THE PRINCIPLE OF "POLLUTER PAYS" IN INSOLVENCY PROCEEDINGS GOVERNED BY LAW 85/2014

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Abstract

By means of this article the author, will analyse the incidence of the fundamental principle of environmental law "polluter pays" in the current national legislation and will identify its applicability, especially in what concerns insolvency proceedings.

The article is structured in three parts. The first part aims to define and identify the particularities of this principle in both contemporary Romanian law and International law.

The second part points out how the company's liability for environmental damage can be attracted in each of the phases of the insolvency proceedings.

The third part correlates the provisions of Law No. 85/2014 with the provisions of Government Emergency Ordinance No. 68/2007 on environmental liability by formulating a de lege ferenda proposal designed to increase the efficiency of environmental damage coverage in insolvency proceedings.

Keywords: *Insolvency proceedings, environmental damage, polluter pays, environmental liability*

1. Principles of environmental law applicable to companies;

The principles of environmental law applicable to companies, but especially to companies under the Insolvency Act, have particularities in their application. The need for environmental protection in our country has been stated since 1973, when Law No. 9 was passed, which stated that the environmental protection activity constitutes a matter of national interest. The Constitution passed in 1991 provides under art. 135 paragraph 2 D "the obligation that the State has in exploiting the country's natural resources, in accordance with national interests". From article 135 paragraph 3 D of the Romanian Constitution one can conclude that "no human activity can be carried out without complying with environmental protection rules, and therefore, this represents a general obligation for all public, central and local authorities, such as natural persons and legal entities"[1].

As regards the owner of an activity with an impact on the environment, we show that this person can be both a natural person and a legal entity, whichever being legally liable. The owner of a project authorising an activity shall be either the applicant, natural person or legal entity, or the public authority initiating a project.

The category of legal entities incudes those established based on Law 31/1990 on commercial companies, whether these are limited liability companies or share companies. Thus, companies may be subject to environmental law as legal entities established based on legal norms. Article 1 of law 31/1990 states that "for the purpose of carrying out lucrative activities, natural persons and legal entities may be associated and establish companies with legal personality, in compliance with the provisions of this Law".[2] The company may be established for carrying out a lucrative activity, but it can also be established without the main objective being that of the activity undertaken to gain profit. The activity which companies carry out in order to gain profit or not must be one stemming from lawful actions, as such, any activity thereof must comply with the legislation of the environmental law as well.

If the commercial company established for a lucrative purpose not only does not gain profit, but also incurs consecutive losses, which cannot be covered by external sources, it may enter in default, which is followed by insolvency. In other words, a company in default is one small step away from to the opening of insolvency proceedings, which can be followed by a successful reorganization or bankruptcy of the debtor.

The insolvency, as it has been defined, shows that it represents that state of the debtor's estate, which is characterized by the insufficiency of money funds for the payment of definite, liquid and payable debts[3]. The text of art. 5 item 29 a) and b) of Law 85/2014 distinguishes between imminent insolvency and presumed insolvency. Regardless of the state of insolvency of the debtor, be it imminent or presumed, we can speak of a commercial company in insolvency only if, following the analysis made by the syndic

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[1] D. Marinescu, M.C. Petre – *Environmental Law Treaty*, ed. V, University Publishing House, Bucharest, 2014, pg. 63

[2] Law 31/1990, company law, republished in Official Journal. No. 1066 of November 17th, 2004;

[3] In the doctrine it was shown that this definition was given by the Romanian lawmaker, in view of the potential economic and legal reality of the estate of its debtor, in other terms, the current insolvency – M.N. Costin, C.M. Costin, the conditions laid down by the law for the opening of the commercial insolvency proceedings at the request of the entitled Creditor, in Commercial law magazine No. 9/2006, pg. 9.

judge, invested with such an application, it is established that all legal requirements are fulfilled and a sentence or closure to open the procedure are issued.

Companies, being legal entities, since their establishment must comply with all legal provisions relating to environmental law, if these are applicable to the specificity of their business. Companies are entities born as a result of the will of one or more persons, either natural persons or legal entities, or a combination thereof. It is assumed that the activity that a company carries out is one of a much larger scale and with a higher complexity as compared to any activity that a natural person can carry out on an individual basis. The risk that the ecological balance is affected is even greater, as the extent of the carried out activities is greater, as such, in the case of commercial companies, the risk is high. Depending on the activity that each company will carry out, it may be necessary to have a certain authorisation, which may also be an environmental one, before its start.

