Study on Analysis of integrating the ELD into 11 national legal frameworks

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1. Existing national environmental legislation

Due to the division of competencies in Austria, legislation that imposes liability for preventing and remediating environmental damage is split between the Federal Government and the Länder. The Federal Government has exclusive competency for water. The nine Länder have exclusive competency for nature conservation.

Both the Federal Government and the Länder have competency for land. This is due to the environmental medium of soil being integrated in legislation for which the Federal Government has competency, such as the Act on the Remediation of Contaminated Sites (Altlastensanierungsgesetz) (ALSAG) and the Trade, Commerce and Industry Regulation Act 1994 (Gewerbeordnung) (GewO). The Länder, meanwhile, have competency for legislation to protect agricultural soil, such as the Styrian Agricultural Soil Protection Law. In addition, soil protection provisions are integrated into other legislation, such as nature protection laws and spatial planning Acts.

Because of this division of legislative competencies, the ELD was transposed into Austrian national law by a single Federal Act (water and land) and legislation by each of the nine Länder (biodiversity and land).

The Federal Act and the Acts for Burgenland, Lower Austria, Styria, Tyrol, Upper Austria and Vienna are stand-alone legislation. In Carinthia, the ELD was transposed by amending the Carinthian IPPC-Act and the Carinthian Plant Protection Chemicals Act (KärntnerLandes-Pflanzenschutzmittelgesetz und Kärntner IPPC-Anlagengesetz), and the Carinthian 2002 Nature Protection Act (K-NSG 2002). In Salzburg, the ELD was transposed by amending the Environmental Protection and Environmental Information Act. In Vorarlberg, it was transposed by amending the IPPC Installations and Seveso II Installation Act.¹

2. Existing regimes for preventing and remediating environmental damage

There is no single law in Austria that imposes liability for the prevention and remediation of water pollution and contaminated land. The main Federal Acts for water and land damage are:

- the Water Act (Wasserrechtsgesetz) (WRG);
- the Waste Management Act 2002 (Abfallwirtschaftsgesetz) (AWG);²
- the ALSAG;
- the GewO; and

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² Waste covered by the AWG is hazardous waste. The Länder have competence for non-hazardous waste.
the Gene Technology Act.

In addition, the Federal Forestry Act (Forstgesetz) governs damage to forests from air pollution. An air pollutant is defined as a substance that causes measurable damage to forest soil or vegetation and, thus, endangers forestry resources. The Forestry Act, however, does not establish liability for preventing and remediating environmental damage; instead, it establishes civil liability for such damage.

The Länder have also enacted legislation on waste management and environmental protection. The legislation includes soil protection Acts related to the protection of agricultural land. For example, the Lower Austrian Soil Protection Act provides authority to a competent authority to issue a “removal order” (Entfernungsauftrag) that orders a person who has unlawfully applied sewage sludge, wastewater, residues from wine and fruit cleansing, etc. to land to remove them. If removal is not feasible, the order sets out measures to ensure the preservation or restoration of the fertility and health of the soil. The Lower Austrian Act also includes penal sanctions and a requirement to restitute damage to agricultural land. The Act does not, therefore, include a severity threshold but, instead, is triggered by an unlawful action.3

The general rule behind all the federal legislation on preventing and remediating damage to contaminated land and water pollution in the form of associated groundwater (as well as other water pollution) is that a person is liable for the cost of preventive or remedial measures if that person caused the contamination and/or failed to prevent further contamination.

The owner of land is secondarily liable for the cost of preventive or remedial measures if it permitted or acquiesced in the contamination and failed to carry out reasonable measures to prevent it. The successor in title to the land is liable if it knew or should have known about the contamination when it acquired the land. Liability is joint and several. If none of the above persons can be found or held liable, governmental authorities are responsible for cost of investigating, assessing and, if necessary, remediating the contamination.

The legislation is not “ring-fenced”; that is, the relevant authority may base an order requiring a person to carry out preventive or remedial measures, or to reimburse costs, on any applicable legislation.

These basic rules significantly influenced the transposition of the ELD at the Federal and Land levels. As discussed below, the rules have been incorporated into the transposing legislation.

The Länder have also enacted nature conservation legislation. As in other Member States, this legislation mainly concerns the protection of biodiversity, impact assessments, and penalties for breaching applicable legislation. The Austrian legislation includes liability provisions only peripherally. That is, in some Land, the legislation imposes liability for remediating damage to biodiversity that has been harmed by an unlawful activity, with substantial differences between the different Länder. The liability provisions are more limited than legislation to prevent and remediate contaminated land and water damage. Further, none of the existing national biodiversity or water legislation includes complementary or compensatory damage.

3 See Justice and Environment, Survey on Severity Thresholds and the Notion of Damage in Environmental Liability Regimes; Austria (2013), 11.
Water pollution

The main regime for remediating water pollution is the WRG, a key objective of which is that groundwater must be maintained at drinking water standards so that it can be used as drinking water. Section 31(1) of the Water Management Act provides that any deterioration of water quality and any reduction of the self-purifying capacity of water is an adverse effect on water quality regardless of whether the adverse effect is significant. The effect of the legislation is zero contamination tolerance.

Section 31 of the WRG, which imposes strict liability, requires a person whose activities may cause water pollution to carry out measures to prevent the pollution. If the activities cause pollution, the responsible person must carry out measures to contain or remediate it, and must notify the relevant authority immediately. The authority may then order the person to carry out measures to prevent further pollution and remediate it. If the responsible person fails to do so, the authority may carry out the measures and recover its costs from the responsible person(s).

The WRG does not apply to minor effects on water such as common agricultural uses and other common uses.4 Third parties who may be affected by the preventive and remedial measures may not object to them being carried out; they must tolerate them but may claim compensation from the responsible person.

If the person who caused the pollution cannot be found, no longer exists or is insolvent, the owner of the land from which the pollution emanated is secondarily liable if it permitted or acquiesced in the activity that caused the threat of, or actual, water pollution and failed to carry out reasonable measures to prevent it. The successor owner of the land from which the pollution emanated is also secondarily liable if it knew or should have known about the activity causing the pollution when it acquired the land and did not take reasonable measures to prevent further pollution.

The above criteria apply to water pollution incidents after 1 July 1990. In respect of incidents before that date, the owner of the land from which the pollution occurred is liable only if it specifically approved the activity(ies) causing the pollution and received compensation for such use of its land. The amount for which the owner is liable is the value actually derived from the use of the land that exceeds the value normally obtained under market conditions. This limitation in cost does not apply to an owner that caused the pollution itself.

Section 138 of the WRG provides that a person who breaches any provisions of the WRG is liable for costs incurred by a competent authority in respect of the following when required to do so by the public interest or affected parties:

- removing any “improvements” (Neuerungen) or carrying out omitted activities;
- containing the pollution if its removal is not possible or is possible only with measures, the costs of which are disproportionate compared to preventing further pollution;
- remediating the adverse consequences of the water pollution; and

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4 See Justice and Environment, Survey on Severity Thresholds and the Notion of Damage in Environmental Liability Regimes; Austria (2013), 7.
Land contamination

The three main regimes for remediating land contamination and related groundwater are the AWG, the GeWO, and the ALSAG.

The WRG also applies to the remediation of land contamination in that the same criteria under which liability is imposed for preventing and remediating polluted surface water also apply to liability for preventing and remediating polluted groundwater and, thus, contaminated land.

- **AWG**

The AWG imposes strict liability for preventing and remediating contamination caused by waste. It thus applies to the remediation of contaminated land and related groundwater.

The AWG provides that the competent authority may require a person to carry out measures when that person caused pollution due to the improper disposal, storage or treatment of waste, or when remediation is necessary to prevent danger to human health and safety or plant life. If there is an imminent danger (Gefahr in Verzug), the relevant authority must carry out measures to prevent it and then seek reimbursement of its costs from the person that caused the contamination. If the responsible person cannot be found, no longer exists or is insolvent, the owner of the land is secondarily liable for the costs to prevent and remediate the contamination. Section 74 of the AWG provides that the owner of the land on which the waste is unlawfully stored or disposed is liable if it either allowed or acquiesced in the activities and did not take reasonable measures to prevent them.

A successor owner who knew or should have known that contamination had been caused by the unlawful storage or disposal of waste is also secondarily liable.

If the contamination is caused by materials that are not defined as hazardous by the Hazardous Substances Act 1983, and the disposal occurred between 1983 and 1 July 1990, when the AWG came into force, an owner or its predecessor, who approved or acquiesced in the disposal is liable but only if the owner or its predecessor received compensation for the disposal. The owner’s liability is limited to the value of the benefit in excess of the income realisable for normal use of the property.

- **GeWO**

The GeWO established conditions for environmental permits for industrial activities. A facility (Betriebsanlage) must obtain a permit if its operations are likely to endanger human health, life or the property of employees or neighbours, cause inconvenience to neighbours in respect of noise, dust, smoke or other pollution, or endanger water quality. The operator of a facility is liable for remediating contamination caused by the facility unless the operator can prove that the contamination existed before operations began at the facility. The successor owner of the facility is also liable if it knew or should have known of the contamination before it acquired the facility.

- **ALSAG**

The ALSAG established a national programme to identify, assess, and remediate waste, industrial and military sites that were contaminated before its entry into force in 1989. The term “historic contamination” (Altlasten) is defined as “existing waste deposits and abandoned polluted areas as well as soils and groundwater vessels from which
substantial danger to human health or the environment are emitted according to the results of an assessment of endangerment”.\(^\text{5}\) It is intended that all historically contaminated sites are inventoried by 2025 and that the most seriously contaminated sites are remediated by 2050.

The programme is funded by a levy / tax on the treatment, disposal and export of waste. The Federal Company for Site Remediation (Bundesaltlastensanierungsgesellschaft) (BALSA GmbH), which is a 100 per cent subsidiary of the Federal Environment Agency (Umweltbundesamt) (UBA GmbH) was established in 2004. BALSA is responsible for the publicly-funded remediation of sites under the ALSAG and the Directive on Funding Clean-Up of Contaminated Sites 2008 (Förderungsrichtlinien 2008 für die Altlastensanierung oder-sicherung). The Governor of each Land (Landeshauptmann) is the competent authority. The fund pays entirely for the costs of site investigation and risk assessment. Funding is not granted to a person who intentionally caused contamination or was grossly negligent in doing so. The level of funding that is provided depends on various factors including whether the owner of the land is a non-profit organisation or a commercial entity.

The Länder report information on potentially contaminated sites to the Federal Ministry of the Environment pursuant to the WRG, the GewO and, in some Länder, surveys. The sites are listed in the register of suspected contaminated sites (Verdachtsflächen). Following an assessment, sites that require remediation are listed in the register of contaminated sites (Altlastenatlas-Verordnung). The assessment includes criteria to rank the sites for priority for remediation according to the risk posed by them to human health and the environment. Priorities to remediate sites are then established at federal level.

The relevant provincial authority then determines whether there is a person who is liable for remediating the site under the ALSAG, the WRG, the GeWO or the AWG. Section 18 of the ALSAG provides that the owner of the land is liable if it agreed to, or acquiesced in, the activities that caused the contamination and continued to tolerate the presence of the contamination. There is no case law to determine the precise extent to which an owner can be held liable for continuing to tolerate the presence of contamination. If such a person cannot be found, public funding is used to remediate the sites. Section 1042 of the Civil Code (Allgemeine Bürgerliche Gesetzbuchentitels) entitles the liable person to bring contribution actions against other persons who contributed to the harm.

The number of sites for each Land in the registers is published by the Federal Environment Agency; see [http://www.umweltbundesamt.at/en/umweltschutz/altlasten/statistik](http://www.umweltbundesamt.at/en/umweltschutz/altlasten/statistik) As of 1 January 2013, 65,586 contaminated sites had been identified, of which 1,955 (Verdachtsflächen) posed a potentially serious threat to human health and the environment.

The ALSAG has five guiding principles. They are:

- to identify historically contaminated sites within one generation until 2025;
- to implement measures (decontamination, safeguarding, monitoring, restricting use) at sites contaminated by historic pollution by 2050. Risk assessments are to be carried out in a site- and utilisation- specific way;

\(^{5}\) ALSAG, s 2(1) (translation from Baker & McKenzie, Contaminated Land 2012, p. 60).
to select measures on a site- or utilisation-specific basis;

- to carry out remediation measures (decontamination, safeguarding) that are sustainable and to improve the environmental status on a permanent basis; and

- to create better framework conditions for the re-use and re-integration of contaminated sites into the economy.

**Restoring biodiversity damage**

Legislation to impose liability for remediating biodiversity damage is enacted by the Länder. The nature protection Acts enacted by them do not impose liability for remediating and restoring biodiversity damage. Instead they provide for the restitution of the lawful status of biodiversity following harm by unlawful activities, and administrative penalties.

Whilst the procedural rules differ in each Land, the Acts include an obligation to remediate and restore biodiversity damage. That is, the Acts contain “obligations to restore” (Wiederherstellungsverpflichtungen) when unlawful activities or, in some cases unlawful omissions, have taken place. In particular, if damage occurs in a protected area, the person whose act or omission causes the damage is required to remediate it and to restore the environmental condition of the area. This obligation equates to primary remediation under the ELD.

The trigger for the Acts is an unlawful act or omission; it is not environmental damage. There is, thus, no significance threshold that must be exceeded before the Acts may apply.

In summary, due to various missing components, the liability system established by the Austrian Nature Protection legislation cannot be defined as a “pre-existing” national liability regime on biodiversity damage although in some cases the system creates the same obligations as those established by the ELD.6

**Other liability systems for remediating environmental damage**

Under sections 364 and 364a of the Civil Code (Allgemeines Bürgerliches Gesetzbuch), a third party may request an order to prohibit the operator of a facility continuing operations if those operations endanger their health or if the operations cause a nuisance regardless of whether the facility is operating in compliance with an environmental permit. The Civil Code, however, concerns liability for bodily injury or property damage, not environmental damage as such.

The WRG also authorises a person who is affected by soil contamination or groundwater pollution to apply to the competent authority for an order to the person causing the contamination to carry out preventive and remedial measures.

Section 79b of the Gene Technology Act imposes strict liability for “significant adverse effects on the environment” from genetically engineered organisms. Section 101a of the Act provides that the administrative authority may carry out remediation measures. The Länder have enacted similar legislation.

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6 See Justice and Environment, Survey on Severity Thresholds and the Notion of Damage in Environmental Liability Regimes; Austria (2013), 4.
Interface between the existing national liability regimes and the ELD regime

The following are some key differences between the existing national environmental liability regimes and the ELD regime:

- the threshold for water damage in the ELD is higher than in the WRG;
- there is no liability for complementary and compensatory damage in the national legislation;
- liability for remediating water pollution under the WRG applies if any person causes pollution by any activity; in contrast to the limitations in the ELD for the person whose activities cause damage to be an operator, and for those activities to be “occupational activities”;
- there are no exceptions to liability in the national legislation;
- neither the WRG nor the legislation concerning land contamination contains a permit or a state-of-the-art defence;
- the nature protection Acts do not contain a permit or a state-of-the-art defence;
- there is no statute of limitations for liability for remediation requirements;
- the AWG is retrospective; and
- there are no provisions for “interested parties” to submit comments in the national legislation.

3. Integration of the ELD into existing national legislation

Transposing legislation

Federal State: The Federal Government transposed the ELD for land damage and water damage. Due to the Federal Government having no competency for nature conservation, the Länder transposed the ELD for biodiversity damage. The Länder also transposed the ELD for land damage (see section 1 above).

