aggrieved party.

28 Civil claims

Are civil (contractual and non-contractual) claims allowed regarding breaches and infringements of environmental law?

Both contractual and non-contractual civil claims regarding breaches and infringements of environmental law are allowed in Bulgarian courts when damage or a nuisance is caused by such a breach or infringement. The environmental liability concept restates the tort's general principle: the polluter should compensate aggrieved third parties for damages caused by such pollution. Furthermore, it should be obliged to reduce and eliminate the environmental harm at its own expense.

29 Defences and indemnities

What defences or indemnities are available?

With respect to environmental administrative liability, no administrative penal proceedings may be initiated if a statement of establishment of the violation has not been issued within three months following the detection of the offender, or if two years have elapsed since the offence was committed. Moreover, administrative proceedings will be discontinued if no decree is issued within six months of the issuance of the act of the violation (Administrative Violations and Sanctions Act, article 34).

Under environmental provisions (eg, the Water Act, the Soils Act, the Waste Management Act), the polluter is primarily liable for contaminations of soil and water (including groundwater). Strict liability applies to the polluter under administrative law. Bulgarian environmental law does not generally provide for joint and several liability; however, if the contamination is caused by more than one party, they will be jointly liable to the aggrieved party. If no polluter can be found, the current property owner is responsible for the clean-up. Thus, the liability of a property owner that is not a polluter itself is secondary. In any case, a property owner who has acquired property after contamination may also be held liable for the remediation.

If a company has caused a pollution and has thereafter undergone corporate reorganisation, the legal entities succeeding the company would be jointly and severally liable together with their predecessor. No personal liability exists for shareholders in the event of contamination caused by the company.

There are no statutes of limitation for liability concerning clean-up under administrative law.

Claims for damages under civil law are subject to five years statute of limitation period, beginning as of the knowledge of the damage and the polluter.

30 Directors' or officers' defences

Are there specific defences in the case of directors' or officers' liability?

Bulgarian legislation does not provide for any specific rules, and therefore the general regime applies. The company in the name and on behalf of which the directors or officers are acting shall be liable to compensate the aggrieved party. In order to be held liable, the directors' and officers' personal fault must be proved.

31 Appeal process

What is the appeal process from trials?

In Bulgaria the administrative proceedings are conducted in two instances. Generally, a decision rendered by an administrative court can be appealed before the competent Supreme Administrative Court.

The appeal process for civil and criminal cases is a three-instance system as follows: the decision of a regional court may be appealed before the respective district court, with a possible second appeal before the court of final appeal.

Update and trends

In mid-October 2011, a draft of the Carbon Dioxide Storage in Depths of Earth Act was presented and adopted by the Council of Ministers. Pursuant to the bill, in Bulgaria in the near future it will be possible to build underground storage for carbon dioxide, where the thermal power plants shall 'inject' the greenhouse gases emitted from their operation, instead of expelling them into the atmosphere and paying for pollution of the environment.

The new legislation shall transpose the requirements of Directive 2009/31/EC on the Geological Storage of Carbon Dioxide; thus, the way for investment by global energy companies that are already developing technology for the capture and underground storage of carbon emissions shall be opened.

Pursuant to the bill a special permit for CO₂ storage shall be issued following the assessment of the environmental impact of the CO₂ storage technology. The permit shall be valid for 30 years. Thereby, the companies that manage the carbon storage would have to follow strictly the requirements related to the carbon dioxide storage in the depths of earth, as prescribed in the issued permit.

The first-instance decisions of the district courts can be appealed before the courts of final appeal (panel of three judges) with an option for second appeal before the same court, acting however with an extended panel of five judges .

International treaties and institutions

32 International treaties

Is your country a contracting state to any international environmental treaties, or similar agreements?

Yes. So far, Bulgaria has incorporated the major EU directives into Bulgarian environmental legislation.

Bulgaria has ratified and become a party to most of the important international environmental conventions, international treaties and bilateral and multilateral agreements, including:

- the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol;
- the Espoo Convention on the Estimation of the Environmental Impact in a Cross-border Context;
- the Convention on Protection and Sustainable Use of Danube River (Sofia Convention);
- the Convention on Environmental Impact Assessment in a Transboundary Context;
- the Helsinki Convention on the Transboundary Effects of Industrial accidents;
- the Berne Convention on Conservation of European Wildlife;
- the European Landscape Convention (Florence Convention);
- the Biological Diversity Convention;
- the Convention on International Trade in Endangers Species of Wild Fauna and Flora (CITIES);
- the Ramsar Convention on Wetlands;
- the Convention for the Protection of the Black Sea Against Pollution (Bucharest Convention); and
- the Vienna Convention for the Protection of the Ozone Layer.

33 International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

International treaties are binding in Bulgaria immediately upon ratification and are further promulgated in the State Gazette. Therefore, the treaties become part of the Bulgarian legal system and have primacy over the provisions of national legislation that contradict them. Thus, the international treaties directly reflect Bulgarian regulatory policy and are promptly implemented in environmental strategies and action plans.

In addition, Bulgaria as a member of the EU has to fulfil its obligations to harmonise its national legislation in accordance with the European legislative acts in a timely manner.

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