The National Agency for Environmental Protection is an entity of the central public administration, whose tasks are represented by strategic planning and monitoring of environmental factors, but also the authorisation of all activities that have an impact on the environment. In Romanian legislation on the environment, there is a number of regulatory enactments (agreements, endorsements, authorisations) that economic operators will have to obtain, under specific criteria and rules. Such agreements/authorisations or endorsements are not intended to give the right for pollution or to affect the environment, but are intended to prevent or at least minimise such negative effects.

The authorisation of environmental impact activities is one of the current techniques currently used by all the States of the European Union, in order to prevent and limit environmental harm. The obligation to obtain special authorisations for the carrying out of certain activities verifies the fulfilment of minimum operating and control conditions that the future economic operator will have to carry out, in order to comply with all environmental requirements. Whether or not a company is in insolvency, it is obliged to comply with all environmental obligations regulated by the enactments in force.

The principles of environmental law have both the guiding role of the legislator, when drafting new regulations, and the role of guiding the activity of any economic operator subject to the rules laid down by that law branch. These regulations will have to be complied with by any of the current or future economic operators performing or wishing to perform activities that may affect the environment. The principles of environmental law are laid down by art. 3 of G.E.O. no. 195/2005 on environmental protection[4], these being the general principles.

The subject of environmental law may be a natural person or a legal entity, but not all the principles of law stated under art. 3 of G.E.O. 195/2005 on environmental protection shall apply to these categories of operators. As regards the application of the principles of environmental law, a particularity in their application is the application of the provisions of art. 3 h) of G.E.O. 195/2005 on environmental protection. The principle laid down by art. 3 h)[5] has two parts, one of "public information and participation of the public in the decision-making process" and another related to "access to justice in environmental matters". If all the principles of law set out by G.E.O. 195/2005 on environmental protection apply to both natural persons and legal entities, the subject of law of the first component of item h) of art. 3 may only be a natural person, commercial companies of any kind being unable to participate in the decision making process.

This principle with two different components has as subjects different persons. Subjects of law for information and participation in the decision-making process related to environmental issues can only be natural persons, and access to justice can have all subjects of law, be they natural persons or legal entities.

The principles of law stated under art. 3 of G.E.O. 195/2005 on environmental protection were designed to prevent pollution and then repair or call on the liability of persons causing environmental damage. In a sense, it is normal for the prevention to be often a much better and more accessible solution than repair, which in the environmental law, can often be very difficult to achieve or is unattainable.

One of the principles of environmental law that represents the foundation of this branch is the "polluter pays" principle.

2. Development of the "polluter pays" principle;

In the European Union, "polluter pays" as a principle of environmental law, was introduced in the

[4] G.E.O. no. 195/2005 on Environmental Protection, published in Official Journal no. 1196 of December 30th, 2005, under art. 3 states "The principles and strategic elements underlying the present emergency ordinance are:
a) The principle of integrating environmental policy into other sectoral policies;
b) The precautionary principle in the decision-making process;
c) The principle of preventive action;
d) the principle of withholding pollutants at source;
e) the "polluter pays" principle;
f) the principle of preserving biodiversity and ecosystems specific to the natural biogeographic framework;
g) sustainable use of natural resources;
h) public information and participation in the decision-making process, as well as access to justice in environmental matters;
i) development of international cooperation for the protection of the environment."

[5] G.E.O. no. 195/2005 on Environmental Protection, published in Official Journal no. 1196 of December 30th, 2005

Treaty on the functioning of the European Union, but also by means of Directive 2004/35/EC[6] of the European Parliament and of the Council of 21.04.2004 on environmental liability in relation to the prevention and remediation of damages. Member States were allowed to transpose the directive into national legislations by April 30th, 2007. All Member States have transposed the directive into national law. In Romania, Directive 2004/35/EC was fully transposed by means of Government Emergency Ordinance No. 68/2007[7] on environmental liability with reference to the prevention and repair of environmental damage, which has been approved by means of Law 19/2008[8].

The "polluter pays" principle is enshrined in the national legislation under art. 3 e) of G.E.O. 195/2005[9] on environmental protection, being a principle underlying both this enactment and other enactments in the field of environmental protection. The principle finds its applicability in art. 94 of G.E.O. 195/2005[10] on environmental protection, which provides for the obligation of both natural persons and legal entities to protect the environment, being obliged to bear the cost of repairing the damage and restoring the conditions prior to their occurrence.

