



Environmental Liability Directive Status of Implementation March 2009

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Brief recap



- 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

Overview of transposition



	Sweden	The Netherlands	Luxemburg	Italy
Date of transposition	August 1st 2007	April 4th 2008	Spring 2009, still under negotiation	2006
Liability regime	+	=	=	+
Damage to water resources	=	=	=	+
Damage to soil	=	=	+	=
Damage to biodiversity	=	=	+	+
Permit defence	+	+	+	=
State of art defence	+	+	=	=
Direct legal action (by third party)	=	+	=	=
New versus historical damage	=	=	=	+

Overview of transposition



	Ireland	Hungary	Germany	England
Date of transposition	April 1st 2009	April 30th 2007	November 14th 2007	January 29th 2009
Liability regime	=	=	=	=
Damage to water resources	=	=	=	=
Damage to soil	=	=	=	=
Damage to biodiversity	=	=	=	=
Permit defence	=	+	+	=
State of art defence	=		+	=
Direct legal action (by third party)	=		=	+
New versus historical damage	=	+	=	=

COMMON FRAMEWORK on Contaminated land in the European Union

Overview of transposition



	Czechia	Flanders (Belgium)	Wallonia (Belgium)	Spain
Date of transposition	May 19th 2008	December 21st 2007	November 22nd 2007	2007
Liability regime	=	+	=	=
Damage to water resources	=	=	=	=
Damage to soil	=	+	=	=
Damage to biodiversity	=	+	=	+
Permit defence	=	+	=	=
State of art defence	=	+	=	=
Direct legal action (by third party)	=	=	=	+
New versus historical damage	=	+ (soil damage)	=	=

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 : SWEDEN



- As a general rule, Sweden applies strict liability in all cases (+)
- Adopts only partly the 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 : possibility of State funding

Implementation : NETHERLANDS



- Maintains the liability regimes as proposed in the Directive text (=)
- Adopts possibilities of exemptions only in case of fault liability (+)
 - 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 (=)
- The Netherlands allow third parties to take direct legal action against polluters (+)

Implementation : LUXEMBURG



- Maintains the liability regimes as proposed in the Directive text (=)
- Adopts only partly the possibilities of exemptions : (+)
 - Permit defence
 - State of the art
- Permit defence only granted in case of soil damage (=)
- Repair to soil damage : also in case of damage to ecosystems (+)
- Biodiversity : locally defined areas of ecological interest are included
- Respects non-retroactivity, i.e. distinction between historical and new damage (=)

Implementation : ITALY



- Maintains only partly the liability regimes as proposed in the Directive text (+)
- Adopts fully the possibilities of exemptions : (=)
 - Permit defence
 - State of the art
- Repair to soil damage : based on human risk (=)
- Does not respect non-retroactivity, i.e. distinction between historical and new damage (+)
- Public funds are available (=)

Implementation : IRELAND



- Maintains the liability regimes as proposed in the Directive text (=)
- Adopts fully the possibilities of exemptions : (=)
 - Permit defence
 - State of the art
- Repair to soil damage : based on human risk (=)
- Respects non-retroactivity, i.e. distinction between historical and new damage (=)
- Financial market based instruments are available, but not required (=)

Implementation : HUNGARY



- Maintains the liability regimes as proposed in the Directive text (=)
- Adopts only partly the possibilities of exemptions : (+)
 - Permit defence
 - State of the art
- Exemption only granted in case of damage to soil
- Does not respect non-retroactivity, i.e. distinction between historical and new damage (+)
- Financial market based instruments are available, but not required (=)

Implementation : GERMANY



- Maintains the liability regimes as proposed in the Directive text (=)
- Adopts at Federal Level not the possibilities of exemptions : (+)
 - Permit defence
 - State of the art
- At Federal Level, only exemptions are granted in case of soil damage (+)
- Länder have the possibility to grant exemption, but none of them did so far (+)
- Repair of soil damage : based on human risk assessment (=)
- Respects non-retroactivity, i.e. distinction between historical and new damage (=)
- Financial aspects : insurance market already well developed

Implementation : ENGLAND



- Maintains the liability regimes as proposed in the Directive text (=)
- Adopts fully the 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 market based instruments are available, but not required (=)
- Legal actions : direct tort law applies. It is not fully clear whether this means that direct third party action is possible

Implementation : CZECHIA



- Maintains the liability regimes as proposed in the Directive text (=)
- Adopts fully the 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 (=)

Implementation : FLANDERS



- Restoration of Soil Damage is implemented through the Soil Decree, other parts in Environmental Policy Decree
- Liability regimes : (+)
- 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
- 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 (+)

Follow-up



- Do you agree on these conclusions?
- Missing countries to be included?
- Case studies exercise? For having a complete view
- Publication on the CF website?
- Other publication?

Thanks for your attention!



- www.commonforum.eu