

Environment: liability with regard to the prevention and remedying of environmental damage

2002/0021(COD) - 21/04/2004 - Final act

PURPOSE : to create a regulatory framework establishing environmental liability with regard to the prevention and remedying of environmental damage. **LEGISLATIVE ACT** : Directive 2004/35/CE of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage. **CONTENT** : This Directive establishes a framework of environmental liability based on the "polluter-pays" principle, to prevent and remedy environmental damage. The Directive applies to: - environmental damage caused by any of the occupational activities listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities; - damage to protected species and natural habitats caused by any occupational activities other than those listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities, whenever the operator has been at fault or negligent. The Directive applies without prejudice to more stringent Community legislation regulating the operation of any of the activities falling within the scope of this Directive and without prejudice to Community legislation containing rules on conflicts of jurisdiction. Moreover, the Directive does not give private parties a right of compensation as a consequence of environmental damage. The Directive does not cover certain kinds of environmental damage, a list of which is given in the text. Significantly, it only applies to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators. The principal points of the directive are as follows: - With regard to prevention, where environmental damage has not yet occurred but there is an imminent threat of it occurring, the operator must take the necessary preventive measures. If, despite such preventive measures the threat of environmental damage is not dispelled, operators are to inform the competent authority of all relevant aspects of the situation, as soon as possible. - With regard to remedial action, where environmental damage has occurred, the operator must inform the competent authority of all relevant aspects of the situation and take all practicable steps to immediately control the relevant contaminants in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services or to provide an equivalent alternative to resources or services as foreseen in Annex II. - The duty to establish which operator has caused the damage or the imminent threat of damage, to assess the significance of the damage and to determine which remedial measures should be taken with reference to Annex II will rest with the competent authority. To that effect, the competent authority is entitled to require the relevant operator to carry out his own assessment and to supply any information and data necessary. - The operator will bear the costs for the preventive and remedial actions taken pursuant to this Directive. In cases where a competent authority acts itself, in the place of an operator, the cost incurred by it should be recovered from the operator. Operators must also ultimately bear the cost of assessing environmental damage and, as the case may be, assessing an imminent threat of such damage occurring. Member States may provide for flat-rate calculation of administrative, legal, enforcement and other general costs to be recovered. An operator will not be required to bear the costs of preventive or remedial actions in situations where the damage in question is the result of certain events beyond the operator's control. Member States may allow that operators who are not at fault or negligent will not bear the cost of remedial measures, in situations where the damage in question is the result of emissions or events explicitly authorised or where the potential for damage could not have been known when the event or emission took place. - Member States may establish national rules covering cost allocation in cases of multiple party causation. Member States may take into account, in particular, the specific situation of users of products who might not be held responsible for environmental damage in the same conditions as those producing such products. In this case, apportionment of liability should be determined in accordance with national law. - The limitation period for recovery of costs is five years

from the date on which measures taken pursuant to the Directive have been completed or the liable operator, or third party, has been identified, whichever is the later. - Under the Directive non-governmental organisations promoting environmental protection and meeting any requirements under national law, are deemed to have sufficient interest to submit to the competent authority any observations relating to instances of environmental damage or an imminent threat of such damage and are entitled to request the competent authority to take action under the Directive. - With regard to insurance, the Directive states that Member States must encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under this Directive. Finally, the Commission, before 30 April 2010, must present a report on the effectiveness of the Directive in terms of actual remediation of environmental damages, on the availability at reasonable costs and on conditions of insurance and other types of financial security for the activities covered by Annex III. The report will also consider in relation to financial security the following aspects: a gradual approach, a ceiling for the financial guarantee and the exclusion of low-risk activities. In the light of that report, and of an extended impact assessment, including a cost-benefit analysis, the Commission will, if appropriate, submit proposals for a system of harmonised mandatory financial security

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