In special laws, the principle shows the need to develop an appropriate legislative and economic framework, so that the costs of reducing pollution are borne by their producer. In G.D. 731/2004 on the approval of the National Strategy for the protection of the atmosphere, it is shown that "the polluter pays principle establishes the need to create an appropriate legislative and economic framework, so that costs for reducing emissions are borne by their generator. The responsible for deterioration of the quality of the atmosphere must pay in accordance with the seriousness of the effects produced[11]".

3. Environmental liability under the ' polluter pays ' principle;

This principle of environmental law shows that the polluter is obliged to bear the costs of achieving both pollution prevention measures and possible damage caused by pollution. A policy of economic operators to reduce pollution prevention costs, including by not adapting to the latest available technologies, sooner or later will lead to higher costs, in order to combat the negative effects pollution can have on human health or the environment, in its entirety. In order to avoid such situations and to "correct" the costs that the economic operator will have, there is the "polluter pays" principle, which, in the environmental law, also has the role of imputing the cost of environmental attainment to the polluter. In the doctrine,[12] it is shown that "all expenditure in relation to the protection of the natural environment is, by default, an expense leading to the creation of profit. It will always be the economy that will bear the consequences in the short term, and additional expenditure will be based on export prices." In our view, the main purpose of applying this environmental principle is to educate economic operators so that starting from the "polluter pays" we can reach the idea of the polluter does not pollute.

The economic justification for the "polluter pays" principle is that the failure to carry out expenditure, prevention and environmental protection in time will entail high costs of the economic operator, consisting

[6] Directive 2004/35/EC published on https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=CELEX:32004L0035 and studied on 26.02.2019
[7] G.E.O. no. 68/2007 on environmental liability published in Official Journal no. 466 of June 29th, 2007
[8] Law 19/2008 for the approval of G.E.O. no. 68/2007 on environmental liability published in Official Journal no. 170 of March 05th, 2008
[9] G.E.O. no. 195/2005 on environmental protection published in Official Journal no. 1196 of December 30th, 2005
[10] G.E.O. No. 195/2005 on environmental protection published in Official Journal no. 1196 of December 30th, 2005 art. 94 shows that (1) the protection of the environment constitutes an obligation of all natural persons and legal entities, for which purpose: (a) it request and obtains the regulatory acts, in accordance with the provisions of this emergency ordinance and the subsequent legislation; b) complies with the conditions of the regulatory acts obtained; (c) does not put into service installations whose emissions exceed the limit values laid down by the regulatory acts; (d) legal entities carrying out activities with a significant impact on the environment shall organise specialised environmental protection structures; e) assists persons empowered with verification, inspection and control activities, providing them with the evidence of their own measurements and all other relevant documents and facilitates the control of activities whose owners they are, as well as sampling; f) provides access for persons empowered for verification, inspection and control of technological installations generating environmental impact, equipment and installations for environmental remediation, as well as in spaces or areas related to the aforementioned g) carries out, in whole and in due term, the measures imposed by the acts of identification concluded by persons empowered with verification, inspection and control activities; h) shall be subject to the written provision of termination of the activity; i) bears the cost of repairing the damage and removing the consequences produced by it, restoring the conditions prior to the damage, according to the "polluter pays" principle; j) provides its own systems for the supervision of technological installations and processes and for self-monitoring of pollutant emissions; k) ensures the recording of results and reports to the competent authority for environmental protection the results of self-monitoring of pollutant emissions, as provided for by the regulatory acts; l) informs the competent authorities, in the event of accidental eliminations of pollutants in the environment or major accidents; m) stores waste of any kind only on premises authorised for this purpose; n) does not burn the stubble, reed, bushes or grass vegetation, without the consent of the competent authority for the protection of the environment or without prior notification of the Community public services for emergencies; o) applies the conservation measures established by the Central Public Authority for environmental protection on terrestrial and aquatic areas, subject to a conservation regime, as natural habitats, which they manage, as well as for their ecological restoration; p) does not use dangerous bait in fishing and hunting activities, except in specially authorised cases; q) ensures optimum conditions of life, in accordance with the legal provisions, for wild animals kept in legal captivity, under different forms; r) ensures that the sanitation measures related to land held under any title, not occupied productively or functionally, in particular those situated along the road, railway and navigation pathways, are taken; s) to identify oneself at the express request of the inspection and control staff, provided for in this Emergency Ordinance.
[11] G.D. no. 731/2004 for the approval of the National Strategy on the protection of the atmosphere published in Official Journal no. 496/2004
[12] D. Marinescu, M.C. Petre – *Environmental Law Treaty*, ed. V, University publishing house, Bucharest, 2014, pg. 75