- **Burgenland:** Act of 29 October 2009 on environmental liability with regard to the prevention and remediing of environmental damage (Burgenland) (*Burgenländisches Umwelthaftungsgesetz* – Bgld. UHG), Land Law Gazette for Burgenland No. 2/2010, issued on 11 January 2010;
- **Lower Austria**: Environmental Liability Act of Lower Austria (*NÖ Umwelthaftungsgesetz – NÖ UHG*), Land Law Gazette of Lower Austria, 6200-0, No. 77/2009, issued on 8 May 2009;
- **Salzburg**: 45th Act of 5 May 2010 amending the Environmental Protection and Environmental Information Act (*Umweltschutz- und Umweltinformationsgesetz*), Land Law Gazette of Salzburg, issued on 30 June 2010;
- **Styria**: 10th Act of 17 November 2009 on environmental liability with regard to the prevention and remedying of environmental damage (Styrian Environmental Liability Act (*Steiermärkisches Umwelthaftungsgesetz*) – *StUHG*), Land Law Gazette of Styria, No. 6/2010, issued on 10 February 2010;
- **Tyrol**: 5th Act of 18 November 2009 on liability in the event of damage to protected species and natural habitats and for certain land damage (Tyrol Environmental Liability Act – *T-UHG*), Land Law Gazette of the Tyrol, No. 2/2010, issued on 21 January 2010;
- **Upper Austria**: 95th Act on environmental liability with regard to the prevention and remedying of environmental damage – Upper Austrian Environmental Liability Act (*Oö UHG*), Land Law Gazette for Upper Austria, No. 95/2009, issued on 4 September 2010;
- **Vienna**: 38th Act on environmental liability with regard to the prevention and remedying of environmental damage in Vienna (*Vienna Environmental Liability Act*) (*Wiener Umwelthaftungsgesetz*) - *Wr. UHG*, Land Law Gazette for Vienna, No. 38/2009, issued on 1 September 2009; and

► **Amendments to existing national legislation**

**Federal State, Burgenland, Lower Austria, Styria, Tyrol, Upper Austria, Vienna:** The transposing legislation does not amend existing national legislation.

**Carinthia:** The transposing legislation amended the 2002 Nature Protection Act, the Carinthian IPPC-Act, and the Carinthian Plant Protection Chemicals Act.

**Salzburg:** The transposing legislation amended the Environmental Protection and Environmental Information Act.

**Vorarlberg:** The transposing legislation amended the IPPC Installations and Seveso II Installations Act.

► **Authorisation in legislation for other governmental entities to issue rules and regulations**

**Federal State, all Länder:** The transposing legislation does not include authorisation for any governmental entities to issue rules and regulations.
Relationship to other legislation

**Federal State, all Länder:** More extensive obligations that regulate the prevention or remedying of environmental damage and that are based on directly applicable EU law and national law that transposed such legislation is not affected by the transposing legislation.

Further, the legislation transposing the ELD does not affect provisions of civil law in respect of compensation for damage.

**All Länder except Vorarlberg:** Measures carried out by competent authorities to prevent an imminent threat of, or actual, environmental damage, under other federal legislation are considered to be measures within the meaning of the transposing legislation.

Guidance and other documentation

Neither the Federal Government nor any of the Länder has published guidance or other documentation concerning the implementation and enforcement of the ELD regime. The Federal Government plans to issue guidance in the future.

The website of the Federal Ministry for Agriculture and Forestry, the Environment and Water Management contains information of the transposing legislation and links to it; see [http://www.lebensministerium.at/umwelt/betriebl_umweltschutz_uvp/umwelthaftung/Umwelthaftung.html](http://www.lebensministerium.at/umwelt/betriebl_umweltschutz_uvp/umwelthaftung/Umwelthaftung.html) (in German). Websites of some of the Land also include information on the transposing legislation in their jurisdictions.

4. Effective date of national legislation

**Federal State:** The B-UHG entered into force on 19 June 2009.

**All Länder:** The transposing legislation was published in each Land Law Gazette on the following dates. It entered into force one day after publication.

- Burgenland: 11 January 2010
- Carinthia: 30 September 2009 and 19 February 2010
- Lower Austria: 5 August 2009
- Salzburg: 30 June 2010
- Styria: 10 February 2010
- Tyrol: 21 January 2010
- Upper Austria: 4 September 2009
- Vienna: 1 September 2009
- Vorarlberg: 2 February 2010
5. **Competent authority(ies)**

The competent authorities for land and biodiversity damage are the district administrative authorities (*Bezirksverwaltungsbehörde*). The competent authority for Vienna is the Municipal Executive (*Magistrat*) of the City of Vienna.

The competent authority for water damage under section 31 of the WRG is the water authority of each Land. Although the Federal State has competency for the legislation and for the enforcement of water law, the district administrative authorities act for the Federal State as water authorities.

6. **Operators and other liable persons**

**Federal State, all Länder:** The definition of an “operator” includes the term “alone or with assistants” or a similar phrase, for example, “any natural or legal, private or public person who operates or controls the occupational activity – alone or with assistants – including the holder of a permit or authorisation and the person registering or notifying”.

The definition of an operator also states that if an activity is no longer carried out and the former operator can no longer be held liable, the owner (or co-owner) of the real property (land) from which environmental damage emanates is liable in lieu of the former operator to the extent that the owner (or co-owner) approved or acquiesced in the installations or measures from which the damage emanated and omitted to take reasonable measures to prevent the damage.

**Lower Austria:** The transposing legislation includes the term “has culpably omitted to take reasonable containment measures”.

► **Secondary liability (e.g., parent company)**

**Federal State, all Länder:** A successor company may be liable for preventive and remedial costs in accordance with national company law (see also “Person other than an operator who may be liable” below).

► **Death or dissolution of responsible operator**

**Federal State, all Länder:** The transposing legislation does not mention the death or dissolution of a responsible operator.

► **Person other than an operator who may be liable**

**Federal State, all Länder:** As indicated above in this section, if a competent authority cannot recover its costs from the responsible operator, the owner (or co-owner) of the real estate (land) from which environmental damage emanates is liable if the owner (or co-owner) approved or acquiesced in the installations or measures from which the damage emanates and the owner (or co-owner) omitted to take reasonable measures to prevent the damage. The successor of the owner is liable if it knew or should have known of the installations or measures from which the damage was caused.

**Federal State:** Liability for a successor of an owner of the land also applies under section 31(4) of the WRG.
7. Annex III legislation

- Rebuttable presumption that operator’s activity caused environmental damage

**Federal State, all Länder:** The transposing legislation does not mention a rebuttable presumption.

- Additional occupational activities subject to strict liability

Strict liability under the ELD in Austria does not apply to any activities in addition to Annex III activities. This section sets out the activities in the legislation for each Land to which strict liability under the ELD applies. These provisions relate to Annex III activities under the ELD.

**Federal State:** not applicable.

**Burgenland:** Strict liability is imposed for an imminent threat of, and actual, land damage that results from:
- operations under the Industrial Emissions Directive;
- the use of dangerous substances and preparations, plant protection products; and
- biocides used in agriculture and forestry; and any direct release into the environment of a genetically modified organism.

**Carinthia:** Strict liability is imposed for an imminent threat of, and actual, land damage that results from:
- the operation of IPPC installations; and
- the use of plant protection products.

**Lower Austria:** Strict liability is imposed for an imminent threat of, and actual, land damage that results from:
- the operation of installations which, according to section 4 of the Lower Austrian IPPC Installations and Establishments Act (NÖ IPPC-Anlagen und Betriebe Gesetz) or section 25 of the 2005 Lower Austrian Electricity Act (NÖ Elektrizitätswesengesetz) require a permit or authorisation according to provisions of other Länder, adopted in implementation of the IPPC Directive (now the Industrial Emissions Directive);
- the use of dangerous substances and dangerous preparations, plant protection products and biocide products to protect plants against diseases and pests in the field of agriculture and forestry; and
- any other deliberate release into the environment of genetically modified organisms including the cultivation of genetically modified organisms as defined in the Lower Austrian Genetic Engineering Precautions Act (NÖ Gentechnik-Vorsorgegesetz).

**Salzburg:** Strict liability is imposed for an imminent threat of, and actual, land damage that results from:
- the operation of IPPC installations;
the use of dangerous substances and dangerous preparations, plant protection products and biocide products to protect plants against diseases and pests; and

any other deliberate release into the environment of genetically modified organisms.

**Styria:** Strict liability is imposed for an imminent threat of, and actual, land damage that results from:

- the operation of installations subject to authorisation according to Styrian Act on IPPC plants and Seveso II undertakings (*Steiermärkisches IPPC-Anlagen- und Seveso II-Betriebe-Gesetz*);
- the use of plant protection products to protect plants against diseases and pests, in accordance with the Styrian Plant Protection Products Act (*Steiermärkisches Pflanzenschutzmittelgesetz*); and
- any deliberate release into the environment of genetically modified organisms requiring authorisation in accordance with the Styrian Genetic Engineering Precautionary Measures Act (*Steiermärkisches Gentechnik-Vorsorgegesetz*).

**Tyrol:** Strict liability is imposed for an imminent threat of, and actual, land damage that results from:

- the operation of installations subject to approval pursuant to section 29 of the 2003 Tyrol Electricity Act;
- the use of dangerous substances and dangerous preparations, plant protection products and biocide products to protect plants against diseases and pests in the fields of agriculture and forestry; and
- a direct release into the environment of genetically modified organisms.

**Upper Austria:** Strict liability is imposed for an imminent threat of, and actual, land damage that results from:

- the use of dangerous substances and dangerous preparations, plant protection products and biocide protects to protect plants against diseases and pests in the fields of agriculture and forestry; and
- any deliberate release into the environment of a genetically modified organism.

**Vienna:** Strict liability is imposed for an imminent threat of, and actual, land damage that results from:

- the operation of IPPC installations as defined in the Integrated Pollution Prevention and Control Act (*Gesetz über die integrierte Vermeidung und Verminderung der Umweltverschmutzung*) (LGB);
- the use of dangerous substances and dangerous preparations, plant protection products and biocide products to protect plants against diseases and pests; and
- a direct release into the environment of genetically modified organisms.

**Vorarlberg:** Strict liability is imposed for an imminent threat of, and actual, land damage that results from:
- the operation of IPPC installations;
- “the use, storage, release, onsite transport or filling of plant protection products for the purposes of use as part of an occupational activity”; and
- “an intentional release of genetically modified organisms into the environment”.

► **Spreading of sewage sludge for agricultural purposes**

**Federal State:** not applicable.

**All Länder except Lower Austria:** The spreading of sewage sludge for agricultural purposes is not exempted from Annex III activities.

### 8. Standard of liability for non-Annex III activities

**Federal State:** Not applicable due to limitation to land and water damage.

**Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Upper Austria, Vienna:** The standard of liability for biodiversity damage caused by non-Annex III activities is fault or negligence.

**Vorarlburg:** The transposing legislation has the term “wilfully or by negligence”.

### 9. Exceptions

► **Application to imminent threat of environmental damage as well as environmental damage**

**Federal State, Burgenland, Carinthia, Lower Austria, Styria, Tyrol, Upper Austria, Vienna:** The exceptions apply to an imminent threat of, and actual, environmental damage.

**Salzburg:** The exceptions apply to preventive and remedial measures caused by specified events and activities. The exception may thus apply to an imminent threat (preventive measures) as well as actual (remedial measures) environmental damage.

**Vorarlberg:** The exceptions apply to environmental damage; they do not specify an imminent threat of environmental damage.

► **Differences with exceptions in the ELD**

**Federal State, all Länder except Vorarlberg:** The exceptions are, in material part, a copy out of the ELD.
The equivalent of Annex III of the ELD, however, includes thresholds for the release into air of specified pollutants from specified activities, for example, “plants for the manufacture of paper pulp by chemical methods with a production capacity of 25,000 tonnes or more per year”. Whereas damage to air is not covered by the ELD, damage caused by the deposition of pollutants onto land, water and biodiversity is covered. It has been questioned whether these thresholds comply with the ELD.7

**Lower Austria:** In addition to the thresholds specified in the preceding paragraph, the transposing legislation states that “Appropriate, sustainable use of real property for agriculture and forestry shall be considered to be authorised”. Annex 2 of the transposing legislation further states that “negative variations which are to be considered normal in the context of appropriate and sustainable use of real property for agriculture and forestry” do not have to be classified as significant damage. These statements appear to be additional exceptions, not thresholds.

There are no exceptions for the marine conventions because Austria is a landlocked country.

► **Diffuse pollution exception**

**Federal State, all Länder:** The diffuse pollution exception is, in material part, a copy out of the ELD.

### 10. Joint and several or proportionate liability

**Federal State, all Länder:** The transposing legislation provides for joint and several liability.

► **Mechanism for contribution between liable operators**

**Federal State, all Länder except Lower Austria and Vorarlberg:** The transposing legislation provides that a liable person’s right to claim expenses from third parties before civil courts is not affected by the transposing legislation.

**Lower Austria and Vorarlberg:** The transposing legislation does not provide for a right of contribution.

Under civil law in Austria, a liable person has a right of contribution against other liable persons under specified circumstances.

### 11. Limitation period

**Federal State, all Länder:** The limitation period is 30 years from the emission, event or incident that resulted in the damage; the same as the ELD.

### 12. Defences

**Federal State:** The B-UHG tracks articles 8(3)(a)-(b) of the ELD concerning the mandatory defences (third party and instruction from a public authority). In respect of

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the third-party defence, it provides that an operator is not required to bear the cost of preventive or remedial actions if the operator proves that the imminent threat of, or actual, water damage was caused by a third party and occurred despite appropriate safety measures being in place. If the imminent threat of, or actual, water damage was not caused by the equivalent of an Annex III activity, the operator must prove that the land or water pollution was not subject to section 31 of the WRG.

The B-UHG further provides that the third party must not be a person who operates on behalf of the operator or uses the facilities with which the activity is carried out in accordance with their intended purpose. If the third party satisfies these criteria, the operator remains liable.

If the responsible operator has been required to obtain financial security or another appropriate guarantee, this requirement will be lifted if the operator proves either of the above defences. Otherwise, the security is offset against the costs order.

The B-UHG further provides that, in such a case, the operator may claim reimbursement of costs incurred for necessary preventive and remedial measures. The competent authority shall make an administrative decision on any such claims. If the operator is unsuccessful in proving that a mandatory defence applies, the operator is liable for the costs of legal remedies under administrative law.

All Länder: The transposing legislation is the same as that of the B-UHG above, except for the reference to section 31 of the WRG.

Vorarlberg: The transposing legislation does not refer to an operator being liable for the costs of legal remedies under administrative law if an operator is unsuccessful in providing that a mandatory defence applies.

► Defences to liability or costs?

Federal State: The mandatory defences (third-party act and instruction by a public authority) are defences to costs. The defences do not apply to water damage that is covered by section 31 of the WRG.

All Länder: The mandatory defences (third-party act and instruction by a public authority) are defences to costs.

Vorarlberg: A liable person must apply for reimbursement within three years after implementing the measures.

► If defences to liability; suspension (or not) of remediation notice during appeal

Federal State, all Länder: Not applicable; see directly above.

► Permit defence

Federal State, all Länder: The transposing legislation does not include the permit defence.

► State-of-the-art defence

Federal State, all Länder: The transposing legislation does not include the state-of-the-art defence.
13. **Scope of environmental damage**

- Percentage of national land area covered by Birds and Habitats Directives (Natura 2000)

  14.96%

- Extension of biodiversity to nationally protected biodiversity

  **Federal State:** Not applicable to biodiversity damage.

  **All Länder except Vienna:** The transposing legislation does not extend biodiversity damage beyond the Habitats and Birds Directives.

