

AXEL LUTTENBERGER, PhD, Associate Professor  
BISERKA RUKAVINA, MSc, Assistant  
Faculty of Maritime Studies, University of Rijeka, Rijeka, Croatia

## TOURISM INDUSTRY ENVIRONMENTAL LIABILITY FOR MARINE POLLUTION

The over-consumption of resources by tourists and tourism infrastructure has deteriorated the marine environment at places where sustainable and environmentally-friendly tourism has not been implemented. The strategy of marine environment should include the assessment covering an analysis of impact and pressure of tourist industry on the environment, as well as the objectives and indicators to achieve the good ecological status. Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to prevention and remedying of environmental damages, as amended, is intended to prevent damage occurring to water, protected areas, natural habitats and land, and to increase the responsibility of operators to address such damage when it does occur. The authors are analysing the legal aspects in preventing and remedying environmental damage in the coastal area as a part of the integrated coastal zone management commitment and action by all levels of government, industry and community. In the opinion of authors, in order to achieve a high level of protection of the environment and enforce environmental liability for damages, stricter regulation is needed for the assessment of plans and programmes which are likely to have significant impact on the environment.

Key words: environmental liability, marine pollution, coastal zone management, environment assessment

### INTRODUCTION

While the tourism industry may be willing to improve their products and services, there is a conflict between the industry's pursuit of economic gains and social and environmental responsibility. The carrying capacity of natural environments is often exceeded with the addition of tourism demands.

For marine pollution an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, and the prevention and remedying of environmental damage should be implemented on the basis polluter pays principle.

## **1. THE ENVIRONMENTAL LIABILITY REQUIREMENTS**

### **1.1. The liability scheme**

The Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to prevention and remedying of environmental damages, as amended, enshrines the polluter pays principle into European legislation and it sets requirements for the prevention and remediation of environmental damage.

The Directive is intended to prevent damage occurring to water, protected species, natural habitats and land, and to increase the responsibility of operators to address such damages when they occur. Apart from environmental aspect of the problem, the damage with negative impact on economic activities which depend on the marine environment can jeopardize the wealth and job creation opportunities offered by the sea, particularly in the tourist sector.

### **1.2. Environmental damages**

The Directive distinguishes between two complementary situations, each one governed by different liability scheme i.e. occupational activities specifically mentioned in the Directive and other occupational activities.

In particular, this Directive shall apply to environment damages caused by occupational activities of waste management operation, discharges into inland surface water, discharge or injection of pollutants, water abstraction and impoundment, dangerous substances and preparations, plant protection products, transport of dangerous substances, modified microorganism, genetically modified microorganism, shipment of waste, as well as to any imminent threat of such damage occurring by the reason of those activities. Furthermore, the Directive shall apply to damage to protected species and natural habitat caused by any occupational activities and to any imminent threat of such damage occurring by reasons of any of those activities, whenever operator has been at fault or negligent.

Environmental damage means damage to protected species and natural habitats, which is any damage that has significant adverse effects in reaching and maintaining the favourable conservation status of such habitats and species. In addition it means water damage which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as well as, land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of direct or indirect introduction, in, or under, land, of substances, preparations, organisms or micro-organism.

Where environmental damage has occurred, the operator, who operates or controls occupational activities, shall, without delay, inform the competent authority of all relevant aspects of situation and take all practical steps to control, contain and remove or otherwise manage the relevant contaminants and/or any other factors in order to limit or to prevent further environmental damage and adverse effects on human or further impairment of services and necessary remedial measures.

### **1.3. Exception and defences**

The Directive shall not apply to activities covered by other liability agreements (such as marine oil or radioactive substances), armed conflict or activities which serve national defence, as well as for exceptional natural phenomenon.

The operator has a defence of liability where environmental damage or imminent threat was caused by third party and occurred despite those appropriate measures were in place or where the operator was complying with an instruction from a public authority. At the discretion of a state whether they transpose these defences, possible defences are a permit defence, where an operator was acting in accordance with the conditions and authorisation and a state of the art defence, where at the time the activities took place were not considered likely to cause environmental damage.