in combating the negative effects occurred. All costs of combating negative effects on the environment will have to be covered by the polluter, and the only option is to reflect these costs in the price of the services offered. If the price of the services offered increases with these additional costs, there is a possibility that the economic operator will suffer a significant decrease in activity, as a result of the high price that can even lead to the blocking of the entire activity and, not lastly, to the entry into insolvency, followed by its deregistration.

In the literature,[13] it is shown that "broadly, the principle seeks to cast to the polluter the load of the social cost of the pollution it causes. This implies the training of a mechanism of responsibility for ecological damage, covering all the effects of pollution, both those produced in relation to goods and persons, and those produced on the environment, as such." The same authors show that "in a narrower sense, it requires the polluters to bear only the cost of anti-polluting measures and cleaning." The polluter pays principle is nothing but an attempt to raise awareness of economic operators that if there are environmental pollutions caused by them, they will have to bear the consequences arising therefrom. On the other hand, the principle seeks to educate the economic operator, with a view to its use of the latest generation of available technologies, which have the lowest degree of pollution. The principle takes into account the liability of polluters, based on the idea of risk and guarantee for the actions perpetrated.

The application of the polluter pays principle may not be solitary, because this would lead to the situation where any economic operator would pay an amount of money as a pollution tax, which could be perceived as a payment to be able to pollute. This principle must be read in conjunction with the principle of prevention and the prohibition of pollution, in order not to lead to inadmissible consequences such as "I pay, therefore I can pollute[14]". We believe that the principle has been adopted so that the party responsible for the production of the pollution can be held accountable and pay environmental damage.

This principle of environmental law is the basis of Directive 2004/35/EC on civil liability in relation to the prevention and remediation of environmental damage. This Directive 2004/35/EC provides that the fundamental principle must be that an economic operator, whose activity has caused an environmental damage, must be financially liable. The aforementioned directive puts particular emphasis on preventive and environmental remedies, because most of the time the ecological destruction can have irreversible effects. This directive was transposed into national law by Emergency Ordinance No. 68/2007[15] on environmental liability in relation to the prevention and repair of environmental damage.

Emergency Ordinance No. 68/2007[16] on environmental liability shows, under article 1 that "it establishes the regulatory framework for environmental liability, based on the polluter pays principle, for the prevention and remediation of environmental damage". This regulation provides a guarantee in addition to the observance, prevention and repair of damage that professional activities may have on the environment. The environmental liability provided for by G.E.O. no. 68/2007 shall apply to all natural persons or legal entities (called operators) who bring harm to the environment, irrespective of the type of professional activity they carry out.

Environmental liability is not a classic tort liability, in the sense that the one who will pollute will be obliged to cover the damage caused, but the operator will also be obliged to take all measures to ensure that the work carried out by it does not pollute or if pollutes, it falls within the limits of the law, and the technology used is one that complies with the environmental law. On the other hand, the operator will have to take all measures required so that, if a disaster occurs, it may be able to remedy it. According to the provisions of the environmental law[17], the one carrying out a risk-incurring activity has no financial guarantee obligation before the action is started, the only activities subject to this regime being those of mining and waste storage.

4. Application of the ' polluter pays ' principle to companies in insolvency;

As regards commercial companies in insolvency, the provisions of G.E.O. no. 195/2005 on environmental protection anticipate their eventual disappearance and show that environmental obligations must be met with priority in dissolution and liquidation procedures or upon termination of the activity[18]. By means of this provision, the legislature attempted to deter the transfer of activities from one subject of law to another, without the fulfilment of environmental obligations. However, the provisions of G.E.O. no. 195/2005 on environmental protection, as well as those of G.E.O. no. 68/2007 on environmental liability are not correlated with the insolvency law, as such, the basic "polluter pays" principle cannot be applied with much success in such procedures. The "polluter pays"