  In addition, the transposing legislation sets out the following derogations:

  - **Burgenland:** the Burgenland Nature and Countryside Stewardship Act *(Burgenländisches Natur- und Landschaftspflegegesetz)*, or the Neusiedler See - Seewinkel National Park Act *(Gesetz über den Nationalpark Neusiedler)*;
  
  - **Lower Austria:** sections 3(6) or (8), 77a(4), 95a(5) or (6) of the 1974 Lower Austrian Hunting Act *(NÖ Jagdgesetz)*, or sections 6, 10(2) or section 13 of the 2001 Lower Austrian Fisheries Act *(NÖ Fischereigesetz)*, or under sections 7, 8, 10 to 12 or 20 of the 2000 Lower Austrian Conservation Act *(NÖ Naturschutzgesetz)*, or under section 4 of the Lower Austrian Genetic Engineering Precautions Act *(NÖ Gentechnik-Vorsorgegesetz)*;
  
  - **Salzburg:** the 1999 Salzburg Nature Conservation Act *(Salzburger Naturschutzgesetz)*, the National Park Act *(Nationalparkgesetz)*, sections 104a to 104c of the 1993 Hunting Act *(Jagdgesetz)*, the 2002 Fisheries Act *(Fischereigesetz)* and the orders adopted on the basis of these provisions; and
  
  - **Upper Austria:** sections 48(3) to (6) or sections 49(2) and (3) of the Upper Austrian Hunting Act *(Oö Jagdgesetz)*, sections 31(3) and (4) of the Upper Austrian Fisheries Act *(Oö Fischereigesetz)*, sections 14, 24(3) to (7), 25(5) or 29(1) of the 2001 Upper Austrian Nature and Countryside Stewardship Act *(Oö Natur- und Landschaftsschutzgesetz – Oö NSchG 2001)* or at least were also approved within the meaning of section 7 Oö NSchG 2001 or for which a favourable assessment was made in accordance with section 9(1), point 2, or section 10(2), point 2, Oö NSchG 2001 or in accordance with sections 8(1) or 9(1) of the Upper Austrian National Park Act *(Oö Nationalparkgesetz)* or which were not prohibited in accordance with section 6 of Oö NSchG 2001 or section 4 of Oö Gt-VG 2006.

  **Vienna:** The transposing legislation extends liability under the ELD to nationally protected biodiversity. The legislation defines biodiversity damage as damage to:

  - any species and their habitats which are strictly protected or protected on the basis of the Vienna Nature Conservation Act *(Wiener Naturschutzgesetz)*, and the Vienna Nature Conservation Order *(Wiener Naturschutzverordnung)*;
the following species of migratory birds and their habitats: mallard (\textit{anas platyrhynchos}), greylag goose (\textit{anser anser}), bean goose (\textit{anser fabalis}), pochard (\textit{aythya ferina}), tufted duck (\textit{aythya fuligula}), goldeneye (\textit{bucephala clangula}), coot (\textit{fulica atra}), collared dove (\textit{streptopelia decaocto}), turtle dove (\textit{streptopelia turtur}), woodpigeon (\textit{columba palumbus}); and any natural habitat (biotope types), listed in the third section of the Annex to the Vienna Nature Conservation Order (\textit{Wiener Naturschutzverordnung}), and in a conservation area or structure to be protected according to the Vienna Nature Conservation Act.

- **Biodiversity damage in the exclusive economic zone**
  Not applicable; Austria is a landlocked country.

- **Waters or water body**
  **Federal State:** The U-BHG does not specify whether it applies to waters or a water body under the Water Framework Directive although it appears to apply to waters, rather than water bodies (see section 14, Water damage, directly below).

14. **Thresholds**

- **Water damage**

  **Federal State:** The B-UHG defines water damage as “any significant water damage, which is any damage that significantly adversely affects the ecological, chemical or quantitative status or ecological potential of the waters concerned, as defined in the [WRG] and is not covered by an authorisation pursuant to the [WRG]”. The WRG refers to “waters” and not “water bodies”.

  Whereas the definition of water damage appears to introduce the permit defence into the definition of water damage, it has been stated that this is not the case because an authorisation pursuant to the WRG requires an operator to carry out measures to prevent water pollution as well as measures to remediate any adverse effects. That is, the conditions of the permit do not allow an operator adversely to affect waters and imposes liability if the operator does so.\(^8\)

  The threshold for damage under section 31 of the WRG is defined in section 30(3) of the WRG as “any deterioration of water quality and any reduction of its self-purifying capacity”. It is not necessary for there to be a significant adverse effect on water quality.\(^9\) As indicated in section 2, above, there is a zero contamination tolerance for groundwater.

  Further, the parliamentary materials on the transposition of the ELD state that the ELD regime does not impose liability for the gradual deterioration of waters. Non-permitted activities such as the excessive use of plant protection products or fertilisers, which may

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\(^{8}\) See Manuela Weissenbacher, Implementation of the Environmental Liability Directive in Austria, [2009] 5 Environmental Liability 199, 200 (referring to OGH 5.5.1982, 1 Ob 12/82, SZ 55/68 (Austrian High Court of Justice ruling that holder of licence may not introduce water into mill stream when introduction may harm adjoining premises).

\(^{9}\) See Justice and Environment, Austria, Environmental Liability 2012, National ELD Report 9.
cause an imminent threat of, or actual, environmental damage are, therefore, not subject to liability under the ELD regime.¹⁰

► Biodiversity damage

All Länder: The description of biodiversity damage tracks the ELD subject to specified derogations (see section 13 above).

Carinthia, Styria, Tyrol, Vienna, Vorarlberg: The description of biodiversity damage tracks the ELD.

Upper Austria: The description of biodiversity damage tracks the ELD subject to specified derogations such as hunting and fishing (see section 13 above).

► National biodiversity damage

All Länder: Only the transposing legislation for Vienna extends biodiversity damage under the ELD to biodiversity protected by national legislation. The threshold in Vienna is the same as in the ELD.

► Land damage

Federal State and all Länder: The threshold for land damage is the same as the ELD.

15. Standard of remediation

► Land

Federal State, all Länder: The standard of remediation is the same as the ELD.

► Biodiversity

All Länder: the standard of primary, complementary and compensatory remediation is the same as the ELD.

► Water

Federal State: the standard of primary, complementary and compensatory remediation is the same as the ELD.

16. Format of determination of environmental damage

Federal State, all Länder: The transposing legislation does not set out a format for a determination of environmental damage.

17. Powers and duties of competent authority

► Inspections, investigations, studies and analyses

Federal State, all Länder except Salzburg: A competent authority is entitled to enter and inspect property and installations and take samples when the authority has reason

¹⁰ See Justice and Environment, Survey on Severity Thresholds and the Notion of Damage in Environmental Liability Regimes; Austria (2013), 6.
to assume either that an imminent threat of environmental damage could materialise or
there is environmental damage.

The application of this authority does not affect other monitoring, control and inspection
powers available to competent authorities under other administrative legislation.

**Salzburg:** The transposing legislation sets out the same powers as directly above in this
section. In addition, it specifically mentions the inspection of “all necessary documents,
business records, delivery and transport notes, spray diaries and advertising materials”.

► **Information orders**

**Federal State, all Länder:** A competent authority may require an operator to provide
information on all relevant aspects when the authority has reason to assume that an
imminent threat of environmental damage could materialise, as well as information
necessary for it to assess the situation, and any other information and data it considers
necessary.

► **Power or duty to require an operator to carry out preventive measures**

**Federal State, all Länder:** A competent authority has a duty to require an operator to
carry out preventive measures to dispel an imminent threat of environmental damage if
the operator does not carry out the measures or the measures are insufficient or
untimely.

**Vorarlberg:** The transposing legislation provides as above. It further provides that if
there is “immediate danger”, the competent authority may issue compulsory orders to
the operator to carry out preventive measures “without any preliminary proceedings in
order to restore the situation”.

**Lower Austria:** The transposing legislation provides as above. In addition, it defines the
term “When delay would be prejudicial” to mean “the existence of an effective risk of
damage where immediate action by the authority is imperative to contain it”.

**Federal State:** The B-UHG further provides that delay is prejudicial “in any case where
a water supply is under threat”. If delay would be prejudicial, the competent authority
may order the operator directly to carry out the measures and, if necessary, have them
carried out and seek reimbursement of its expenses from the operator.

► **Power or duty to require an operator to carry out remedial actions**

**Federal State:** If the competent authority considers that the measures notified by the
operator concerning emergency remedial actions are insufficient to immediately control,
contain, remove or otherwise manage the relevant contaminants or other damage
factors, the authority has a duty to instruct the operator to carry out necessary remedial
measures. The B-UHG provides that delay is prejudicial “in any case where a water
supply is under threat”.

**All Länder:** A competent authority has a duty to require an operator to carry out
remedial measures if environmental damage has occurred and the operator does not
carry out the measures or the measures are insufficient or untimely. If delay would be
prejudicial, the competent authority may order the operator directly to carry out the
measures.

**Lower Austria:** The transposing legislation provides as above. In addition, it defines the
term “When delay would be prejudicial” to mean “the existence of an effective risk of
damage where immediate action by the authority is imperative to contain it”. 
Power or duty of competent authority to carry out preventive measures

**Federal State, all Länder:** A competent authority has the power, but not the duty, to carry out preventive measures “without delay” if it considers it necessary to do so. The authority may then seek reimbursement from the operator (see section 12 above concerning the third party and instruction from a public authority defences; see also section 22 below concerning financial security when a competent authority carries out preventive measures).

Power or duty of competent authority to carry out remedial measures

**Federal State, all Länder:** A competent authority has the power, but not the duty, to carry out remedial measures “without delay” if it considers it necessary to do so. The authority may then seek reimbursement from the operator.

Form of preventive order

**Federal State, all Länder:** The form of preventive order is not prescribed.

Form of remediation order

**Federal State, all Länder:** The form of remediation order is not prescribed.

Appeal against preventive or remediation order

**Federal State, all Länder:** An operator whose activities cause an imminent threat of, or actual, environmental damage and who alleges that the imminent threat of, or actual, damage, was caused by a third party or was pursuant to the act of a third party (see section 12 above) may claim reimbursement. The authority shall make an administrative decision on such claims. If a competent authority makes a decision other than by an administrative decision and the responsible operator so requests, the competent authority shall notify the responsible operator without delay of the grounds and legal remedies available to the operator.

**Lower Austria:** In addition to the above, a responsible party shall be advised of limitation periods.

**Salzburg:** The transposing legislation does not specify that a competent authority’s decision shall be by an order; it states that “the authority shall decide on claims for compensation in accordance with [the transposing legislation]”.

**Vorarlberg:** The transposing legislation does not set out provisions for an appeal from a preventive or remediation order.

The Administrative Procedure Act (AVG) applies to all appellate proceedings in Austria. That is, if legislation (such as the transposing legislation for Vorarlberg) does not provide special provisions, the AVG applies, including appeals against formal decisions (Bescheide) and non-formal decisions (verfahrensfreie Verwaltungsakte).

Sanctions for delay in complying with preventive or remediation order

**Federal State, all Länder:** There is no specific sanction for delay in complying with a preventive or remediation order; general sanctions apply (see section 23 below).

Formal consultees on contents of preventive and remediation orders

Section 52 of the AVG provides for legal experts in administrative procedures.
**Federal State, all Länder except Salzburg, Vienna, Vorarlberg:** The transposing legislation does not provide for formal consultees on the contents of preventive and remediation orders are named. The competent authority must notify the relevant municipality of the underlying objective of the remediation of land damage.

**Salzburg, Vorarlberg:** No formal consultees on the contents of preventive and remediation orders are named. The transposing legislation does not mention notifying the relevant municipality.

**Vienna:** The Municipal Executive (*Magistrat*) of the City of Vienna is the competent authority so there is no need for notification.

- **Recovery of implementation and enforcement costs**
  
  **Federal State:** The operator shall bear all costs including the costs of legal remedies under administrative law if the operator is unsuccessful. The definition of the word “costs” in the B-UHG is largely a copy-out of the ELD except that the B-UHG includes the term “other proportional general costs” instead of the term “other general costs”, as in the ELD.

  The B-UHG further provides that the Federal Minister for Agriculture, Forestry, Environment and Water Management is entitled, in agreement with the Federal Minister for Finance and the Federal Minister of Economy, Family and Youth, and after consultation of the Land Minister-Presidents, to issue an order that simplifies the costing, to include detailed provisions for the administrative, legal and enforcement costs and other general costs that are to be reimbursed.

  **Burgenland, Carinthia, Salzburg; Upper Austria:** The definition of “costs” is a copy-out of the ELD except for the term “other general costs, financing [or financial] costs” in lieu of the term “other general costs” in the ELD.

  **Lower Austria:** The definition of “costs” is a copy-out of the ELD.

  **Styria, Tyrol, Vienna:** The definition of “costs” is a copy-out of the ELD except for the term “other proportional general costs [and] financial costs” in lieu of the term “other general costs”.

  **Vorarlberg:** The transposing legislation does not define the term “costs”.

- **All Länder except Vorarlberg:** The Land Government may issue an order to establish detailed provisions for the administrative, legal and enforcement costs and other general costs in order to simplify costing and in consideration of comparable provisions under federal law.

- **Deadline for competent authority to seek recovery of costs**
  
  **Federal State, all Länder except Lower Austria:** The transposing legislation does not specify the deadline for a competent authority to seek recovery of its costs. The AVG thus applies.

  **Lower Austria:** There is a five-year time limit from the date of completion of measures or the date of identifying a person liable for the costs, whichever is later, for a competent authority to bring proceedings to recover its costs.
18. Duties of responsible operators

► Preventive measures

**Federal State, all Länder:** An operator has a duty to carry out preventive measures without delay if there is an imminent threat of environmental damage. The duty to carry out such measures equates to the ELD.

► Remedial actions (emergency actions)

**Federal State, all Länder:** An operator has a duty to carry out emergency remedial actions. The duty to carry out such actions equates to the ELD.

**Federal State:** The transposing legislation provides that the measures to be notified to the authority include emergency remedial actions.

► Remedial measures

**Federal State, all Länder:** An operator has a duty to carry out remedial measures. The duty to carry out such measures equates to the ELD.

► Duty to notify / provide information when imminent threat of environmental damage occurs

**Federal State, all Länder:** An operator must notify the competent authority without delay if an imminent threat cannot be dispelled despite preventive measures having been carried out.

► Entity to which notification should be provided

**Federal State, all Länder:** Notification should be provided to the district administrative authority in whose area the imminent threat of, or actual, environmental damage occurred. The competent authority in Vienna is the Municipal Executive (*Magistrat*) of the City of Vienna.

19. Access to third-party land to comply with the ELD

**Federal State, Burgenland, Carinthia, Lower Austria, Styria, Upper Austria, Vienna:** The transposing legislation does not mention access to third-party land to comply with the ELD.

**Salzburg:** The transposing legislation specifies that “owners of land, persons with rights to use water in licensed installations, holders of hunting or fishing permits and other holders of rights shall tolerate:

1. entry into and use of land,
2. the taking of samples including the removal of animals and plants,
3. the establishment, operation and maintenance of testing and monitoring facilities, or
4. a temporary restriction or stoppage of the use of water by a person with rights to use water in licensed installations,

in so far as is absolutely necessary to establish the existence and the gravity of an imminent threat of environmental damage or the occurrence of such environmental damage, to carry out preventive, reduction and remedial measures, to restore the status...
in accordance with the law, to perform surveys, investigations, observations and measurements or to carry out monitoring and surveillance measures”.

