

## NOI ASPECTE PRIVIND REGIMUL JURIDIC AL DEȘEURILOR LA NIVEL COMUNITAR EUROPEAN (II)

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### **Abstract:**

General principles related to environment protection – such as prevention principle or precaution principle - are more often applied when comes to new European legislative acts, as for ex. Directive 2006/21/CE on the management of waste from the extractive industries (the mining waste directive).

Also, polluter-pays principle is applied through the provision establishing that owner' liability could be raised in any moment, from the data of Directive' s enforcement.

New environmental acquis contributes to strengthen sustainable development requirements and to improve public access to environmental information and decision making process. In this sense, one of the preliminary mandatory conditions for opening an installation of mining waste management refers to an administrative procedure of authorization, issued by competent authorities, in each Member State. A procedure based on public/civil society consultation and participation is regulated, as for guaranteeing the general principle of public consultation and also potential risks are underlined. But it is to be underline that the authorization do not offer any right to pollute to the owner or any kind of liberty to infringe environmental protection norms and finally to cause any damage to the environment. Another provision in order to assure the recovering of the potential environmental damage refers to financial guarantees to be offered by the owner but also to a symmetric administrative procedure for closing the installation. In the same time, one of the novelties in terms of modern regulation of liability when managing wastes is referring to the fact that two types of emergency plans are established – internal and external – regulating different judicial obligations, but convergent, in the same time. Also it regulates a judicial strict liability divided between the owner and Member State (as represented by the competent authority). The main scope is to immediately and efficiently reduce the effects of main environment damages and to offer legal premises for reconstructing the damaged site. It is to mention that a certain distinction should be made when discussing about judicial procedures for repairing damaged sites and judicial procedures for repairing the environmental damage (especially civil environmental damage). The large and multiple perspective of judicial regulation of waste management, at European level, is offered also by numerous decisions of ECJ even related to mining activities and soil exploitation. Waste management has also implications in what concerns single market regulations and functioning in order to obtain and keep a “healthy” level of profitability (starting, for ex., with 1998 – Report from the Commission to the Council and the European Parliament on the implementation of Community waste legislation and also to the Commission Communication from 22 July 1998). A lot of discrepancies related to waste' recycling activities on the Single Market and also positive/negative factors of influencing competitive activities have been identified and are to be promoted. In this context, a certain simplification of the related legislation could be benefic both on European and national level together with an increased role of the economic tools (taxes a.o.). Concerning the Romanian activity for implementing the acquis on waste, we may underline that even the acquis is transposed, still less resolute regulations related to waste handling and recycling are in place (meaning laws and not subsequent provisions – as are Ministerial Orders etc.) and a lot of economic measures and tools are to be adopted and used for the next future in order to ensure a complete and efficient implementation of the acquis together with simplified, strengthen procedures for controlling waste transfer (reducing risks of un-controlled waste transfer etc.)

**Keywords:** Waste management, mining wastes, sustainable development, polluter-pays principle, precaution principle, public consultation procedures, waste recycling industries on the Single European Market, fully implementation of European waste legislation into Romanian law and practice.

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