[13] M. Duţu, A. Duţu – *Environmental law, edition 4*, C. H publishing house, Beck, Bucharest, 2014, pg. 117

[14] D. Anghel - Legal liability regarding environmental protection, Legal Universe publishing house, Bucharest 2010, p. 63

[15] G.E.O. no. 68/2007 on environmental liability published in Official Journal no. 466 of June 29th, 2007

[16] Idem

[17] G.E.O. no. 68/2007 on environmental liability published in Official Journal no. 466 of June 29th, 2007 and G.E.O. no. 195/2005 on environmental protection published in Official Journal no. 1196 of December 30th, 2005

[18] G.E.O. no. 195/2005 on environmental protection published in Official Journal no. 1196 of December 30th, 2005, under art. 10 paragraph 4, states that "the fulfilment of environmental obligations is of priority, in the case of procedures for: dissolution, followed by liquidation, bankruptcy, termination of activity"

principle in cases of insolvency does not have the levers necessary to be able to give maximum efficiency to the provisions of G.E.O. 68/2007 on environmental liability, although the legislator has been thinking of further laws aiming at the companies in insolvency, but this has never happened. According to art. 33 of G.E.O. 68/2007[19] on environmental liability, the obligations incumbent on companies in insolvency should have been established by a government decision, within 12 months from the entry into force of said order, a decision that has not been issued until now. The application of the "polluter pays" principle in light of the provisions of G.E.O. 68/2007 on environmental liability shall be made through the environmental agency, which is assisted by the Environmental Guard and who also has the role of notice entity. The economic operator that has caused damage to the environment has several obligations set out in G.E.O. 68/2007 on environmental liability: to notify the competent authorities, in this case the Environmental Guard, of any environmental hazard; The operator must take all preventive measures necessary to combat environmental damage; The operator is required to take all necessary measures to remedy the environmental damage. Failure to fulfil these obligations may entail contravention sanctions, but also the employment of criminal liability. The environmental agency may carry out preventive measures and repairs at its own expense, under art. 11 d of G.E.O. 68/2007[20] on environmental liability, and the amount spent will be recovered from the economic operator that had the obligation to execute them. In order to recover such expenditure under art. 29 of G.E.O. 68/2007[21] on environmental liability, the environmental agency may establish a statutory mortgage on the immovable property of the Operator. It is thus shown based on these provisions that the competent bodies do not have an obligation to intervene if the polluter operator does not, but they can do so, if the necessary amount is allocated by means of decision of the Government from the intervention fund.

As far as environmental liability is concerned, under the "polluter pays" principle, we believe that there is a discrepancy between environmental and insolvency provisions. A first issue in applying the principle for commercial companies in insolvency would be to enrol the debtor in the statement of affairs. Environmental obligations are usually obligations that entail actions, and the provisions of the Insolvency Act do not entitle the creditor to enter such an obligation in the statement of affairs. The practice shows that such obligations are not placed in the statement of affairs, although the environmental remediation value may represent an important amount of money from the total debts of the debtor company, as a result of the risk assessment[22]. We believe that the best option is for the environmental agency to have acted at its own expense, in order to remedy environmental damage before the insolvency proceedings are opened, because in this case there would be a quantified value of environmental obligations which were not executed by the debtor, and as such they could be entered in the statement of affairs. If there is also a legal mortgage prior to the opening of insolvency proceedings, then the claim to be entered in the statement of affairs shall receive orders of priority in future distributions, within the procedure. If there is no such guarantee, the environmental agency will be entered with the amount requested in the statement of affairs, with the order of priority of a budget claim, so that in order to extinguish it, distributions in insolvency proceedings must first provide for the payment of guaranteed creditors, and only thereafter the budgetary ones.

If the environmental agency intervenes, in order to carry out the necessary remedies for the environmental damage done by the operator, after the opening of the procedure, the amounts resulting from this operation may be classified under art. 102 paragraph 6[23] of Law 85/2014 on insolvency, as being current claims to be paid, in accordance with the resulting documents, which are not required to be entered in the statement of affairs of the debtor. On the other hand, these greening operations could be regarded as representing a financing during the insolvency proceedings, which would entail the prior approval of creditors, as the greening operation is not considered a current activity of the general debtor. According to the