The transposing legislation provides for an appeal against entry into land, except when a delay in carrying out the measures specified above would be prejudicial. The transposing legislation also provides for compensation.

**Tyrol:** The transposing legislation requires landowners to tolerate entry and use of their land to carry out necessary preventive and remedial measures. The transposing legislation also provides for compensation.

**Vorarlberg:** The transposing legislation provides that a landowner “shall submit” to preventive and remedial measures. The transposing legislation also provides for compensation.

### 20. Interested parties

**Federal State:** Interested parties whose rights may have been impaired (see ELD, art. 12(1)(c)) may provide written comments / observations (called complaints in all Austrian transposing legislation) to the district administrative authority in which environmental damage occurred in respect of emergency remedial actions and remedial measures (not preventive measures for an imminent threat of environmental damage). In addition, the environmental ombudsman (*Umweltanwalt*) may submit comments / observations to the competent authority. Further, environmental organisations may submit comments / observations pursuant to section 19(7) of the Environmental Impact Assessment Act 2000 (*Bundesgesetz über die Prüfung der Umweltverträglichkeit (Umweltverträglichkeitsprüfungsgesetz 2000)*), as amended.

**Burgenland, Lower Austria, Styria, Tyrol, Upper Austria, Vienna:** In addition to qualified interested parties, the environmental ombudsman / mediator (*Landumweltanwalt*) may submit comments / observations to the competent authority.

**Carinthia:** In addition to qualified interested parties, the nature conservation advisory board in its capacity as environmental ombudsman may submit comments / observations to the competent authority.

**Salzburg:** In addition to qualified interested parties, the Salzburg Land environmental ombudsman (*Landesumweltanwaltschaft*), and nature conservation representatives appointed pursuant to section 54 of the 1999 Salzburg Nature Conservation Act (*Salzburger Naturschutzgesetz*) may submit comments / observations relating to environmental damage which has occurred relevant to their responsibilities.

**Vorarlberg:** In addition to qualified interested parties, the nature protection officer may submit comments / observations to the competent authority.

► Qualification criteria for “sufficient interest”

**Federal State; all Länder except Carinthia and Vorarlberg:** An organisation must be recognised in accordance with section 19(7) of the 2000 Environmental Compatibility Verification Act. The rights to which the organisation, or other interested party, refers are:

- the protection of human life and health;
established (property) rights to water under section 12(2) of the WRG; and

ownership or other real rights in land affected by the environmental damage, but not the possibility of a mere depreciation in its market price.

**Carinthia:** An organisation must be recognised in accordance with section 19(6) of the 2000 Environmental Impact Assessment Act.

**Vorarlberg:** The transposing legislation does not specify section 19(7) of the 2000 Environmental Impact Assessment Act as a pre-requisite for an organisation to submit comments / observations but refers indirectly to it by describing the criteria set out in it.

► **Method of notifying interested parties of planned remedial measures**

**Federal State, Burgenland, Carinthia, Lower Austria, Styria, Tyrol, Upper Austria, Vienna:** The B-UHG provides that the competent authority shall “publish” the main content of remedial measures notified to it by an operator or ordered by the authority. The authority shall inform a “known interested party” “personally if possible” and shall take into account any observations that “it receives in time”. The transposing legislation in the Länder include similar provisions.

**Salzburg:** The transposing legislation provides that, when environmental damage has occurred, the competent authority shall publish a brief summary of the situation, the main points of the remedial measures proposed to it and the remedial measures it is planning, instructing or ordering on its homepage on the internet, and keep the information up-to-date. The authority shall also notify interested parties of the environmental damage and provide them with an opportunity to make their views known to it.

**Vorarlberg:** The transposing legislation provides that the competent authority must issue a decision on the operator’s proposed remedial measures “without any unnecessary delay, but within six months at the latest”. The main contents of the authority’s decision are to be published on the authority’s home page on the internet.

► **Information to be provided to competent authority**

**Federal State, all Länder:** All comments / observations must be accompanied by information and data to provide evidence of the alleged environmental damage, as well as details of the right of the interested parties to provide comments / observations.

► **Challenges to competent authority’s decision**

**Federal State, all Länder except Lower Austria:** An interested party may lodge an appeal against a decision taken pursuant to the transposing legislation to the autonomous administrative tribunal (*UnabhängigerVerwaltungssenat*) of the Land in the area of which the competent authority issued the decision.

**Lower Austria:** The competent authority shall notify a person without delay whether the authority will or will not take action. An interested party has 14 days from service of a notification by the competent authority not to take requested measures to lodge a complaint with the autonomous administrative tribunal. In the absence of a notification from the competent authority, the interested party has three months to lodge the complaint.
Duty on competent authority to respond to person making comments

**Federal State, all Länder:** If the district administrative authority that receives the comments/observations is not the relevant competent authority, it shall forward the comments/observations without delay to the relevant competent authority and shall inform the interested party that it has done so.

If the competent authority considers that the comments/observations do not meet the relevant criteria (see directly above), no environmental damage exists, or all necessary steps or remedial measures have been taken, it shall issue a decision to state that this is the case.

Inclusion of interested party in any proceedings by the competent authority against an operator

**Federal State, all Länder except Lower Austria:** All interested parties that submitted comments/observations shall be parties to any proceedings concerning remedial actions or emergency remedial actions to which the comments/observations refer. Interested parties that have declared in writing, within two weeks of publication of the main content of proposed remedial measures that they wish to be parties to such proceedings, are also entitled to be parties.

**Lower Austria:** The transposing legislation does not state that an interested party has the right to be a party to proceedings on remedial measures.

21. Public access to information regarding environmental damage and related measures

**Federal State, all Länder:** The transposing legislation does not set out specific procedures but Salzberg and Vorarlberg require publication on the internet of some data.

As with other Member States, legislation transposing Directive 2003/4/EC on public access to environmental information applies.

22. Charges on land/financial security after environmental damage

**Federal State:** The B-UHG provides that if an authority carries out preventive measures for which it is to be reimbursed by the operator, the authority shall, at the same time, order the operator to obtain a financial security or other appropriate guarantee in the amount of the estimated cost of the measures. The financial security will be offset against the order for costs.

The B-UHG further provides that the order requiring the operator to obtain financial security or other appropriate guarantee will be lifted if the operator provides proof that either of the mandatory defences applies (that is, third-party action or an instruction from a public authority). The B-UHG tracks articles 8(3)(a)-(b) of the ELD. It further provides in respect of third-party action, however, that the third party must not be a person who operates on behalf of the operator or uses the facilities with which the activity is carried out in accordance with their intended purpose. If the third party satisfies these criteria, the operator remains liable.
Burgenland, Carinthia, Styria, Tyrol, Upper Austria, Vienna: The transposing legislation is the same as that of the Federal State in material part except that the transposing legislation for some Land states that the financial guarantee must be in rem, that is, it must relate to real, not personal, property.

Lower Austria: The transposing legislation provides that the financial security may be in cash, a deposit account not subject to transfer restrictions with a financial institution registered in the EU or in which the institution would pay the security in the event of default. If it is not possible for a competent authority to recover costs from a corporate entity that is an operator, the following persons are liable: a person who is distinct from the operator and “who, on the basis of laws, articles of association or contractual arrangements, is assigned a certain influence on the occupational activity of the operator and ... who holds a significant participating interest in [the] company at the time of the event triggering the threat or the damage, if he or she has infringed the duties of care incumbent upon him or her as shareholder, especially if the operator at the time of the occurrence of the threat or damage does not possess the capital endowment to be deemed necessary according to economic principles for the occupational activity concerned”.

Salzburg: The transposing legislation provides that the financial security may be in cash or a deposit account not subject to transfer restrictions with a financial institution registered in the EU or in which the institution would pay the security in the event of default.

Vorarlberg: The transposing legislation does not mention financial security.

23. Offences and sanctions

Federal State, Burgenland, Carinthia, Styria, Tyrol, Upper Austria, Vienna: The transposing legislation provides for three levels of penalties. The penalties do not apply if the offence satisfies the criteria for a penal offence, in which case penal penalties apply.

The first level is an administrative offence, subject to a fine of up to €3,500 for:
- failing to notify the competent authority of an imminent threat of, or actual, environmental damage, either at all or without delay; and
- failing to take any or insufficient preventive actions or emergency remedial actions without delay.

The second level is an administrative offence, subject to a fine of up to €15,000 for:
- failing to provide information pursuant to an imminent threat of, or actual, environmental damage at all or without delay; and
- obstructing the competent authority in its inspections, investigations, monitoring or other controls.

The third level is an administrative offence, subject to a fine of up to €35,000 for:
- failing to take necessary preventive measures without delay;
- failing to take necessary emergency remedial actions without delay;
- failing to identify and notify required emergency remedial actions or remedial measures to the competent authority without delay; and
failing to carry out necessary remedial measures, as required by the competent authority.

**Lower Austria:** In addition to the penalties for the administrative offence specified above, the transposing legislation provides that, in lieu of a fine of up to €3,500, a person may be imprisoned for up to one week. In lieu of a fine up to €15,000, a person may be imprisoned for up to three weeks. In lieu of a fine of up to €35,000 a person may be imprisoned up to six weeks.

**Salzburg:** In respect of the offences set out above, the first level sanction is an administrative offence, subject to a fine up to €5,000, with imprisonment up to one week for an uncollectible fine. The sanction for a second level offence is a fine up to €15,000, with imprisonment up to three weeks for an uncollectible fine. The sanction for a third level offence is a fine up to €25,000, with imprisonment up to five weeks for an uncollectable fine.

**Vorarlberg:** The transposing legislation does not mention sanctions. Section 15 of the Vorarlberg Law on Obligations of the Operator to Protect the Environment (Gesetz über Betreiberpflichten zum Schutz der Umwelt), which provides for sanctions up to €20,000, applies.

► **Directors and officers liability for breaching legislation**

**Federal State, all Länder:** The transposing legislation does not mention the liability of directors and officers for breaching legislation.

► **Publication of penalties**

**Federal State, all Länder:** The transposing legislation does not mention the publication of penalties.

**24. Registers or data bases of incidents**

**Federal State, all Länder:** The transposing legislation does not provide for registers or data bases of incidents under the ELD regime.

**25. Cross border damage in another MS**

**Federal State:** The cross border damage provisions of the B-UHG are largely a copy-out of article 15 of the ELD. The B-UHG further provides that special arrangements under State Treaties shall not be affected.

**Burgenland, Carinthia, Lower Austria, Salzburg, Tyrol, Upper Austria:** The cross border damage provisions of the transposing legislation are largely a copy-out of the ELD and are materially the same as the B-UHG, with the addition of similar provisions to cross-border damage provisions for damage that affects another Land.

**Styria, Vienna:** The transposing legislation states that “Special arrangements under State Treaties shall not be affected”.

**Vorarlberg:** The transposing legislation is largely a copy-out of the ELD. It does not mention similar provisions for damage that affects another Land.
26. Financial security

**Federal State, all Länder:** The transposing legislation does not include mandatory financial security provisions.

27. Establishment of a fund

**Federal State, all Länder:** The transposing legislation does not including any provisions for a fund.

28. Reports

**Federal State:** The Federal Minister for Agriculture, Forestry, Environment and Water Management was directed to prepare the report that was submitted to the European Commission by 30 April 2013.

**Burgenland, Lower Austria, Vorarlberg:** The transposing legislation does not provide for the submission of a report.

**Carinthia:** The Provincial Government was directed to submit a report on experience gained in applying the transposing legislation to the European Commission by 30 April 2013.

**Salzburg:** The Land Government was directed to submit a report to the Federal Minister for Agriculture, Forestry, Environment and Water Management on the application of the transposing legislation by no later than 31 December 2012.

29. Information to be made public

**Federal State, Burgenland, Carinthia, Lower Austria, Styria, Tyrol, Upper Austria, Vienna:** The main contents of proposed remedial measures are published.

**Salzburg:** If environmental damage has occurred, the competent authority must publish a brief summary of the situation, the main points of the remedial measures proposed to it and the remedial measures it is planning, instructing or ordering on its homepage on the internet, keeping the information up-to-date.

**Vorarlberg:** The competent authority’s decision on the selection of remedial measures is published on the authority’s homepage on the internet.

30. Provisions concerning genetically modified organisms

**Federal State, all Länder:** The Gene Technology Act imposes strict liability for environmental damage from genetically engineered organisms.

**Burgenland: Lower Austria, Salzburg, Styria, Tyrol, Upper Austria, Vienna, Vorarlberg:** The transposing legislation imposes strict liability for environmental damage from a deliberate release of genetically modified organisms into the environment.
31. Key features and differences in legislation transposing the ELD and existing legislation

The legislation transposing the ELD into Austrian law consists of separate Acts for the Federal Government and each of the Länder. Reflecting the split competencies in Austrian law, the Federal Act covers water and land damage; the Acts for the Länder cover biodiversity and land damage. The Federal Act and the Acts for all the Länder except Carinthia, Salzburg and Vorarlberg are stand-alone legislation. The Acts for these three Länder amend existing legislation.

When the legislation transposing the ELD was enacted, Austria already had well-developed regimes to remediate contaminated land and associated groundwater. Legislation that imposes liability for preventing and remediating biodiversity damage was less developed.

The transposing legislation reflects existing national legislation in that owners of land on which environmental damage occurs are secondarily liable for the cost of preventive or remedial measures if they permitted or acquiesced in the damage and failed to carry out reasonable measures to prevent it; they are primarily liable if they caused it. Further, a successor owner of the land is also secondarily liable if it knew or should have known about the damage when it acquired the land. The transposing legislation also reflects existing national legislation in that there is no permit or state-of-the-art defence under it.
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1. **Existing national environmental legislation**

Legislation that imposed liability for preventing and remediating water pollution, contaminated land, and biodiversity damage in Bulgaria before the transposition of the ELD was limited. Bulgaria does not have a dedicated regime for preventing and remediating water pollution or a dedicated regime to remediate contaminated land. Liability provisions in the Act to protect fauna and flora are limited in scope.

Bulgaria transposed the ELD into national law by an Act and two regulations. A substantial number of existing Acts supplement the transposing legislation’s implementation and enforcement.

2. **Existing regimes for preventing and remediating environmental damage**

Most current national environmental legislation in Bulgaria was enacted after the end of communist rule in 1989. The first major environmental Act was enacted in September 1991. The Act, the current version of which is the Environmental Protection Act (SG No. 91/2002), as amended, covers a wide range of environmental matters including the prevention and limitation of pollution.

The initial version of the Environmental Protection Act contained a general provision that provided that “persons found guilty of harming others by pollution or damage to the environment shall be bound to remedy the damage. The compensation may not be less than the sum required to repair the damages caused”. This vague provision was not, however, enforced actively, if at all.\(^{11}\)

The current version of the Environmental Protection Act provides the Ministry for the Environment and Water with authority to exercise preventive and remedial controls over environmental media. The Act also provides that a person that causes environmental damage may be required to carry out “coercive administrative measures”. This term, which appears in other environmental legislation, includes, among other things, suspension and prohibition notices (see section 23 below).

► **Water pollution**

Article 199(1) of the Water Act (SG No. 67/1999), as amended, authorises the Minister for the Environment and Water to issue an order for coercive administrative measures if there is:

- “an immediate danger of environmental pollution, damage or loss, personal injury or loss of human life, or of pollution, damage or loss of property owned by the State, municipalities, natural or legal persons as a result of acts or omissions of water users”;

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“emergency and disaster situations caused by acts or omissions of water users in the course of water abstraction and/or water site use and operation of water development systems and facilities”; or

“abstraction of mineral waters without a permit issued or a concession granted”.

