


DEVELOPMENT OF LEGISLATION ON ENVIRONMENTAL INSURANCE: EXPERIENCE OF THE EUROPEAN UNION AND RUSSIA

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hand, shift the responsibility for compensation for losses from the state budget funds to extra-budgetary funding, attracting funds from commercial structures.

One of these, the most effective economic mechanisms of protection and responsible attitude to the environment, is environmental insurance. It is a set of types of insurance aimed at creating insurance coverage in the event of damage to policyholders, insured persons and third parties as a result of environmental pollution. Since the 1970s and 1980s, environmental insurance policies have been developed to cover liabilities arising from claims from third parties.

At present, scientists from all over the world are involved in the development of an international environmental insurance mechanism. These problems are the object of research of scientific works of scientists from different countries of the world. For example, Richardson, Benjamin J. (2002) Alberto Monti (1939), Vávrová Eva (2011), Knebel Jeffrey T. (2011) and many others. The Russian Federation does not stand aside from this trend either. Certain guidelines for the formation of effective insurance protection against environmental damage in our country can serve as insurance systems that have developed in a number of economically developed countries.

Modern insurance systems of the American, Japanese, German types are in many ways capable of protecting both economic / industrial structures, individuals, and the environment from the consequences of various technological risks. In these countries, the insurance sector is able to accumulate sufficient financial reserves to compensate for environmental damage, and the institution of civil liability is also developed. As a result, it is relevant to study the experience of developed countries in the field of environmental insurance.

INTRODUCTION

The last decades have been characterized by increased attention to the problems of liability for environmental pollution. These issues are of an international nature. Environmental problems are reflected in the state of the environment, regardless of the territorial boundaries of national states. Therefore, taking care of the environment and reducing pollution has, in recent decades, become a high-priority global topic.

To date, national and international laws have been developed so that individuals and companies can be prosecuted for causing damage to the environment. Compliance with environmental requirements by business participants is gradually becoming a generally accepted practice and an element of competitive struggle.

Yet many are unaware of the impact even the smallest accident could have, not just to the environment but financially to the polluter themselves. In this regard, economic instruments are needed that, on the one hand, could cover the economic damage associated with environmental pollution, and on the other

METHODS

Various general scientific methods and the methods of logical cognition are used in the work: analysis and synthesis, systemic, functional and formal-logical approaches. The development of conclusions was facilitated by the application of formal-legal and comparative-legal methods.

RESULTS AND DISCUSSION

Environmental issues continue to be a headline business risk as regulatory and public pressure regarding environmental performance increase. Environmental risks related to the protection of water resources, impacts to human health, and the maintenance of biodiversity and the quality of the environment may result from the activities of industry.

Insurance is a tool that minimizes the risks of business entities. Insurance functions to spread the economic consequences of individual events across many parties, and, thereby, reduce the potentially catastrophic effects of unforeseen events on individuals by having those consequences absorbed by a third-party (the insurer). Insurance is in principle utility maximizing, as it enables risk-averse parties to transfer their risks for a relatively small fee, and by so protecting parties from exposure to costly liability allows them to pursue socially beneficial ventures.

Environmental Liability Insurance, also known as Environmental Impairment Liability (EIL), this type of insurance covers claims for personal injury, damage to property, clean-up expenses, legal expenses or fines that have been incurred as a result of pollution. Often property and liability insurance policies have exclusions related to pollution, which means that additional insurance for pollution-related damage is still needed.

The use of insurance to ensure environmental safety by creating financial guarantees of compensation for damage arising from negative environmental changes appeared in the 60s of the XX century. The development of legislation on environmental liability has led to the creation of an environmental insurance mechanism for the risk of an accident at an industrial enterprise. Later, this tool began to be widely used in various areas in which there was a risk of environmental harm.

In the world practice, insurance in the field of nature management compensates for losses caused to the environment and "third parties" at the expense of the market participants themselves, and not the state budget. This makes it possible for the state to direct more money for preventive measures, and to carry out restoration work more clearly and effectively. One of the main motives for the development of environmental insurance is the high amount of environmental damage, which is two orders of magnitude higher than the damage caused by fires and natural disasters.

Environmental liability insurance first emerged in the United States in the mid-70s. the last century as a consequence of the tightening of the legal regime of liability for environmental pollution. The national legislation of European states (for example, the Netherlands, Spain and others) regulates the relationship of environmental responsibility in criminal codes, as well as in additional criminal environmental legislation.

Attention should be paid to the experience of the countries of the European Union in regulating relations on compensation for environmental harm. Thus, the European Union pays considerable attention to environmental protection in general and compensation for environmental damage, in particular. The objectives of environmental protection are aligned with the main directions of EU development in other areas. First of all, this concerns the problems of ensuring sustainable development in relation to the policy of industrial and economic development. The legal regulation of compensation for damage to the environment is organically incorporated into the general environmental policy of the EU.