### **1.4. Remediation standards**

The competent authority decides which remedial option the operator is to act upon. For damage to water or to protected species and natural habitats this requires primary remediation, in the sense to return to baseline condition, complementary remediation in equivalent off-site measures where primarily the remediation does not return to the site to baseline condition and compensatory remediation in order to compensate for the interim loss of natural resources and service pending recoveries.

If the competent authority has carried out preventive and remedial action itself, the authority may recover the costs it has borne from the operator responsible for damage or imminent threat of damage. The same is valid for environmental assessment carried out to the extent of damage or action to be taken to repair it.

States shall take measures to encourage the development of financial security instruments and markers by appropriate economic and financial operators, including financial mechanism in a case of insolvency, with the aim of enabling the operators to use financial guarantees to cover their responsibility.

### **1.5. Request for action**

Natural or legal persons affected or likely to be affected by environmental damage or having sufficient interest in environmental decision making relating to damage, or, alternatively, alleging the impairment of a right, where administrative procedural law of a state requires this precondition shall be entitled to submit to the competent authority any observations relating the instances of environmental damage or imminent threat of such damage of which they are aware and shall be entitled to request the competent authority to take action.

The request for action shall be accompanied by the relevant information and data supporting the observations submitted in relation to the environmental damage in question.

## **2. PROTECTION AND CONSERVATION OF THE MARINE ENVIRONMENT**

### **2.1. The threats to a coastal area**

The marine environment is a precious asset and an important factor in economic prosperity, social wellbeing and quality of life. Massive influences of tourism, often to a relatively small area, have a huge impact. They add to the pollution, waste, and water needs of the local population, putting local infrastructure and habitats under enormous pressure.

Overdevelopment for tourism has the same problems as other coastal developments, but often has a greater impact as the tourist developments are located at or near fragile marine ecosystems. That is, the environment of many coastal areas has been adversely affected by tourism.

The Thematic Strategy on the protection and conservation of the marine environment constitutes the environmental pillar of the future maritime policy the European Commission is working on, designed to achieve the full economic potential of oceans and seas in harmony with the marine environment.

In October 2005, the European Commission proposed a draft marine protection law – the EU Strategy Directive. This Directive is aimed at filling the gap in the EU environmental policy, which is presently land-focused. The Directive proposes a framework for the development of national strategies to improve health in Europe's seas and requires a member states to draw up national strategies to enable them to achieve a healthy marine environment, or good environmental status.

### **2.2. Assessment procedure**

States must assess the ecological status and the impact of human activities. This assessment covers an analysis of the essential characteristics of these waters, an analysis of main impact and pressure as a result of human activities and an economic and social analysis of the use of these waters and the cost of the degradation to the marine environment.

On the basis of the evaluation of waters the State must define the objectives and indicators to achieve a good ecological status, which must be measurable and tied to a definite timetable.

The Marine Strategies contains a detailed assessment of the state of the environment, a definition of good environmental status at regional level and the establishment of clear environmental targets and monitoring programmes. It is a obligation of the European Member State to draw up a programme of cost-effective measures. Impact assessments, including detailed cost-benefit analysis of the measures proposed, will be required prior to the introduction of any new measure.

As part of delivering national strategies, member states have to produce an environment assessment of the current state of their waters, a list of environmental targets, a monitoring programme and a programme of measures.

### **3. THE CHALLENGES OF THE MARINE ENVIRONMENTAL DIRECTIVE**

The Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to prevention and remedying of environmental damages, as amended is, above all, an environmental measure. This arises both from its legal basis as well, as its contents. It appears, that the Directive only has a slight rapport with the civil liability, but, rather, aims at implementing a sui generis system, where a public authority is competent to ensure adherence to prevention mechanism and compensation of environmental damages.

Consumer behaviour and environmental awareness can and must be influenced by fighting unsustainable forms and aspects of tourism, at the various levels by sanctioning unacceptable behaviour and discouraging inappropriate consumer behaviour, as well as promoting responsible and sustainable patterns of behaviour by promoting best practices and encouraging responsible consumer behaviour.