The polluter is liable for carrying out the above measures and their cost.

Article 131(1) of the Water Act, which applies to emergencies, provides that an owner or operator of an installation that has caused water pollution must carry out measures to mitigate or eliminate its consequences according to the installation’s emergency response plan. The owner or operator must notify the competent authorities of the pollution.

► Land contamination

The Soils Act (SG No. 89/2007), as amended, imposes liability for remediating contaminated land.

The Soils Act is not, however, dedicated to the remediation of contamination. Instead, like the EU Thematic Strategy for Soil Protection,\(^\text{12}\) it also covers the conservation and sustainable use of soil, including the prevention of harm to, and the restoration of, soil from erosion, acidification, salinisation, compaction, the decline of organic matter, sealing, and landslides.

Article 22 of the Soils Act imposes liability for remediating harm to soil on the person that caused its degradation. If the polluter cannot be found, the owner or occupier of the contaminated land is liable regardless of whether it was aware of the contamination when it acquired the freehold or leasehold interest in the land.

► Restoring biodiversity damage

The Biological Diversity Act (SG No. 77/2002), as amended, is the main nature protection Act in Bulgaria.

The Act does not impose liability for the prevention and remediation of damage to fauna and flora protected under the Act. Instead, it is designed to prevent and cure breaches of the legislation and harm by unlawful activities, as well as imposing administrative penalties, mostly in the form of fines and property penalties.\(^\text{13}\)

► Other liability systems for remediating environmental damage

Other liability systems for remediating environmental damage include the Protection of Agricultural Lands Act (SG No. 35/1996), as amended, which requires persons who own or occupy agricultural land to preserve them from pollution and other damage. A person who damages the land is liable for the cost of remediating it.

The Waste Management Act (SG No. 53/2012), imposes liability on the holder of waste as well as the person who produced it, for its removal.


\(^{13}\) Under Bulgarian law, natural persons may be penalised by a fine. Legal persons may be penalised by a property sanction. Legal persons in Bulgaria are not subject to criminal liability.
Bulgaria, like other States that were formerly under communist rule, has programmes that include the remediation of land that is privatised. The Environmental Protection Act provides that privatised companies are liable for restoring environmental damage from past acts or omissions. The procedures for restoring the damage are set out in the Ordinance on the Terms and Procedure for Determination of the Liability of the State and for Elimination, upon Privatisation, of Damage Caused to the Environment as a Result of Past Acts or Omissions, adopted by Council of Ministers Decree No. 173/2004.

Bulgaria’s legislation on civil liabilities is not contained in a civil code. Instead, civil liability provisions are included in various Acts and other legislation. Article 170 of the Environmental Protection Act provides that “any person, who shall culpably inflict environmental damage or pollution on another, will be obliged to indemnify the aggrieved party”. Article 171 provides that aggrieved parties “may bring action against the offender for cessation of the violation and for elimination of the consequences of [the] pollution”.

The Water Act also imposes civil liability. Article 202 provides that a person who causes water pollution is liable for harm to other persons if the polluter is at fault.

The general civil liability provision in Bulgarian law is article 45 of the Law on Obligations and Contracts (SG No. 275/1950), as amended, which provides that every person is obliged to remedy damage caused by it. As a general rule, liability is fault-based. Joint and several liability applies when more than one person has caused the damage, with a liable person having a right of contribution against other liable persons.

The Law on Obligations and Contracts provides that the owner of personal property and the person who supervises such property are strictly, and jointly and severally, liable for damage caused by the property. A person who is harmed by the property may bring a claim for the cessation of the activity and remediation of its consequences.

Interface between the existing national liability regimes and the ELD regime

The following are key differences between the existing national environmental liability legislation and the ELD regime:

- there is no permit or state-of-the-art defence in the existing legislation compared to such defences in the legislation transposing the ELD;
- the existing legislation does not include complementary or compensatory remediation;
- the thresholds for environmental damage in the existing legislation are lower than the thresholds in the ELD regime;
- liability for preventing and remediating damage to protected species and natural habitats under existing legislation is very limited;
- liability for preventing and remediating damage to water under existing legislation is very limited;
- liability under existing legislation for preventing and remediating environmental damage is not limited to an operator; and
- the owner or occupier of land may be liable under existing legislation for remediating damage to it even if they did not cause the damage.
3. Integration of the ELD into existing national legislation

► Transposing legislation

The Act that transposed the ELD into Bulgarian law is:

- Act on Liability with Regard to the Prevention and Remediying of Environmental Damage (SG No. 43/2008) (PREDA).

In addition, Bulgaria enacted the following two regulations:

- the Ministry of the Environment and Water issued Regulation No. 1 of 29 October 2008 on types of preventive and remedial measures in the events provided for by the Prevention and Remediation of Environmental Damage (ZOPOESht) and on the minimum cost of such measures (SG No. 96/2008); and

- the Council of Ministers adopted Regulation concerning the public register of operators who carry out activities referred to in Annex 1 to Article 3(1) of the Prevention and Repair of Environmental Damage Act (approved by Council of Ministers’ Decree No. 317 of 12 December 2008 (SG No. 109/2008).

The following amendments have subsequently been made to PREDA:


- SG No. 32/2009, enacted and effective 28 April 2009;

- SG No. 35/2009 (amended in connection with amendment of the Disaster Protection Act), enacted and effective 12 May 2009;

- SG No. 77/2010 (amended due to closure of the Ministry of State Administration and Administrative Reform and the transfer from 1 September 2009 of regional administrations as second-tier authorities to the Council of Ministers), enacted and effective 1 October 2010;

- SG No. 98/2010 (amended in connection with amendments to the Health Act, which resulted in the establishment of the Regional Health Directorate), enacted 14 December 2010, effective 1 January 2011;

- SG No. 92/2011 (amended in connection with the closure of the Executive Agency on Soil Resources under the Minister for Agriculture and Food), enacted and effective 22 November 2011;

- SG No. 14/2012 (supplemented PREDA to transpose the amendment to the ELD, which added the operation of storage sites pursuant to Directive 2009/31/EC on the geological storage of carbon dioxide to the list of legislation in Annex III), enacted and effective 17 February 2012; and

- SG No. 53/2012 (amended PREDA to add the carrying out of activities to export, import and transport waste within the meaning of section IV of chapter 5 of the Waste Management Act), enacted and effective 13 July 2012.
Amendments to existing national legislation

PREDA did not amend existing legislation.

Authorisation in legislation for other governmental entities to issue rules and regulations

PREDA authorised the Minister for the Environment and Water to issue an Order for the type of preventive and remedial measures in cases covered by PREDA and the minimum amount of expenditure for their implementation.

The Minister issued the above Order; Regulation No. 1 of 29 October 2008 on preventive and remedial measures in the events provided for by the Prevention and Remediation of Environmental Damage (ZOPOEšht) and on the minimum cost of such measures (SG No. 96/2008).

PREDA authorised the Minister for the Environment and Water or its designated official to issue an instrument on claims by local and executive bodies for the reimbursement of costs incurred in carrying out preventive measures, emergency remediation actions, and remedial measures.

The Minister has not issued this order as yet.

Relationship to other legislation

The following legislation applies to the implementation and enforcement of the ELD regime:

- provisions in the Code of Administrative Procedure (SG No. 30/2006), as amended, apply to appeals of preventive and remediation notices under PREDA, and appeals by an interested party of a competent authority’s decisions, acts or failure to act;
- the Spatial Development Act (SG No. 1/2001), as amended, applies to the designation of the assigned use of spatial development areas and lots (sites and landed holdings);
- the Environmental Protection Act applies to the procedures for providing environmental information and the bodies required to provide it;
- the Public Procurement Act (SG 28/2004), as amended, applies to the preparation of a report on remedial measures when the responsible operator has not been identified;
- the Obligations and Contracts Act, and the Commercial Code (SG No. 48/1991), as amended, apply to the prioritisation of costs incurred by executive authorities in carrying out preventive measures, emergency remedial actions, and remedial measures;
- the Tax and Social Insurance Procedure Code applies to the procedure for the collection of costs incurred by executive authorities in carrying out preventive measures, emergency remedial actions, and remedial measures, and the limitation period of five years for the period during which a competent authority may seek to recover its costs;
- the procedure set out in Decree on Inventorying and Surveying Areas with Contaminated Soil, the Necessary Restoration Measures, and the Maintenance of Restoration Measures as Implemented (SG No.
15/2007) applies to the assessment of the contamination of soil and the presence of a risk; and

- Decree No. 3 on Standards for the Permissible Content of Toxic Substances in Soils (SG No. 36/1979), as amended, applies criteria for a natural discovery option if there are organic contaminants in soil.

**Guidance and other documentation**

Bulgaria has not issued guidance on the ELD regime. PREDA does, however, direct authorities to publish a substantial amount of information on the internet (see section 29 below).

4. **Effective date of national legislation**

29 April 2008

5. **Competent authority(ies)**

The competent authorities are:

- Minister for the Environment and Water;
- directors of the Regional Environmental and Water Inspectorates (RIOSVs);
- directors of river basin directorates of the water management administration; and
- directors of national parks.

6. **Operators and other liable persons**

PREDA defines an “operator” as:

- “a natural person, a trader within the meaning of the Commerce Act, a cooperative as defined in the Cooperatives Act, a person as defined in the Act on non-profit legal persons, a partnership as defined in the Obligations and Contracts Act, a budget-funded enterprise within the meaning of the Accountancy Act, or a State enterprise not formed under the Commerce Act”; and
- “a natural person, a trader or non-profit legal person, or a budget-funded enterprise within the meaning of national legislation of another State, which performs activity on the territory of the Republic of Bulgaria, including when it has been delegated rights to carry on such activity or it holds a permit, authorisation or licence in respect of the activity”.

It could be considered that the above definition indirectly includes public authorities. The definition may, therefore, be less stringent than the ELD if, for example, public authorities, rather than State-owned companies, operate businesses such as waste collection and other industrial / commercial activities.
Secondary liability (e.g., parent company)
PREDA does not impose secondary liability on a parent company or on any other persons.

Death or dissolution of responsible operator
PREDA does not mention the death or dissolution of a responsible operator.

Person other than an operator who may be liable
A third party that causes an imminent threat of, or actual, environmental damage may be liable. Whereas the ELD mentions third parties, PREDA specifically states that a competent authority may seek reimbursement of costs incurred by it in carrying out preventive or remedial measures from a third party.

7. Annex III legislation

Rebuttable presumption that operator’s activity caused environmental damage
PREDA does not establish a rebuttable presumption that an operator’s activity caused environmental damage.

Additional occupational activities subject to strict liability
PREDA does not include additional occupational activities subject to strict liability.

Spreading of sewage sludge for agricultural purposes
Bulgaria exempted the spreading of sewage sludge for agricultural purposes from Annex III activities.

8. Standard of liability for non-Annex III activities

The standard of liability for non-Annex III activities is fault-based.

9. Exceptions

Application to imminent threat of environmental damage as well as environmental damage
The exceptions apply to an imminent threat of environmental damage as well as environmental damage.

Differences with exceptions in the ELD
The exception for “an act of armed conflict, hostilities, civil war or insurrection” in the ELD (ELD, art 4(1)(a)) is termed “an act of armed conflict, military operations, civil war or unrest” in PREDA. This exception appears to be the same as the ELD exception.

PREDA provides an exception for “Actions during an acknowledged crisis, pursuant to the Crisis Management Act”. The exception was added by SG No. 35/2009, effective 12 May 2009. The exception is not in the ELD and may be less stringent than it unless it equates to "activities the sole purpose of which is to protect from natural disasters" (ELD, art 4(6)), which is unclear.
There is a specific exception for past environmental damage to which article 9 of the Transitional and Final Provisions of the Environmental Protection Act apply. Article 9 provides that that: “Upon privatisation, the liability for damage caused to the environment and resulting from past acts or omissions shall be incurred by the privatised corporations or owners of self-contained parts concerned and the restoration of the environment shall be for the account thereof”.

Diffuse pollution exception

The diffuse pollution exception tracks the exception in the ELD.

10. Joint and several or proportionate liability

PREDA establishes joint and several liability with the proviso that when an imminent threat of, or actual, environmental damage is caused by successive operators, the last operator is liable, but is entitled to claim restitution against the other operators.

Mechanism for contribution between liable operators

PREDA does not set out a mechanism for contribution between liable operators. It does, however, state that it does not prejudice such claims or other civil claims by an operator against other parties.

11. Limitation period

The limitation period is 30 years from the emission, event or incident causing the damage, which is the same as the ELD.

12. Defences

Defences to liability or costs?

The defences of a third party having caused environmental damage and the damage having been caused due to compliance with a compulsory order or instruction of a public authority (ELD, art 8(3)) appear to be defences to costs although this is not entirely clear.

PREDA specifically states that an order requiring an operator to carry out preventive measures shall not be suspended during an appeal but does not contain equivalent language concerning the appeal of an order to carry out remedial measures.

PREDA states that “Where the operators have disbursed funds [to carry out preventive measures, emergency remedial actions and remedial measures], they may request reimbursement of the costs incurred”.

This statement does not necessarily mean that operators must carry out all preventive and remedial measures prior to seeking reimbursement of their costs.

If defences to liability; suspension (or not) of remediation notice during appeal

See directly above.
Bulgaria did not adopt the permit defence.

Bulgaria did not adopt the state-of-the-art defence.

13. Scope of environmental damage

The scope of liability under the ELD regime for biodiversity damage in Bulgaria is restricted to the Natura 2000 network.

This scope is more limited – and, therefore, less stringent – than the scope of liability for biodiversity damage under the ELD.

Percentage of national land area covered by Birds and Habitats Directives (Natura 2000)

34.34%

Extension of biodiversity to nationally protected biodiversity

Bulgaria did not extend biodiversity damage under the ELD to species and natural habitats protected by national legislation.

Biodiversity damage in the exclusive economic zone

Bulgaria has extended biodiversity damage to its exclusive economic zone.

Water or water body

The threshold for water damage is “waters”, not a “water body”. PREDA refers to “damage to waters and bodies of water that significantly adversely affects the condition of surface and ground waters ...”. PREDA defines “waters” following the Waters Act.

14. Thresholds

The definition of the “baseline condition” in PREDA differs from that in the ELD. The ELD defines the term as “the condition at the time of the damage of the natural resources and services that would have existed had the environmental damage not occurred, estimated on the basis of the best information available” (ELD, art 2(14)).

PREDA defines the term as “the condition of the natural resources and services at the time environmental damage occurs, estimated on the basis of the best information available”. This definition appears to be more limited, and thus less stringent, than the ELD.

Water damage

The threshold for water damage is the same as the ELD, with the proviso that the damage appears to be to “waters” and not “water bodies”.

Biodiversity damage

The threshold for biodiversity damage in PREDA is the same as the ELD.
► National biodiversity damage

Bulgaria has not extended liability under the ELD to species and natural habitats protected by national legislation.

► Land damage

The threshold for land damage in PREDA is the same as the ELD.

15. Standard of remediation

► Land

Annex 4 of PREDA (which corresponds to Annex II of the ELD) specifies that an assessment of the contamination of soil and the presence of a risk are to be carried out according to the procedure set out in the Decree on Inventorying and Surveying Areas with Contaminated Soil, the Necessary Restoration Measures, and the Maintenance of Restoration Measures as Implemented (SG No. 15/2007), as amended.