The central place in the system of legal regulation of compensation for environmental damage is taken by Directive 2004/35 / CE of the European Parliament and the Council of the EU on environmental responsibility aimed at preventing environmental damage and eliminating its consequences (<https://eur-lex.europa.eu>). The purpose of this Directive is to establish a framework of environmental liability based on the «polluter-pays» principle, to prevent and remedy environmental damage (article 1).

As noted by L. Knopp and I. Piroch, this Directive creates at the EU level a standard of public liability for environmental damage (KNOPP, PIROCH, 2013). However, EU Directive 2004/35 / CE also does not provide for the right of individuals and legal entities to compensation for damage. Its purpose is to prevent harm to the environment and ensure its elimination. In the event of damage to individuals and legal entities, their health and property, they can claim compensation for damage in accordance with national legislation on civil liability.

At the present time in the European Union, there exist, in terms of general liability, insurance products which partially cover some elements of the Directive, these being liability insurance for environmental damage occurring as a result of sudden, unexpected and uncontrollable accidents, for which damage compensation claims are based in civil law. As soon as the final extent of the legislation is known, the insurance industry will be able to begin preparing corresponding insurance products. One of the assumptions of risk insurability is legal clarity, comprehensibility, definiteness and a consistent legal environment.

Only as part of such a legal framework can insurers precisely determine under what conditions they will be asked to reimburse damage claims and in what amount. European insurance companies use their experience and know-how from past environmental liability insurance activities to develop products which meet the Directive, including claims for damage reimbursement under public law and the coverage of new types of damage to the natural environment itself, so-called biodiversity damage, as well as costs for the prevention of this damage and its repair (VÁVROVÁ, 2011).

Generically, there are two basic types of insurance. One type serves to compensate damage caused by the insured to other people and property. Known as third-party liability insurance, it can also serve to protect the injurer from excessive claims that could financially cripple their business. Under liability insurance the insurer becomes responsible for not only guaranteeing compensation for damage, but also ensuring that sufficient incentives remain for parties to take due care given that insureds are not subject to the full extent of legal liabilities. Alternatively, there exists first-party or personal insurance, which aims to compensate for example the costs incurred by the insured in remedying (historic or future) pollution on their own site, including externally generated harms (RICHARDSON, 2002).

In European countries, the environmental risk insurance system includes several types of insurance coverage:

- liability insurance for accidental (sudden) and gradual environmental pollution within the framework of general liability insurance;
- liability insurance only for accidental (sudden) environmental pollution within the framework of general liability insurance;
- liability insurance for accidental (sudden) and gradual environmental pollution within the framework of environmental insurance.

Currently, in many European countries there is a tendency to exclude environmental risk insurance from general liability insurance contracts and to move to insurance of all risks associated with environmental pollution, only within the framework of environmental insurance contracts.

Within the EU, there is a shift towards the development of an integrated environmental liability framework, with two main issues being addressed. Using a civil liability scheme to ensure that environmental compensation costs are covered. Instead of a form of responsibility based on proven guilt, preference is given in favor of unconditional responsibility. For such a system to work, the types of activities for which unconditional liability is provided, it is necessary to provide some form of liability insurance for environmental damage. In the EU, a proposal was put forward on the compulsory insurance of certain types of risks. However, it is noted that in cases where insurers are not ready to provide coverage for certain types of risks, or the amount of insurance premiums for such risks is unacceptably high for small and medium-sized enterprises, it may be necessary for the government to intervene (MENSHIKOVA, MENSHIKOV, 2012).

The legislation of the Russian Federation contains provisions on liability for environmental damage. The main regulatory act in this area is the Federal Law «On Environmental Protection» (MALINOVSKY et al., 2020). In accordance with Article 75 of this act, property, disciplinary, administrative and criminal liability is established for violation of legislation in the field of environmental protection in accordance with the legislation. In addition, Article 18 provides for the implementation of environmental insurance measures. «one. Environmental insurance is carried out in order to protect the property interests of legal entities and individuals in case of environmental risks. 2. Compulsory state environmental insurance may be carried out in the Russian Federation. 3. Environmental insurance in the Russian Federation is carried out in accordance with the legislation of the Russian Federation» (TURANIN et al., 2020).

In 1997, a specialized law "On industrial safety of hazardous production facilities" was adopted. This normative act laid the foundation for the development of a mechanism for compulsory environmental liability insurance of enterprises - sources of increased danger. At present, when a hazardous production facility is put into operation, this act provides for the mandatory existence of a compulsory civil liability insurance contract concluded in accordance with the legislation of the Russian Federation on compulsory civil liability insurance of the owner of a hazardous facility for damage caused by an accident at a hazardous facility. One of the main normative acts that determine the basic conditions for compulsory insurance in such cases is the Law «On compulsory insurance of civil liability of the owner of a hazardous facility for damage caused by an accident at a hazardous facility» (MALINOVSKY et al., 2020).