Framework regulation is a way of addressing differences in scope and bringing consistency to these liabilities regimes. Further, these laws have not generally been applied to damage to natural resources, but to the traditional damage to human health or property, and to contaminated sites.

The European framework Directive on the prevention and remedying of environmental damage intends to enforce the polluter pays principle and sets standards for other countries to attain and will be the basis for the new legislation in relation to damage to biodiversity.

The regulatory target is to change the business practice through stricter liability. Moreover, the Directive details how an operator whose activities have caused the environmental damage is to be held financially liable, in order to induce operator to adopt measures and develop practices to minimize the risks of environmental damage so that their financial liability is reduced.

### **4. THE IMPACT OF THE ENVIRONMENTAL LIABILITY DIRECTIVE ON NATIONAL LEGISLATION**

The Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to prevention and remedying of environmental damages, as amended is addressed to the Member States and its main purpose is to align national legislation. A directive is binding on the Member States as to the result to be achieved but leaves them the choice of the form and method they adopt to realise the Community objectives within the framework of their internal legal order. If a directive has not been transposed into national legislation in a Member State, if it has been transposed incompletely or if there is a delay in transposing it, citizens can directly invoke the directive in question before the national courts.

Most Member States of the European Union have national laws that deal with strict liability for damage that cause serious harm to the environment.

Strict liability essentially requires the operator to internalise all possible costs of environmental damage into production, and the major advantage is that compliance with a set standard will not absolve the operator. Operators and authorities alike were given duties to take both preventive and remedial action should damage occur or

should a threat of damage arise. The Directive sets out a common framework for remediation, with the objective of restoring the environment as a whole to its baseline condition, by including appropriate measures to ensure remedying of environmental damage.

Liability can be brought into effect if there is a causal link between a polluting event and quantifiable damage. Moreover, it would seem plausible that where liability is imposed, financial compensation would be required for a damage incurred.

Undoubtedly the competent national authority has the authority to recover from securities or guarantees made by the operator. However, the Directive has only gone as far as encouraging operators to have insurance and other forms of financial security to guard against any environmental damage responsibility.

## CONCLUSIONS

The challenge for tourism developers and operators is to develop the tourism industry in a way which conserves its natural resources and built heritage base and minimises any negative environmental ecological and cultural impact.

Unsustainable development in the coastal zone will lead to a degraded natural environment and therefore a degraded resource base for tourism and accompanying loss of profitability, and a diminished quality for the most of inhabitants. Sustainable coastal tourism implies sustainable coastal management practice, clean water, air and healthy coastal system. It covers also a safe and secure recreational environment, beach restoration efforts and sound policies for wildlife and habitat protection.

An integrated approach to coastal and marine management is needed to resolve the conflicting demands of a society of products and services, bearing in mind both current and future interests. Tourism offers opportunities to educate consumers regarding responsible tourism and sustainable development, on the one hand, and in the highly competitive tourism markets, well informed, responsible consumers can put increasing pressure to behave more responsibly, on the other hand.

In the opinion of authors, the preservation of environment is an important factor for tourism and the need for a legal framework of environment protection with stricter regulation in order not to release pollutants faster than the marine habitat can process them to a harmless state, as well as to maintain a full range of recreational, educational and cultural opportunities for the present generation and future generations

It is crucial to hold operator whose activities have caused environmental damages financially liable for remedying this damage. In that sense the Environment Liability Directive with a proper strategy for the marine environment should result in a higher degree of environment protection throughout Europe.

## REFERENCES

1. The Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to prevention and remedying of environmental damages, OJ L 143/56, 30.4.2004
2. The Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC – Statement of the European Parliament, the Council and the Commission