If there are organic contaminants in the soil, a natural recovery option may be considered in accordance with the criteria set out in Decree No. 3 on Standards for the Permissible Content of Toxic Substances in Soils (SG No. 36/1979), as amended.

The assigned use of spatial development areas and lots (sites and landed holdings) is designated in accordance with articles 7 and 8 of the Spatial Development Act. The provisions are much more specific than those in the ELD.

► Biodiversity

➢ Primary remediation

The standard of primary remediation for biodiversity damage is the same as the ELD. The definition of “baseline condition”, however, is less stringent than that in the ELD (see section 14 above).

➢ Complementary and compensatory remediation

The standard of remediation for complementary and compensatory remediation for biodiversity damage is the same as the ELD.

► Water

➢ Primary remediation

The standard of primary remediation for water damage is the same as the ELD. The definition of “baseline condition”, however, is less stringent than that in the ELD (see section 14 above).

➢ Complementary and compensatory remediation

The standard of remediation for complementary and compensatory remediation for water damage is the same as the ELD.
16. Format of determination of environmental damage

There is no specified format for a determination of environmental damage. PREDA does, however, establish detailed formats for orders to carry out preventive and remedial measures (see section 17 below).

17. Powers and duties of competent authority

► Inspections, investigations, studies and analyses

A competent authority or an official designated by it may carry out inspections, investigations, studies and analyses (see below this section).

PREDA states, in particular, that the authority or its designated official is entitled to obtain self-monitoring data concerning a site, and information connected with the production activity on a site.

If there is an imminent threat of, or actual, environmental damage, an authority is entitled immediately to access the site to carry out an inspection, take samples and collect necessary information.

► Information orders

A competent authority or an official designated by it may require an operator to provide information concerning an imminent threat of, or actual, environmental damage (see below this section).

Prior to identifying remedial measures, the competent authority may request further information, which the operator must provide within 10 days.

► Power or duty to require an operator to carry out preventive measures

When a competent authority receives information from an operator that there is an imminent threat of environmental damage which preventive measures carried out by the operator has not dispelled (see section 18, Duty to notify / provide information when imminent threat of environmental damage occurs, below), the competent authority or an official designated by it shall carry out an on-site inspection to determine the facts and circumstances related to the imminent threat. If necessary, the authority or official shall require the operator to provide supplementary information and to make a record of the facts.

The authority or official may issue an instruction and/or an order requiring the operator to carry out preventive actions other than those already carried out or proposed by the operator. The authority shall forward the order to the operator within three days of the date on which it is issued.

► Power or duty to require an operator to carry out remedial actions

Within 10 days of the occurrence of environmental damage, the operator shall propose necessary remedial measures to the competent authority, together with an estimate of their costs.

Within three days of receiving the above information, the competent authority or its designated official shall carry out an on-site inspection of the facts and circumstances related to the environmental damage and make a record of the facts. If necessary, the
competent authority shall issue mandatory instructions to the operator to carry out emergency remedial actions.

Prior to identifying remedial measures, the competent authority may carry out an on-site inspection and issue mandatory instructions. In identifying remedial measures, the competent authority may request assistance from other central and regional executive authorities.

► Order to carry out remedial works

The competent authority or its designated official shall issue a draft order identifying the remedial measures to be carried out by the operator within 30 days of receiving the operator’s proposal of necessary remedial measures. The competent authority shall provide written notice of the draft order to the governor of the region in whose territory the environmental damage has occurred. The authority shall also publish the draft order on its website, together with an invitation to the public to provide recommendations and opinions on it. In addition, the competent authority shall post the draft order in a prominent place in its administrative building.

The regional governor shall provide written notice of the draft order to the mayor of the municipality in whose territory the environmental damage has occurred. The mayor shall post the draft on the municipality’s website.

Recommendations and opinions may be submitted in writing up to 14 days after the draft order is published. The competent authority shall also arrange meetings to consult with the operator on the proposed remedial measures.

No later than seven days after the end of the 14-day period for recommendations and opinions, the authority or its designated official shall issue the order to require implementation of the remedial measures. Within three days of the date on which it is issued, the competent authority shall provide it to the operator and simultaneously publish it on its website.

► Order to carry out remedial actions when further analysis is needed

There is an exception to the seven-day deadline for issuing an order if “there is genuine difficulty in identifying the remedial measures and/or a need for further analysis”. In such a case, the operator must prepare and submit the report on proposed remedial measures to the competent authority within six months. Local and regional executive bodies plus other authorities that have environmental information, including public services relating to the environment (that is, authorities specified in article 21 of the Environmental Protection Act) that have information necessary for preparation of the report are directed to provide it. The procedure specified by chapter 2 of the Environmental Protection Act, which concerns information relating to the environment, applies to the provision of environmental information to prepare the report.

The proposal shall include the following:

- the type, territorial extent and causes of the environmental damage;
- a description of the baseline condition of the damaged site, its condition after the damage, and the benefits and services of the damaged natural resources;
an assessment of the actual and/or anticipated negative effects of the environmental damage on natural resources and human health, and the methodology used to prepare the assessment;

- a description of the proposed remedial measures and alternatives to them;
- an estimate of the costs of carrying out the measures; and
- a description of expected difficulties in implementing the measures.

The competent authority or its designated official has 14 days after receiving the report to assess whether it is complete. If this is considered to be the case, the authority or its designated official shall issue a draft order specifying the remedial measures to be carried out by the operator. If there are omissions in the report, the operator must provide information on them within 30 days of its receipt of the request to do so. Within three days after the expiration of either of the above procedures, the competent authority shall provide written notice of the draft order to the regional governor or the region in which the site is located and publish the draft order on its website, with a statement that the public may provide recommendations and opinions within 14 days. The competent authority shall also post the draft order in a prominent place in its administrative building.

The regional governor shall provide written notice of the draft order to the mayor of the municipality in whose territory the environmental damage has occurred. Recommendations and opinions may be submitted in writing up to 14 days after the draft order is published. The competent authority shall also arrange meetings to consult with the operator on the proposed remedial measures, taking account of any submitted recommendations and opinions.

No later than 30 days after the end of the 14-day period for recommendations and opinions, the authority or its designated official shall issue the order to implement the remedial measures. Within three days of the date on which it is issued, the competent authority shall provide it to the operator and simultaneously publish it on its website.

► Power or duty of competent authority to carry out preventive measures

If the operator whose activities cause an imminent threat of environmental damage is not identified, the competent authority or an official designated by it shall carry out an on-site inspection of the facts and circumstances connected with the imminent threat and make a record of the facts within three days of receipt of information concerning the threat. Relevant local and regional executive authorities in whose area the threat has been caused may participate in the inspection.

The competent authority or its designated official may take preventive measures jointly with the relevant local and regional executive authorities in order to avert an imminent threat of damage.

If the preventive measures are insufficient to prevent the imminent threat of environmental damage, the competent authority or its designated official may submit to the Minister for the Environment and Water a proposal to enforce preventive measures within three days of compiling the factual record.

The proposal shall include:
the place, territorial extent and the type of environmental damage in respect of which an imminent threat exists;
the region affected by the imminent threat;
the probable causes of the imminent threat;
the preventive measures that have already been taken;
proposals for further preventive measures and the time frame for carrying them out;
an estimate of the cost of carrying out the measures; and
at the discretion of the authority, the facts and circumstances connected with the imminent threat of environmental damage.

Within 10 days of receiving the proposal, the Minister for the Environment and Water shall issue an order for enforcement of the preventive measures and shall publish it on the Ministry’s website. The preventive order may be appealed but the appeal does not suspend its enforcement. The provisions of the Code of Administrative Procedure apply to the appeal.

If the responsible operator fails to take preventive measures or cannot be asked to bear the costs of the measures, the Minister for the Environment and Water, acting on a proposal of the relevant competent authority, may issue an order for the enforcement of preventive measures.

If the operator does not take such preventive measures or cannot be asked to bear the costs, the Minister for the Environment and Water shall issue an order designating the regional governor responsible for enforcement of the preventive measures.

The competent authority shall send written notice to the director of the competent regional health inspectorate within five days if there is a suspected risk of human health as a result of the imminent threat of environmental damage. The written notice shall specify:

the place, territorial scope and type of environmental damage in respect of which there is an imminent threat;
the probable causes of the imminent threat of environmental damage;
the necessary preventive measures and/or measures that have already been carried out; and
at the discretion of the authority, other facts and circumstances relevant to the imminent threat.

Power or duty of competent authority to carry out remedial measures

If an operator does not carry out emergency remedial actions, the Minister for the Environment and Water shall carry them out. If the operator is unable to carry out emergency remedial actions or remedial measures or cannot be asked to bear the costs of such measures, the Minister may carry them out.

If the operator is unable to carry out obligations set out in an order to carry out remedial measures or cannot be asked to bear the costs of such measures, the Minister shall issue an order specifying the regional governor responsible for implementing them.
If the operator whose activities cause environmental damage is not identified, the competent authority or an official designated by it may carry out emergency remedial actions and may also carry out an on-site inspection of the facts and circumstances connected with the environmental damage within three days of receipt of information concerning the damage and make a record of the facts. Relevant local and regional executive authorities in whose area the damage has been caused may participate in the inspection.

Within three days of finalising the record, the competent authority shall submit a proposal for the necessary remedial measures to the Minister for the Environment and Water for approval.

The proposal shall specify:

- the place, territorial extent and the type of environmental damage;
- the probable causes of the damage;
- the effects of the damage;
- the emergency remedial actions that have already been taken;
- conclusions concerning the need for additional special analyses and assessments;
- the proposed remedial measures;
- an estimate of the cost of carrying out the measures; and
- at the discretion of the authority, the facts and circumstances connected with the imminent threat of environmental damage.

Within 30 days of receiving the proposal, the Minister for the Environment and Water or its designated official shall issue a draft order identifying the remedial measures. The Minister shall give written notice of the draft order to the regional governor of the region in which the damage occurred and shall publish it on the Ministry’s website, with a statement that the public may provide recommendations and opinions. In addition, the Minister shall post the draft order in a prominent place in its administrative building.

The regional governor shall provide written notice of the draft order to the mayor of the municipality in whose territory the environmental damage has occurred. Recommendations and opinions may be submitted in writing up to 14 days after the draft order is published. Within seven days of the end of the 14-day period, the Minister or its designated official shall issue the order to carry out remedial measures.

If an operator has not been identified and “there is genuine difficulty in determining the remedial measures and/or a need for further analyses”, the Minister for the Environment and Water shall, within 14 days of receipt of the proposal for necessary remedial measures, begin proceedings or assign preparation of a report on remedial measures in accordance with the Public Procurement Act.

The report is prepared by “experts with experience in the field of conservation of habitats and protected species, or conservation of waters and bodies of water, or soil”, or other experts as specified in PREDA. As with the report for remedial measures when the operator has been identified, bodies and persons with relevant information must provide it to the persons preparing the report. The report is to be submitted to the Minister within six months after it has been commissioned. The Minister has 14 days
upon receipt of the report to assess its completeness. If there are omissions, the experts have 30 days to provide additional information.

Within three days of the expiration of either deadline, the Minister shall give written notice of the draft order to the regional governor of the region in which the damage occurred and shall publish it on the Ministry’s website. The website shall also state that the public may provide recommendations and opinions. In addition, the Minister shall post the draft order in a prominent place in its administrative building.

The regional governor shall provide written notice of the draft order to the mayor of the municipality in whose territory the environmental damage has occurred. Recommendations and opinions may be submitted in writing up to 14 days after the draft order is published. Within 30 days of the end of the 14-day period, the Minister or its designated official shall issue the order to carry out remedial measures and shall post it on the Ministry’s website.

Form of preventive order

An order for preventive measures that have not been carried out, or proposed, by an operator shall include the following:

- the name of the authority issuing the order;
- details of the operator;
- legal and factual grounds for issuing the order;
- preventive measures to be carried out by the operator;
- the reasons for enforcing the preventive measures;
- the deadline for carrying out the measures;
- an estimate of the cost of the measures;
- the name of the authority to which the operator may lodge an appeal and the deadline for lodging an appeal; and
- the date on which the order is issued and the signature of the official who issued the order.

An order for implementation of preventive measures proposed by an operator shall include:

- the name of the authority that issues the order;
- legal and factual grounds for issuing the order;
- the reasons for enforcing the preventive measures;
- the preventive measures to be carried out and the time frame for carrying them out;
- an estimate of the cost of the measures;
- the regional governor responsible for carrying them out;
- the name of the authority to which an appeal may be lodged and the deadline for lodging an appeal; and
- the date on which the order is issued and the signature of the official who issued the order.
Form of remediation order

An order to an operator for implementation of remedial measures shall include:

- the name of the authority that issues the order;
- details of the operator;
- legal and factual grounds for issuing the order;
- the remedial measures to be carried out and the deadlines for carrying them out;
- the reasons for selecting the remedial measures;
- the sequence for implementing the measures if the operator has not been identified;
- an estimate of the cost of the measures;
- the name of the authority to which an appeal may be lodged and the deadline for lodging an appeal; and
- the date on which the order is issued and the signature of the official who issued the order.

An order for carrying out remedial measures when an operator has not been identified shall include:

- the name of the authority that issues the order;
- legal and factual grounds for issuing the order;
- the remedial measures to be carried out and the deadlines for carrying them out;
- the reasons for selecting the remedial measures;
- the sequence for implementing the measures if the operator has not been identified;
- an estimate of the cost of the measures;
- the regional governor responsible for carrying out the measures;
- the name of the authority to which an appeal may be lodged and the deadline for lodging an appeal; and
- the date on which the order is issued and the signature of the official who issued the order.

Appeal against preventive or remediation order

An operator may appeal a preventive order but the appeal does not suspend its enforcement. The provisions of the Code of Administrative Procedure apply to the appeal.

The provisions of the Code of Administrative Procedure also apply to an appeal against an order to carry out remedial actions.

Sanctions for delay in complying with preventive or remediation order

PREDA provides sanctions for:
a delay in submitting a report concerning remedial measures for which there is a genuine difficulty in identifying the necessary measures; and

- a delay by an expert in submitting a report concerning remedial measures that are difficult to determine or require additional analyses (see section 23 below).

► Formal consultees on contents of preventive and remediation orders

PREDA does not provide for formal consultees on the contents of preventive and remediation orders. It does, however, provide for the appointment of “experts with experience in the field of conservation of habitats and protected species, or conservation of waters and bodies of water, or soil, or other experts” to prepare a report if an operator has not been identified and “there is genuine difficulty in determining the remedial measures and/or a need for further analyses” (see section 17 above).

► Recovery of implementation and enforcement costs

PREDA defines the term “costs” in the ELD to include, among other things, costs in commissioning analyses and expert examinations, the preparation of reports on remedial measures, and costs for information systems and databases.

The cost of activities carried out by executive authorities under PREDA is financed by the State budget. The National Revenue Agency is responsible for collecting the costs, together with interest and costs of collection, according to the procedure established by the Tax and Social Insurance Procedure Code. The executive authority may decide not to seek recovery of costs if the costs of doing so exceed the amount to be recovered.

An executive authority’s claim for costs incurred in carrying out preventive measures, emergency remediation actions, and remedial measures has priority over specified claims under item 6 of article 136(1) of the Obligations and Contracts Act, and item 1 of article 722(2) of the Commercial Code.

► Deadline for competent authority to seek recovery of costs

The limitation period for a competent authority to seek recovery of its costs runs from the date on which the measures that gave rise to the costs have been completed or the liable operator, or third party, has been identified, whichever is later.