[19] G.E.O. No. 68/2007 on environmental liability published in Official Journal no. 466 of June 29th, 2007 provides under article 33 paragraph 1 that "defining forms of financial collateral, including insolvency cases, and measures to develop the supply of financial instruments on environmental liability, enabling operators to use them for the purpose of guaranteeing their obligations under this Emergency Ordinance, shall be determined by means of decision of the Government, based on a proposal from the central public authorities for the protection of the environment and for public finances, within 12 months from the entry into force of this emergency ordinance "

[20] G.E.O. No. 68/2007 on environmental liability published in Official Journal no. 466 of June 29th, 2007 under art. 11 d) shows that "at any time the County Agency for Environmental Protection has the possibility to exercise the following duties: ... d) take the necessary preventive measures "

[21] G.E.O. No. 68/2007 on environmental liability published in Official Journal no. 466 of June 29th, 2007, under art. 29 paragraph 2 states that "in order to ensure the recovery of the costs incurred, the Environmental Protection Agency establishes a mortgage on the immovable property of the operator and a precautionary garnishment, in accordance with the legal rules in force"

[22] G.E.O. No. 195/2005 on environmental protection published in Official Journal no. 1196 of December 30th, 2005 provides under article 2 paragraph 32, the following: "risk assessment – this is the work drawn up by a natural person or legal entity who has this right, according to the law, which carries out the analysis of the probability and seriousness of the main components of the environmental impact and establishes the need for preventive, intervention and/or remedial measures "

[23] Law 85/2014 on insolvency and insolvency prevention procedures published in Official Journal no. 466 of June 25th, 2014, under art. 102 paragraph 6, states the following: "Claims arising from the date of initiation of the proceedings, during the observation period or in the judicial reorganisation procedure, shall be paid in accordance with the documents they are based on, and they are not required to be enrolled in the statement of affairs. The provision shall be applied appropriately for claims emerged after the date of opening of the bankruptcy procedure"

provisions of art. 87 of Law 85/2014[24] on insolvency proceedings, operations exceeding the company's current activity will have to be approved by the creditors' committee, at the request of the special administrator or judicial administrator, as the case may be. It is hard to believe that creditors of the debtor who are also part of the creditors' committee will agree, from any sums, which are to be distributed in the procedure, to pay the costs of greening. Because, on one hand, G.E.O. 195/2005 on environmental protection obliges the operator to pay its environmental obligations, and on the other hand, Law 85/2014 on insolvency proceedings does not provide for a priority or exception from payment related to these environmental obligations, so we can think that there are situations in which these obligations will not be complied with. We believe that we can be faced with the situation where the polluter pays principle cannot be applied, as the law provides for the pollutant operator to be held accountable by the judicial administrator/liquidator under the provisions of Law 85/2014 on insolvency proceedings.

In the fortunate event, in which the environmental agency intervenes for greening before the insolvency proceedings are opened and enters the statement of affairs of the debtor with the corresponding amounts, and these are not paid in the procedure, they may only be recovered in the situation in which persons have been identified as leading to the insolvency of the debtor, and they are also subject to liability for the not recovered liability, by means of an action filed under art. 169 of Law 85/2014[25] on insolvency proceedings.

The application of the polluter pays principle with reference to the liability of judicial administrators/judicial liquidators for unhonoured environmental obligations by the debtor company, the Statute for organising and exercising the profession of insolvency practitioner[26], allows, by means of art. 117 paragraph 2 e)[27] the insolvency practitioner to ask for funds necessary for any greenings from the National Union of Practitioners in Insolvency proceedings Fund. However, the insolvency practitioner who will request and receive these necessary funds will be obliged, under art. 116 paragraph 4 of the Statute on the organisation and exercise of the profession of insolvency practitioner[28], to ensure that these funds are returned immediately after the assets have been capitalised. If the assets, which are to be redeemed, do not cover such expenditure advanced by the Union, the judicial administrator or the liquidator, as the case may be, shall bear the amounts not covered by means of personal property, making it difficult to reach the decision to request these funds necessary for greening.

5. Proposals to amend the legal provisions;

The problems identified concerning the application of the "polluter pays" principle in what concerns economic operators under the Insolvency act lead to the ever-growing necessity to amend the legal provisions, but also to harmonise the provisions of the two areas of law. The necessity comes as a result of both the country's economic development and the very large number of insolvencies that UNPIR practitioners manage.

