

Environmental Liability Directive Status of Implementation March 2008

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March 2008

- MS required to have transposed the Directive into National legislation by May 2007
- March 2008, following countries have done it :
 - Germany
 - Lithuania
 - Latvia
 - Roumania
 - Spain
 - Sweden
 - Hungary
 - Italy (potentially to redo the job)
 - Poland, Belgium, Czech Republic have implemented in part but not in full
 - Slovakia
 - Malta
 - Cyprus

- Targets : surface water, groundwater, endangered species, protected habitats, soil (only in case damage is a danger to human health)
- Activities concerned : (1) IPPC-installations, (2) discharges of dangerous substances to water and air, (3) transport of dangerous substances, (4) waste management activities, (5) processing, storing, transport (on own land) of dangerous substances, (6) use and discharges of GMO's = STRICT LIABILITY vis-à-vis all targets
- Other activities : = FAULT LIABILITY vis-à-vis endangered species and protected habitats
- Directive only applicable to damages caused after date of entry into force (20/04/2007)
- Possibility for MS to grant (or not) permit defence, state of the art defence
- MS are encouraged to install financial instruments for damage repair (insurance or others)
- Claims by third parties to be addressed to CA, not to activities directly

Implementation : SPAIN

- First country to do so, because of accident in Aznalcollar and with Prestige
- Some provisions are more stringent (+) than the text of the Directive, others (=) follow the Directive
- Damage to biodiversity not limited to protected species and Natura 2000, but to ALL natural areas and species (100% of the country) (+)
- Compulsory system of financial guarantee (+)
 - Mandatory for operators having the potential to cause damages costing more than 2 Mio €
 - Between 0.3-2 Mio €: either financial guarantee or EMAS
- Spain allows third parties to take direct legal action against polluters (+)

Implementation : SPAIN

- Maintains the liability regimes as proposed in the Directive text (=)
- Adopts possibilities of exemptions : (=)
 - Permit defense
 - State of the art
- Respects non-retroactivity, i.e. distinction between historical and new damage (=)
- Not applicable to nuclear nor oil bussiness (=)

Implementation : FLANDERS

- Maintains the liability regimes as proposed in the Directive text (=)
- Adopts **partly** possibilities of exemptions : (=)
 - Permit defence
 - State of the art
- Rejects possibility for permit defence in case of damage to soil and groundwater : as soon as standards are exceeded, action is required (+)
- Respects non-retroactivity, i.e. distinction between historical and new damage (=)
- Scope of habitats and endangered species can be extended upon decision of the Flemish Government (+)
- CA encourages insurance business to provide financial products to cover expenses
- Not applicable to military activities (=)

Implementation : WALLONIA

- Maintains the liability regimes as proposed in the Directive text (=)
- Adopts **fully** possibilities of exemptions : (=)
 - Permit defence
 - State of the art
- Repair of soil damage : based on human risk assessment
- Respects non-retroactivity, i.e. distinction between historical and new damage (=)
- Financial aspects : financial bank guarantees, bond...
- Applicable to military activities (+)