PREDA does not specify the time limit for recovery of the costs. Instead, article 171(1) of the Tax and Social Insurance Procedure Code, which provides for a five year limitation period, applies.

18. Duties of responsible operators

► Preventive measures

An operator has a duty to carry out preventive measures.

► Remedial actions (emergency actions)

An operator has a duty to carry out emergency remedial actions.

► Remedial measures

An operator has a duty to carry out remedial measures.
Duty to notify / provide information when imminent threat of environmental damage occurs

An operator has a duty immediately to provide written notice of an imminent threat of environment damage that continues despite measures taken to dispel it. The information shall include:

- the details of the operator;
- the place, territorial extent and type of environmental damage of which there is an imminent threat;
- data from records of analyses and measurements showing that applicable emission standards and emission limit values have been breached;
- the reasons for the imminent threat of environmental damage;
- the preventive measures already carried out by the operator;
- proposals for further preventive measures; and
- an estimate of the costs involved in implementing the measures.

An operator also has a duty to provide written notice of environmental damage without delay. The information provided by the operation shall include:

- the details of the operator;
- the place, territorial extent and type of environment damage which has occurred;
- the reasons for the environmental damage;
- the expected consequences of the environmental damage;
- emergency remedial actions that have already been carried out; and
- at the discretion of the operator, other facts and circumstances related to the damage.

Entity to which notification should be provided

When a director of an RIOSV is notified of an imminent threat of, or actual, environmental damage, the director shall notify, in writing, the director of the relevant regional inspectorate for protection and control of public health (RIOKOS) of the Minister for Public Health to enable the regional inspectorate to assess the risk to human health.

When a director of an RIOSV is notified of an imminent threat of, or actual, water damage from an action that involves the formation of wastewater, the director shall “immediately notify the directors of the river basin directorates within the relevant river basin region”.

19. Access to third-party land to comply with the ELD

“Every individual and body corporate” is required “to provide immediate full access” to their land to a competent authority or official designated by it for taking measures and samples and gathering information if there is an imminent threat of, or actual, environmental damage.
PREDA does not refer to access to third-party land to carry out preventive or remedial measures.

20. Interested parties

Bulgaria did not apply the provisions for comments / observations by interested parties to an imminent threat of environmental damage; only for actual environmental damage, an option permitted by the ELD (ELD, art 12(5)).

► Qualification criteria for "sufficient interest"

A non-governmental organisation that promotes environmental protection qualifies as an interested party whether or not it is, or is likely to be, affected by environmental damage, has a sufficient interest in environmental decision making relating to the damage or alleges that it has a right that has been impaired by the damage.

► Method of notifying interested parties of planned remedial measures

The competent authority shall publish the draft order to carry out remedial measures on its website, including an invitation to the public to provide recommendations and opinions on it. The competent authority shall also post the draft order in a prominent place in its administrative building. Further, the mayor of the municipality in whose territory the environmental damage has occurred, shall post the draft on the municipality’s website.

► Information to be provided to competent authority

An interested person must provide the following information to the competent authority:

- its postal address;
- the location, territorial extent and type of environmental damage that has been caused;
- details of the operator who has caused the damage (if known);
- actual or presumed reasons for the damage;
- the right that has been impaired by the damage, or the nature of its sufficient interest in environmental decision-making related to the damage;
- the apparent or presumed consequences of the damage;
- recommendations for carrying out appropriate remedial measures (if the interested party has such recommendations); and
- other facts and circumstances supporting the comments / observations in respect of the environmental damage.

If the competent authority considers that the information is sufficient, it must carry out an on-site inspection within 14 days following receipt of the comments / observations. If the authority concludes that there is environmental damage, it forwards the request to the operator to provide its views within 14 days.

The authority then begins the procedure for identifying remedial measures to be carried out or, if it decides that environmental damage has not occurred, issues an order refusing to impose remedial measures, together with the reasons for its decision.
authority notifies the operator and the interested party in writing of its decision within seven days. The order is published on the authority’s website.

► Challenges to competent authority’s decision

An interested party may challenge the competent authority’s decision according to procedures established by the Code of Administrative Procedure.

► Duty on competent authority to respond to person making comments

The competent authority has seven days following its receipt of comments / observations to consider the request. If the comments / observations are incomplete, the authority returns the application to the interested party, specifying the missing information. The interested party then has seven days to provide the missing information. If it fails to do so, the authority is not required to consider the comments / observations further.

► Inclusion of interested party in any proceedings by the competent authority against an operator

PREDÁ does not provide for the inclusion of an interested party in any proceedings by a competent authority against an operator.

21. Public access to information regarding environmental damage and related measures

Bulgaria has provided for public access to a substantial amount of information on implementation of the ELD regime by publishing such data on the internet (see section 29 below). In addition, as in all other Member States, Directive 2003/4/EC on environmental information applies.

22. Charges on land / financial security after environmental damage

The following financial security mechanisms may be required by a competent authority for "security over property or other appropriate guarantees" for the cost of preventive or remedial measures which are to be provided by an operator who has caused an imminent threat of, or actual, environmental damage:

- an insurance policy for the benefit of the Ministry of Environment and Water covering the risk of imminent threats, or actual, environmental damage of at least BGN 50,000;
- a bank guarantee;
- a mortgage on real estate or the real rights (in rem) to such real estate; and
- a lien on receivables, personal property or securities.

If an imminent threat of, or actual, environmental damage occurs and the operator does not have an insurance policy as specified above, the operator must submit to the Ministry for the Environment and Water one of the other three financial security mechanisms specified above within seven days following notification of an order to
implement preventive measures or remedial measures. If the mechanism is a bank guarantee, it must cover the period specified in the order.

If the operator does not carry out the preventive and/or remedial measures specified in an order, delays in carrying them out, or carried them out unsatisfactorily, or the operator becomes insolvent, the Ministry for the Environment and Water shall make a claim on the insurance policy or shall foreclose on the last three mechanisms listed above.

The last three securities may be released within 10 days after the works have been carried out, with the operator being entitled to release them if the competent authority has not released them within this period.

23. Offences and sanctions

Competent authorities may impose the following coercive administrative measures when there is an imminent threat of, or actual, environmental damage and may issue orders for implementation of the measures and to impose administrative penalties.

The coercive administrative measures are:

- suspension of an operator’s activity that is directly related to the occurrence of environmental damage;
- denial of access to land by owners and users; and
- imposition of prohibitions or restrictions on the use of water and/or bodies of water.

The following are the administrative sanctions and the amount of each:

- a fine or property sanction of between BLG 1,000 and 3,000 on an operator for failure to provide information by the specified deadline, or supplementary information, with double the fine for repeat offences;
- a fine or property sanction of between BGL 2,000 and 6,000 on an operator for the failure to provide information on an imminent threat of environmental damage that continues despite preventive measures having been carried out, or the occurrence of environmental damage, with double the fine for repeat offences;
- a fine or property sanction of between BGL 2,000 and 6,000 on an operator for providing false or misleading information, with double the fine for repeat offences;
- a fine or property sanction of between BGL 10,000 and 30,000 on an operator for the failure to carry out preventive measures, emergency remedial actions, or remedial measures;
- a fine or property sanction of between BGL 1,000 and 3,000 on an operator for the failure timely to submit the report that is required when there is a genuine difficulty in identifying the necessary remedial measures or further analysis is required;
- a fine of between BGL 500 and 1,500 on an expert who fails timely to submit a report concerning remedial measures that are difficult to determine or require additional analysis;
- a fine or property sanction of between BGL 5,000 and 15,000 on an operator for the failure to comply with instructions issued by a competent authority;
- a fine or property sanction of double the above amount (between BGL 10,000 and 30,000) on an operator for the failure to comply with an order requiring the implementation of preventive measures or remedial measures;
- a fine or property sanction of between BGL 10,000 and 30,000 on an operator for the failure to have the requisite financial security, including financial security required after an imminent threat of, or actual, environmental damage has occurred;
- a fine of between BGL 2,000 and 6,000 on an official for the failure to allow a competent authority access to land so as to carry out an inspection or to take measurements or samples;
- a fine of between BGL 5,000 and 15,000 on an operator that is a legal person or sole trader for the failure to allow a competent authority access to land so as to carry out an inspection or to take measurements or samples; and
- a fine of BGL 1,000 and 3,000 for the breach by an official of PREDA when that breach is not a felony, with double the fine for repeat offences.

► Directors and officers liability for breaching legislation

PREDA does not specify any particular liability for directors and officers who breach it. Nevertheless it could be considered that the definition of “an official” under the Bulgarian Criminal Code covers most directors and officers.

► Publication of penalties

PREDA does not provide for the publication of penalties.

24. Registers or data bases of incidents

Bulgaria has not created a public register or data base of ELD incidents. It has, however, created a register of Annex III operators (see also section 29 below concerning information published on the internet). Nevertheless, such information could become available under the Law for Access to Public Information.

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14 Bulgarian law provides for penalties against individuals, including officials who fail to carry out their duties.
25. Cross border damage in another Member State

When a competent authority becomes aware of an imminent threat of, or actual, environmental damage that is affecting, or is likely to affect, another Member State, it must notify the Minister of Environment and Water of the threat or damage, together with information concerning the threat or damage. The Minister must also provide requested supplementary information to the Member State. The Minister must then notify that Member State “without delay” and provide the information to it.

If an imminent threat of, or actual, environmental damage that originates in the territory of another Member State results in an imminent threat of, or actual, environmental damage in Bulgaria, the Minister shall:

- require the competent authority of that Member State to provide information related to the environmental damage and the relevant procedures of that State;
- send the competent authority of the Member State an opinion concerning the environmental damage and recommendations for preventive and remedial measures;
- order preventive and remedial measures to be carried out in Bulgaria; and
- may seek reimbursement of the costs of such measures from the Member State.

The Minister shall also report the damage to the European Commission and provide the following information to it:

- the place, territorial extent and type of environmental damage that has been caused or is likely to be caused;
- the reasons for the imminent threat of, or actual, environmental damage;
- the presumed consequences of the damage;
- recommendations for preventive or remedial measures;
- preventive or remedial measures already carried out; and
- other facts and circumstances related to the damage or actions to prevent it.

The relevant treaty applies if the imminent threat of, or actual, environmental damage involves a State that is not a Member State of the EU.

26. Financial security

Annex III operators are required to have financial security for ELD risks arising from such operations. The requirement became effective on 1 January 2011.

The following mechanisms may be used as evidence of financial security:
an insurance policy for the benefit of the Ministry of Environment and Water covering the risk of imminent threats, or actual, environmental damage of at least BGN 50,000;

- a bank guarantee;
- a mortgage on real estate or the real rights (in rem) to such real estate; and
- a lien on receivables, personal property or securities.

The operator may present evidence of an insurance policy within seven days of entering into it.

As a practical matter, the last two items are unlikely to be used by operators to provide evidence of financial security. They relate more to “security over property or other appropriate guarantees”, as stated in article 8(2) of the ELD for an operator who has caused an imminent threat of, or actual, environmental damage (see section 22 above).

27. Establishment of a fund

Bulgaria has not established a fund.

28. Reports

The Ministry for the Environment and Water submitted the report, directed by the ELD, to the European Commission, like other Member States, of the implementation of the ELD.

29. Information to be made public

PREDA directed the Minister for the Environment and Water to create and maintain a public register of Annex III operators (Annex I in PREDA). The register includes the following details:

- the name of the operator;
- the Annex III activities carried out by the operator, together with a brief description of each activity;
- the location of the site(s) where the activities are carried out, if applicable;
- the postal address, including telephone, fax and email;
- the name of a contact person;
- the Regional Inspectorate for the Environment and Water in the territory where the activities are carried out; and
- the river basin water management directorate for the district in which the activities are carried out.

PREDA directed the local and regional executive bodies that issue licences, permits, authorisations and certificates for Annex III activities to provide the above information to
the Minister for the Environment and Water within 60 days of the administrative Act entering into force.

PREDA further requires operators who carry on an Annex III activity, with the exception of those on which the local or regional executive body had provided the above information, to provide the above information to the Minister for the Environment and Water within 30 days of commencing the activity.

An order issued by the Minister for the Environment and Water to carry out preventive measures when the operator whose activities caused the imminent threat has not been identified is published on the Ministry’s website.

A draft order that requires an operator to carry out remedial measures shall be published on the authority’s website, including an invitation to the public to provide recommendations and opinions on it. The competent authority shall also post the draft order in a prominent place in its administrative building. Further, the mayor of the municipality in whose territory the environmental damage has occurred, shall post the draft on the municipality’s website.

The order that requires an operator to carry out remedial measures shall be published on the authority’s website.

The order setting out a competent authority’s decision that there is, or is not, environmental damage following the comments / observations of an interested party are published on the authority’s website.

30. Provisions concerning genetically modified organisms

PREDA does not mention genetically modified organisms other than in respect of Annex III activities.

31. Key features and differences in legislation transposing the ELD and existing legislation

The ELD regime differs substantially from environmental liability legislation that existed in Bulgaria when the ELD was transposed. The provisions that impose liability for preventing and remediating environmental damage in the existing legislation are limited in scope. In particular, there is no regime in national law dedicated to the remediation of contaminated land or water pollution and only very limited provisions that require the restoration of fauna and flora, with requirements to restore limited to harm from unlawful acts.

PREDA imposes joint and several liability, modified by imposing liability for preventing or remediating an imminent threat of, or actual, environmental damage to the last operator when the threat or damage is caused by successive operators. The operator has recourse for restitution against the other operators.

Costs incurred by governmental authorities in carrying out preventive and remedial measures have priority over other claims against an operator.

Bulgaria introduced mandatory financial security under the ELD. The provisions are closely linked to the provisions providing for “security over property or other appropriate
guarantees” (ELD, art 8(2)) for the cost of preventive or remedial measures which are to be provided by an operator who has caused an imminent threat of, or actual, environmental damage.
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1. **Existing national environmental legislation**

When Cyprus transposed the ELD, it did not have dedicated liability systems to remediate contaminated land or water pollution. Neither did it have a liability system for restoring damage to protected species and natural habitats. The sanctions for causing environmental damage are mostly criminal penalties.

Cyprus transposed the ELD by enacting the Environmental Liability with regards to the prevention and remedying of environmental damage Law of 2007, Law 189(I)/2007. The Law is stand-alone legislation; it does not amend other legislation.

2. **Existing regimes for preventing and remediating environmental damage**

Cyprus did not have a liability system for preventing and remediating environmental damage before the transposition of the ELD. Instead, persons who caused environmental damage were required to carry out preventive and remedial measures under legislation that transposed the Industrial Emissions Directive (2010/75/EU), waste legislation, and nature protection legislation. The primary legislation is supplemented by secondary legislation.

The emphasis on such legislation reflects the fact that Cyprus is one of the smaller Member States and, whilst it is known historically for mining and has some petrochemical and other industrial sites, it is not an industrial country.

Another factor in national environmental legislation is the “water poor” nature of Cyprus.

- **Water pollution**

  The Water and Soil Pollution Law, No. 106(I)/2002, as amended, is the framework law for controlling water pollution in Cyprus. Among other things, the Law prohibits activities that cause or may cause pollution of surface or ground water or soil unless the activities are carried out pursuant to a permit.

  It is a criminal offence to cause water pollution without, or outside the terms and conditions of, a permit. A defence of *force majeure* applies.

  There is also a defence if a defendant demonstrates that it used due care to prevent the offence and carried out all measures to remediate the pollution without undue delay.

  Section 30 of the Water and Soil Pollution Law provides that, in addition to imposing a criminal penalty, a court may also order the cessation of activities causing pollution and order the operator to restore the environmental damage caused by its operations.