In recent years, Russia has been actively discussing the issue of adopting the law «On Compulsory Environmental Insurance». Currently, no such law has been adopted. This determines the relevance of voluntary environmental insurance. Experience in implementing the principles of voluntary environmental insurance shows that at present in Russia voluntary types of insurance are not fully developed due to the insufficiently developed legal framework, which strictly obliges to compensate for losses caused by accidental insurance events from profit. In addition, the lack of free financial resources does not contribute to the creation of reserve funds by potentially dangerous enterprises in the form of insurance deductions in case of unforeseen events (TURANIN et al., 2020). The main incentives for voluntary insurance of environmental risks are benefits for the insured in the form of attributing (full or partial) insurance premiums to the cost of products (works, services).

An analysis of the main regulations in the field of environmental insurance shows that the Russian Federation has a legislative basis for this legal institution. However, there is no systemic and complex regulation. The very concept of «environmental insurance», carried out in order to protect the property interests of legal entities and individuals in the event of environmental risks, is absent in a special federal law. So far, it is only only indicated in legal circulation and enshrined in the Federal Law «On Environmental Protection». At the present time, this term is actively used in educational and monographic specialized literature. This prevents the active development of legislation in this area, as well as its practical use. In addition, the question of the possibility of compensation for moral damage should be analyzed (BOLTENKOVA et al., 2019).

CONCLUSIONS

The experience of developing mechanisms to prevent environmental harm as a result of hazardous production facilities shows the benefits of environmental insurance. Moreover, it is desirable that it be carried out on a mandatory basis. The advantages of this mechanism are seen in the following:

- environmental insurance guarantees payments to persons who have suffered property and physical losses as a result of environmental damage;
- this mechanism protects the property interests of the owners of environmentally hazardous facilities. Compensation to persons who have suffered as a result of an environmental accident is carried out at the expense of insurance compensation;
- environmental insurance can prevent the bankruptcy of an organization in the event of major environmental damage that the organization itself will not be able to compensate;

- insurance can act as a means of preventing environmental offenses. When concluding an insurance contract, the insurer assumes the responsibility of carrying out inspections and preventive measures.

Environmental insurance is an effective tool for ensuring environmental safety. With the use of the mechanism for modeling and assessing environmental risks, insurance coverage becomes available to users of natural resources, provided that technologies are improved to prevent the onset of environmental harm.

Thus, in the current economic conditions, the creation and implementation of an insurance system in the field of environmental management should become one of the priority directions of the state environmental policy.

CONFLICT OF INTEREST

The authors confirm that the information provided in the article does not contain a conflict of interest.

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Development of legislation on environmental insurance: experience of the European Union and Russia

Desenvolvimento de legislação sobre seguro ambiental: experiência da União Europeia e Rússia

Desarrollo de la legislación en materia de seguros medioambientales: experiencia de la Unión Europea y Rusia

Resumo

Este artigo analisa o desenvolvimento da legislação de seguro ambiental da União Europeia e da Federação Russa. São determinadas as vantagens desse mecanismo em matéria de compensação de danos causados ao meio ambiente em decorrência de infrações ambientais. A análise da Diretiva n.º 2004/35 / CE do Parlamento Europeu e do Conselho da UE sobre a responsabilidade ambiental, visa prevenir os danos ambientais e eliminar as suas consequências. É feita uma comparação da legislação russa com as normas de seguro ambiental adotadas na União Europeia. Conclui-se que o seguro ambiental deve se tornar uma direção prioritária da política estadual de recursos naturais.

Palavras-chave: Seguros. Riscos. Seguros ambientais. Emergências. Segurança ecológica.

Abstract

This article analyzes the development of the environmental insurance legislation of the European Union and the Russian Federation. The advantages of this mechanism in matters of compensation for harm caused to the environment due to environmental offenses are determined. The analysis of Directive No. 2004/35 / CE of the European Parliament and the Council of the EU on environmental responsibility, aimed at preventing environmental damage and eliminating its consequences. A comparison of Russian legislation with the norms of environmental insurance adopted in the European Union is carried out. The conclusion is formulated that environmental insurance should become a priority direction of the state natural resource policy.

Keywords: Insurance. Risks. Environmental insurance. Emergency Situations. Ecological Safety.

Resumen

Este artículo analiza el desarrollo de la legislación sobre seguros ambientales de la Unión Europea y la Federación de Rusia. Se determinan las ventajas de este mecanismo en materia de indemnización por daños causados al medio ambiente por delitos ambientales. El análisis de la Directiva n.º 2004/35 / CE del Parlamento Europeo y del Consejo de la UE sobre responsabilidad medioambiental, encaminada a prevenir los daños medioambientales y eliminar sus consecuencias. Se lleva a cabo una comparación de la legislación rusa con las normas de seguro medioambiental adoptadas en la Unión Europea. Se formula la conclusión de que el seguro ambiental debe convertirse en una dirección prioritaria de la política estatal de recursos naturales.

Palabras-clave: Seguro. Riesgos. Seguro ambiental. Situaciones de emergencia. Seguridad ecológica.