3. Communication from the Commission to the Council and the European Parliament of 27 October 2005, The Thematic Strategy on the protection and conservation of the marine environment, COM (2005)504 final
4. Communication from the Commission to the Council and the European Parliament – Towards a strategy to protect and conserve the marine environment, COM (2002)0539 final
5. Proposal for a Directive of the European Parliament and the Council of 24 October 2005 establishing a framework for the Community action in the field of marine environmental policy (Marine Strategy Directive)
6. Recommendation 2002/413/EC of the European Parliament and of the Council of 30 May 2002 concerning the implementation of integrated coastal zone management in Europe, OJ L148, 6.6.2002
7. Communication from the Commission to the Council and the European Parliament on integrated coastal zone management: a strategy for Europe, COM (2000)0547 final
8. Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for the Community action in the field of water policy, OJ L 327, 22.12.2000, Directive as amended by Decision No 2455/2001/EC, OJ 331, 15.12.2001
9. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and recognition and enforcement of judgments in civil and commercial matters, OJ L12, 16.1.2001, Regulation as amended by Commission regulation (EC) No 1496/2002, OJ L 225, 22.8.2002

Izdavač / Publisher: Faculty of Tourism and Hospitality Management in Opatija  
Primorska 42, P.P. 97, 51410 Opatija  
Phone: ++385 51 294 700, Fax: ++385 51 291 965  
E-mail: [dekanat@fthm.hr](mailto:dekanat@fthm.hr)

Međunarodni programski odbor /  
International Programme Committee: Zoran Ivanović, Chair (Croatia);  
Ahmet Aktas (Turkey); Theoman Alemdar (Turkey); Ivo Ban (Croatia); Mato Bartoluci (Croatia); Constantin A. Bob (Romania); Frank Brück (Austria); Carlos Cândido (Portugal); Evangelos Christou (Greece); Muris Čičić (Bosnia and Herzegovina); Sanda Ćorak (Croatia); Ante Dulčić (Croatia); Georgi Georgiev (Bulgaria); Marian Gúčik (Slovakia); Ivanka Avelini Holjevac (Croatia); Elizabeth M. Ineson (UK); Peter Jordan (Austria); Dobrica Jovičić (Serbia); Ioannis Karamanidis (Greece); Fotis Kilipiris (Greece); Lazar Lazić (Serbia); Hartmut Luft (Germany); Slobodan Malinić (Serbia); Marcel Meler (Croatia); Sofronija Miladinovski (Macedonia); Konrad Misztal (Poland); Chavdar Nikolov (Bulgaria); L'udmila Novacká (Slovakia); Franc Pauko (Slovenia); Harald Pechlaner (Austria); Milena Peršić (Croatia); Stevan Popović (Serbia); Darko Prebežec (Croatia); Gordana Reckoska (Macedonia); Ilija Rosić (Serbia); Gabriella Schoier (Italia); Marianna Sigala (Greece); Werner Sperling (Germany); Graham Stone (UK); Nadia Theuma (Malta); Paris Tsarta (Greece); Ada Mirela Tomescu (Romania); Željko Turkalj (Croatia); Vesna Vrtiprah (Croatia); Schapour Zafarpour (Austria); Elfrida Zefi (Albania).

Organizacijski odbor /  
Organizing Committee: Branko Blažević, Chair  
Zoran Ivanović, Congress Proceedings Editor  
Branka Berc Radišić  
Zdenko Cerović  
Milena Peršić  
Vlado Galičić, Congress Secretary

Urednik / Editor: Zoran Ivanović

Tehnički urednik Technical Editor: Helga Maškarin

Prijelom / Layout: Helga Maškarin

Naklada / Printed in : 1000 copies

CIP - Katalogizacija u publikaciji  
SVEUČILIŠNA KNJIŽNICA RIJEKA

UDK 338.48:640.4>(063)(086.8)

BIENALNI međunarodni kongres Turizam i hotelska industrija (19 ; 2008 ; Opatija)  
Tourism & Hospitality Industry 2008 <Elektronička građa> : new trends in tourism and  
hospitality management : congress proceedings : 19th Biennial International Congress, Opatija,  
May 07- 09, 2008 / editor Zoran Ivanović. - Opatija : Faculty of Tourism and Hospitality  
Management, 2008.

Zahtjevi sustava: PC; Windows XP; Adobe Acrobat Reader. - Stv. nasl. s nasl. zaslon. - CD-  
ROM je priložen uz knjigu: Turizam i hotelska industrija 2008.

ISBN 978-953-6198-64-1  
111126061