

Malta's Report under Article 18(1) in conjunction with Annex VI of Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the Prevention and remedying of environmental damage

Introduction

Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004, on environmental liability with regard to the prevention and remedying of environmental damage (hereinafter referred to as the "Environmental Liability Directive or ELD"), entered into force on 30 April 2004. Member States were obliged to transpose this into domestic law by 30 April 2007. Through this Directive, a structure was created based on the polluter pays principle, in order to prevent and remedy environmental damage. The Directive seeks to achieve this by making businesses that damage the environment, legally and financially accountable for that damage.

It is the first EU legislation that establishes a common framework for liability with a view to preventing and remedying damage to ecosystems, natural habitats, water and soil. The liability scheme applies to certain specified occupational activities and to other activities in cases where the operator is at fault or negligent. Public authorities are also responsible for ensuring that the operators responsible take or finance the necessary preventive or remedial measures themselves.

The ELD was transposed into national legislation by virtue of the Prevention and Remedying of Environmental Damage Regulations (Legal Notice 126 of 2008 as amended), which entered into force on 29 April 2008 under two acts: the Development Planning Act, 1992 (Cap. 356, as amended) and the Environment Protection Act, 2001 (Cap. 435, as amended). The two Acts have since been amalgamated into one, that is, the Environment and Development Planning Act (Cap. 504).

Article 18(1) on reports and review

This Directive obliges Member States to report to the Commission on the experience gained in the application of the Directive by means of Article 18(1) in conjunction with Annex VI of the ELD. Through this reporting, the Commission can evaluate the effectiveness of this Directive and also honour its commitment towards Article 18(2) of the ELD, that is, to submit a report to the European Parliament and to the Council including any appropriate proposals for amendments.

Article 18(1) on reports and review - Malta's experience with the Directive

The implementation of the ELD lies within the responsibility of the Malta Environment and Planning Authority as the agency responsible for environment protection and development control in Malta. Malta considered a number of cases within the context of the ELD. This kind of approach is virtually new to the Maltese authorities and hence certain scenarios which had an element of environmental implications were assessed against this Directive. To date, a fully fledged case has not occurred or been detected by the Authority or reported by third parties.

However, in certain cases parts of the Directive were applied to make operators shoulder responsibility for possible environmental damage, pursue operators to apply voluntary remediation and facilitate recovery of expenses incurred by the Authority to mitigate negative environmental impacts.

The cases where specific provisions of the Directive were used were two, namely:

- The pollution from batching plants by over spillage of concrete by-product into a valley system (Case 1);
- The laying of alien material in an area which forms part of the Natura 2000 Network for the filming of a television production (Case 2).

Hereunder are the details of the two cases.

Case 1 – Pollution from batching plants

Type of Environmental damage:

Pollution from five batching plants due to the discharge of concrete by-product (concrete sludge) at Il-Wied ta' Santa Katerina, which also forms part of the Wied il-Ghasel valley system. Although this particular area was still unprotected in 2007 (it was protected in 2012), the Malta Environment and Planning Authority intervened since the valley system is important for other protected areas within this valley's system.

Date of occurrence:

September 2007

Date of discovery of Damage:

January 2008 - Through a third party report, the Malta Environment and Planning Authority was alerted in January 2008. Following further investigations it was discovered that date of occurrence of incident was September 2007, when torrential rain hit the Maltese Islands.

Date on which proceedings were initiated under the Directive:

(date of commencement of remedial action and duration)

21 January 2008. The Malta Environment and Planning Authority officials took the necessary remedial measures, according to Article 6.2(e) of the Directive, as the operators did not inform the Competent Authority of discharge of concrete by-product into the valley system, and did not take any steps to control the damage, as stipulated by Article 6.1(a) of the ELD.

Date of closure of proceedings:

Not applicable. The case is ongoing.

Classification of activity pursuant to Annex III of the Directive:

No Classification

Activity Classification Code (NACE):

C23.6.1 – Manufacture of concrete products for construction purposes

Judicial Review:

The Malta Environment and Planning Authority filed a Judicial Protest against the five plants to recover the expenses incurred in the operation to remove the sludge, and bring the valley back to its pristine condition. This operation amounted to approximately 42,000 Euro and was contested by the operators in front of the First Hall of the Civil Court, where the proceedings are still ongoing.

Outcome of remediation process:

The pollutant was removed and the affected area was left to regenerate through natural processes.

Type of Environmental damage (As specified in Article 2.1 of the Directive):

Classification 1(a): damage to protected species and natural habitats.

Qualified Entities (Article 12.1):

None

Case 2 – Filming activities

Type of Environmental damage:

The laying of alien material (sand derived from the crushing of Upper Coralline limestone) for a television production within the Qawra/Dwejra, Special Area of Conservation in Gozo, a site which forms part of the Natura 2000 Network.

Date of occurrence:

19 to 21 October 2010

Date of discovery of Damage:

25 October 2010

Date on which proceedings were initiated under the Directive:

(date of commencement of remedial action and duration)

25 October 2010

Date of closure of proceedings:

3 December 2010

Classification of activity pursuant to Annex III of the Directive:

No Classification

Activity Classification Code (NACE):

J 59 – Motion picture, video and television programme production, sound recording and music publishing activities

Judicial Review:

Not applicable.

Outcome of remediation process:

The area affected was small and did not include any species or natural habitats for which the site was designated under the Habitats Directive. All alien material was manually removed. An independent scientific assessment was commissioned to evaluate the extent of damage incurred to the site. The result of the scientific assessment concluded that negligible to no damage was inflicted on the affected area.

Type of Environmental damage (As specified in Article 2.1 of the Directive):

Not applicable. In this specific case the mechanism of the ELD was initiated due to possibility of an imminent potential threat, however, following the relevant studies undertaken, it was concluded that no significant damage had been incurred. The mechanism was originally initiated in relation to Classification 1(a); damage to protected species and natural habitats.

Qualified Entities (Article 12.1):

None