Firstly for the payment of environmental obligations, Law 85/2014 on insolvency proceedings should provide that these represent a priority, either by assimilating them to conservation costs and the administration of goods, as provided for by article 161 paragraph [29]1 of the law or by means of a distinct

[24] Law 85/2014 on insolvency and insolvency prevention procedures published in Official Journal no. 466 of June 25th, 2014, under art. 87 states that "during the observation period, the debtor will be able to continue carrying out the current activities and make payments to known creditors, who fall under the usual conditions for the exercise of the current activity, as follows: Under the supervision of the judicial administrator, if the debtor has made a request for reorganisation, within the meaning of art. 67 paragraph 1 g), and the right of administration has not been lifted; b) under the direction of the judicial administrator, if the debtor has been excluded from the right to administer it. 2. Documents, transactions and payments exceeding the conditions laid down under paragraph (1) may be authorised in the exercise of supervisory tasks by the judicial administrator; the latter shall convene a meeting of the creditors' committee for approval of the request of the special administrator, within a maximum of 5 days from the date of its receipt. If a particular operation exceeding the current activity is recommended by the judicial administrator and the proposal is approved by the creditors' committee, it will be met by the special manager. If the activity is run by the judicial administrator, the operation will be carried out by the latter, with the approval of the creditors' committee, without the request of the special administrator.

[25] Law 85/2014 on insolvency and insolvency prevention procedures published in Official Journal no. 466 of June 25th, 2014

[26] Statute on organizing and exercising the profession of insolvency practitioner, republished in Official Journal no. 712/16.08.2018

[27] Statute on organizing and exercising the profession of insolvency practitioner, republished in Official Journal no. 712/16.08.2018, under art. 117 paragraph 2 lit. e) shows that "expenditure necessary for the fulfilment of the urgent environmental obligations laid down by the competent authority, in accordance with Government Emergency Ordinance No. 195/2005 on environmental protection, approved with amendments and completions by means of Law no. 265/2006, with subsequent amendments and completions (such as liquidation of stocks of radioactive materials, PCB capacitors, hazardous chemicals, etc. for which preservation in the conditions of the law cannot be ensured), as well as expenditure related to the elaboration of technical documentation / feasibility studies / environmental reports / projects, necessary to identify feasible solutions for the fulfilment of environmental obligations and the costs associated with these solutions. The cost of environmental obligations relating to the closure of non-compliant storages will be highlighted;"

[28] Statute on organizing and exercising the profession of insolvency practitioner, republished in Official Journal no. 712/16.08.2018, under art. 116 paragraph 4 shows that "in the case of advances from the Liquidation fund, if the sentence/conclusion does not expressly provide that the amount are to be returned, the applicant, in addition to the documents referred to under paragraph (1), shall also give a statutory statement, by means of which it undertakes to repay the advance, within 10 working days, as of the recovery of the debtor's assets"

[29] Law 85/2014 on insolvency and insolvency prevention procedures published in Official Journal no. 466 of June 25th, 2014, under art. 161 paragraph 1, provides that "claims shall be paid in the event of bankruptcy in the following order: 1. Fees, stamps or any other expenditure relating to the procedure established by this title, including the expenditure necessary for the conservation and administration of assets of the

wording, in the same article, granting these priority in terms of potential distributions.

Second, when the situation requires the application of Law 85/2014 on insolvency proceedings, it must provide for an exception to the rule of approval by the creditors' committee, in terms of the necessary remedial operations and the payment of the damage produced. This modification must also be made based on the long duration of the convening and approval of any operations necessary for the remedy. If the polluter would immediately pay the damage caused, and also the measures to prevent and extend them, one could prevent in this manner other negative effects that the passage of time might have on the environment in which the operator activated.

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- Law 19/2008 for the approval of G.E.O. 68/2007 on environmental liability published in Official Journal no. 170 of March 05th, 2008
- G.E.O. no. 195/2005 on environmental protection published in Official Journal no. 1196 of December 30th, 2005
- G.E.O. no. 68/2007 on environmental liability published in Official Journal no. 466 of June 29th, 2007
- G.D. no. 731/2004 for the approval of the National Strategy on the protection of the atmosphere published in Official Journal no. 496/2004
- Statute on organizing and exercising the profession of insolvency practitioner republished in Official Journal no. 712/16.08.2018

debtor's estate, for the continuation of the activity, and for the payment of the remuneration of persons employed under the provisions of art. 57 paragraph (2), art. 61, 63 and 73, subject to those laid down under art. 140 paragraph (6);"