- **Land contamination**

  Cyprus does not have a specific regime to remediate contaminated land.

  The Water and Soil Pollution Law, No. 106(I)/2002, as amended, provides that it is an offence to cause soil, as well as surface and ground water, to be contaminated. The other provisions of the Water and Soil Pollution Law, as set out directly above, also apply to soil contamination.
Restoring biodiversity damage

Cyprus does not have a specific regime that imposes liability for restoring damage to protected species and natural habitats.

The Protection and Management of Wild Birds and Game Species Law, No. 152(1)/2003, which transposed the Birds Directive and partially transposed the Habitats Directive, and the Protection and Management of Nature and Wildlife Life, No. 153(1)/2003, which also transposed the Habitats Directive do not impose liability for preventing and remediating damage to fauna and flora protected under them. Instead, they are designed to prevent and cure breaches of the legislation and harm by unlawful activities, as well as imposing penalties.

Other liability systems for remediating environmental damage

The legislation indicated above is the main liability legislation for remediating, and to a lesser extent preventing, environmental damage.

Section 51 of the Civil Wrongs Law (Cap. 148), as amended, is the main provision that establishes civil (not administrative) liability for bodily injury and property damage. Section 51 provides that a person who causes harm to another person to whom that person owes a duty is liable for compensating that person for the harm. The provision imposes fault-based liability.

Section 52 of the Civil Wrongs Law establishes a presumption that, among other things, a person who owns a dangerous thing that causes harm is liable to the person who suffered the harm. In order to rebut the presumption, the defendant must show that it was not negligent.

Section 56 of the Civil Wrongs Law provides that it is a defence to an action if a third person was negligent and their negligence was the decisive cause of the harm, or the cause was an extraordinary natural occurrence that the defendant could not have anticipated and, thus, could not have avoided by the exercise of reasonable care.

Section 60 of the Civil Wrongs Law provides a defence to potential tortfeasors if they can demonstrate that their actions were performed pursuant to or under a statutory provision or law. This is not a permit defence. Arguably, however, as a permit is issued pursuant to a statutory provision, and provided that the tortfeasor’s actions do not exceed their license or constitute an abuse of said license, then they may have a defence.

Section 11 of the Civil Wrongs Act provides for joint and several liability. Section 11 further provides that a defendant has the right to seek contribution from other tortfeasors.

As a matter of court practice rather than a statute or law, when there is more than one tortfeasor, a court first seeks to apportion liability on the basis of each party’s fault. If allocation is not possible, the court allocates liability evenly between the tortfeasors.

In addition to the above liability systems, Cyprus has legislation that authorises causes of actions in trespass, public nuisance and private nuisance (see sections 44 to 50 of the Civil Wrongs Law).

Interface between the existing national liability regimes and the ELD regime

The ELD differs from the existing national liability legislation in many respects. The following are key differences:
the legislation transposing the ELD is more comprehensive than existing legislation;

there is no liability under existing legislation for complementary or compensatory remediation;

liability for restoring biodiversity that is damaged by accidental activities under existing legislation is limited;

the imposition of liability for preventive measures under existing legislation is much more limited than liability for preventive measures under the legislation transposing the ELD; and

the existing legislation does not include provisions for interested parties to submit comments / observations to a competent authority.

3. **Integration of the ELD into existing national legislation**

▸ **Transposing legislation**

Cyprus transposed the ELD by enacting:


The Minister of Agriculture has issued:

▸ Order to determine that the Relevant authority for the areas of the Publicly owned forests is the Department of Forests of the Ministry of Agriculture, Natural Resources and Environment, dated 6 June 2008, Cyprus Official Gazette No. 4282. Subsidiary Administrative Act (Statutory Instrument) 212/2008 (see below this section).

▸ **Amendments to existing national legislation**

The 2007 Law did not amend existing national legislation.

▸ **Authorisation in legislation for other governmental entities to issue rules and regulations**

The 2007 Law authorised the Ministerial Council to issue regulations:

▸ concerning any issues not regulated by the provisions of the 2007 Law that encourage the development of financial security instruments and markets; and

▸ “concerning any matter which requires or is capable of clarification and to ensure better implementation of the provisions of [the 2007] Law”.

The Ministerial Council has not issued the above regulations.

The 2007 Law also authorised the Minister of Agriculture, Natural Resources and the Environment (Minister) to issue a decree, to be published in the Government Gazette of Cyprus, to amend or replace the Annexes to the Law.

The Minister has not issued the decree.
The 2007 Law further authorised the Minister to determine property or other guarantees for the cost of preventive or remedial measures (see ELD, art 8(2)).

The Minister has not issued any such determination.

Still further, the 2007 Law provided that the Minister may designate another service(s) or organisation(s) as a competent authority depending on the nature of the environmental damage. The Law states that if the Minister does so, it shall publish the designation in the Government Gazette of Cyprus. The decree that contains the designation shall also state whether the Department of Environment is to be an additional competent authority.

The Minister of Agriculture issued one such Order, dated 6 June 2008, Cyprus Official Gazette No. 4282. Subsidiary Administrative Act (Statutory Instrument) 212/2008. The Order provides that, as provided under article 23 of the 2007 Law, the relevant authority for the areas of the publicly owned forests is the Department of Forests of the Ministry of Agriculture, Natural Resources and Environment.

► Relationship to other legislation

Article 146 of the Constitution of Cyprus applies to the right of an interested person to lodge an appeal against a decision of a competent authority (see section 20 below).

► Guidance and other documentation

Cyprus has not published guidance or other documentation on the ELD regime.

4. Effective date of national legislation

31 December 2007

5. Competent authority(ies)

The competent authority is the Department of Environment, which is part of the general administration of the Ministry of Agriculture, Natural Resources and Environment.

The Department of Forests of the Ministry of Agriculture, Natural Resources and Environment is the competent authority for the areas of the publicly owned forests.

6. Operators and other liable persons

The definition of an “operator” in the 2007 Law is a copy out of article 2(6) of the ELD. The definition does not specify whether it includes "any natural or legal, private or public person ... to whom decisive economic power over the technical functioning of [an occupational activity] has been delegated, including the holder of a permit or

15 When the ELD was transposed, the competent authority was the Environment Service of the Ministry of Agriculture, Natural Resources and the Environment. In 2010, the Environment Service was upgraded to a Department. The Department of Environment consists of the following four sectors: International / European issues and Sustainable Development; Nature Protection and Management; Waste Management and Pollution Control; and Climate Action.
authorisation for such an activity or the person registering or notifying such an activity”. Instead, the definition includes the term “where this is provided for in Law”, without clarifying whether the law of Cyprus provides for the extension to the definition.

The national law appears to include the extended definition.

- **Secondary liability (e.g., parent company)**
  The 2007 Law does not mention secondary liability.

- **Death or dissolution of responsible operator**
  The 2007 Law does not mention the death or dissolution of a responsible operator.

- **Person other than an operator who may be liable**
  The 2007 Law provides that “the competent authority may empower or require third parties to carry out the necessary preventive or remedial measures”. This provision is, however, a copy out of article 11(3) of the ELD and, although it is not entirely clear, it does not appear to extend liability for preventing and Remedying environmental damage to any person other than an operator.

### 7. **Annex III legislation**

- **Rebuttable presumption that operator’s activity caused environmental damage**
  The 2007 Law does not establish a rebuttable presumption that an operator’s activity caused environmental damage.

- **Additional occupational activities subject to strict liability**
  The 2007 Law does not extend strict liability to any activities that are not carried out under legislation set out in Annex III of the ELD.

- **Spreading of sewage sludge for agricultural purposes**
  The spreading of sewage sludge for agricultural purposes is exempted from Annex III activities.

### 8. **Standard of liability for non-Annex III activities**

The standard of liability for non-Annex III activities is fault-based, that is, the operator must have “been at fault or negligent” for liability under the ELD regime to apply.

### 9. **Exceptions**

- **Application to imminent threat of environmental damage as well as environmental damage**
  The exceptions in the 2007 Law apply to an imminent threat of, and actual, environmental damage.

- **Differences with exceptions in the ELD**
  The exceptions in the 2007 Law are the same as those in the ELD.
Diffuse pollution exception

The diffuse pollution exception is largely a copy out of article 4(5) of the ELD.

10. Joint and several or proportionate liability

Joint and several liability applies to the ELD regime.

The 2007 Law states that "where there is multiple party causation, the costs provided for by this Law shall be allocated between the producer and user of a good".

Mechanism for contribution between liable operators

The 2007 Law does not set out a mechanism for contribution between liable operators.

11. Limitation period

The limitation period in the 2007 Law is the same as the ELD, that is, 30 years from an emission, event or incident that caused environmental damage.

12. Defences

Defences to liability or costs?

It is not clear from the 2007 Law whether the defences are defences to liability or defences to costs.

In respect of preventive actions, the 2007 Law provides that if an operator can prove that an imminent threat of environmental damage was caused by a third party despite appropriate safety measures or compliance with a compulsory order or instruction from a public authority (ELD, art 8(3)), “the operator shall contact the competent authority and present it with evidence demonstrating that it is not liable for the imminent threat of damage. Where the competent authority is satisfied that the operator is not liable for the imminent threat of damage, the operator shall be released of the obligation to pay the prevention costs, or if such costs have already been paid, the amount paid shall be returned”.

In respect of remedial actions, the 2007 Law provides that “the operator may contact the competent authority and present it with evidence demonstrating that it is not liable for the damage caused. Where the competent authority is satisfied that the operator is not liable for the damage caused, the operator shall be released of the obligation to pay the remediation costs, or if such costs have already been paid, the amount paid shall be returned”.

The 2007 Law further provides, in respect of remedial actions, that, “following a written recommendation and consultations with the competent authority, the Minister may permit an operator not to bear all or part of the cost of remedial actions ... where the operator demonstrates to the full satisfaction of the minister that he was not at fault or negligent and that the [permit defence or the state-of-the-art defence apply to the] environmental damage”.

If defences to liability; suspension (or not) of remediation notice during appeal

The 2007 Law does not mention the suspension of a remediation notice during an appeal.
Permit defence
Cyprus adopted the permit defence.

State-of-the-art defence
Cyprus adopted the state-of-the-art defence.

13. Scope of environmental damage

Percentage of national land area covered by Birds and Habitats Directives (Natura 2000)
28.37%

Extension of biodiversity to nationally protected biodiversity
Cyprus has extended liability under the ELD to nationally protected biodiversity. The 2007 Law specifies that various species and natural habitats must be within specified areas, such as protected areas, proposed environmentally important areas, and public forests, for liability for biodiversity damage under the Law to apply to them. The Law also lists various threatened endemic plants, as well as protected landscapes.

Biodiversity damage in the exclusive economic zone
Cyprus has an exclusive economic zone in which it carries out offshore oil and gas exploration activities. Liability under the ELD thus applies to species and natural habitats protected by the Birds and Natural Habitats Directives in this zone.

Water or water body
Cyprus appears to consider that water damage occurs when the status of a “water body” under the Water Framework Directive, or bathing waters are affected, not when an imminent threat of, or actual, damage occurs to “waters” under the Water Framework Directive (see (ELD, art 2(1)(b)). This is, however, not entirely clear from the 2007 Law. The 2007 Law defines the term “waters” as “all waters covered by the Protection and Management of Waters Law”. It defines the term “water damage” as “any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Protection and Management of Waters Law...”.

14. Thresholds

Water damage
The threshold for water damage in the 2007 Law is the same as the ELD.

Biodiversity damage
The threshold for damage to protected species and habitats in the 2007 Law is the same as the ELD.

National biodiversity damage
The threshold for species and habitats protected under national legislation in the 2007 Law is the same as the threshold for species and habitats protected under the Birds and Habitats Directives.
15. **Standard of remediation**

- **Land**
  The standard of remediation for land damage in the 2007 Law is the same as that in the ELD.

- **Biodiversity**
  - **Primary remediation**
    The standard of primary remediation for biodiversity damage in the 2007 Law is the same as that in the ELD.
  - **Complementary and compensatory remediation**
    The standard of complementary and compensatory remediation for biodiversity damage in the 2007 Law is the same as that in the ELD.

- **Water**
  - **Primary remediation**
    The standard of primary remediation for water damage in the 2007 Law is the same as the ELD.
  - **Complementary and compensatory remediation**
    The standard of complementary and compensatory remediation for water damage in the 2007 Law is the same as that in the ELD.

16. **Format of determination of environmental damage**

The 2007 Law does not specify a format for a determination of environmental damage.

17. **Powers and duties of competent authority**

In addition to the powers of a competent authority specified in the ELD, the 2007 Law provides that the competent authority may take a decision that:

- orders the immediate termination of any activity, operation or action;
- prohibits the repetition of any such action, operation or activity; or
- orders the operator or third party to take any other measures that are necessary to prevent, eliminate or minimise environmental damage.

In respect of installations authorised in accordance with article 8 of the Control of Atmospheric Pollution Law, the authority to take the above decision is the authority that authorised the installation.
Any decisions taken pursuant to the above powers are to be published in the Government Gazette of Cyprus, two newspapers with wide-ranging circulation in Cyprus, and on the internet.

- **Inspections, investigations, studies and analyses**

  The transposing legislation does not mention the power of the competent authority to carry out inspections, investigations, studies and analyses.

- **Information orders**

  The competent authority has the power to require an operator to provide information concerning an imminent threat of environmental damage, a suspected imminent threat, and environmental damage.

- **Power or duty to require an operator to carry out preventive measures**

  The competent authority has a duty to require an operator to carry out preventive measures.

- **Power or duty to require an operator to carry out remedial actions**

  The competent authority has a duty to require an operator to carry out emergency remedial actions and remedial measures.

  The 2007 Law provides that “operators shall identify ... potential remedial measures in the case of possible environmental damage and submit them to the competent authority for its approval within 6 months from approval of this Law, unless the competent authority has [carried them out itself]”.

  The authority in respect of the duty to carry out remedial actions for installations authorised in accordance with article 8 of the Control of Atmospheric Pollution Law is, if requested by the Department of Environment, the authority that authorised the installation.

- **Power or duty of competent authority to carry out preventive measures**

  The competent authority has the power, but not the duty, to carry out preventive measures.

- **Power or duty of competent authority to carry out remedial measures**

  The competent authority has the power, but not the duty, to carry out remedial measures “as a means of last resort” if:

  - the operator fails to carry out emergency remedial actions or remedial measures;
  - the operator cannot be identified; or
  - the operator is not required to bear the cost of such measures.

- **Form of preventive order**

  An order to carry out preventive measures must “be duly reasoned and shall be promptly notified to the operator”. The competent authority must also inform the operator about the availability of judicial remedies and the deadlines for exercising those remedies.
Form of remediation order

An order to carry out remedial measures must “be duly reasoned and shall be promptly notified to the operator”. The competent authority must also inform the operator about the availability of judicial remedies and the deadlines for exercising those remedies.

Appeal against preventive or remediation order

The 2007 Law does not specify the procedure for an appeal against an order to carry out preventive or remedial measures.

Sanctions for delay in complying with preventive or remediation order

The 2007 Law does not provide any specific sanctions for a delay in complying with a decision on preventive or remedial measures.

Formal consultees on contents of preventive and remediation orders

The 2007 Law does not provide for formal consultees on the contents of preventive or remediation orders.

Recovery of implementation and enforcement costs

The definition of “costs” in the 2007 Law is largely a copy out of article 2(16) of the ELD.

Deadline for competent authority to seek recovery of costs

The deadline for the competent authority to recover the costs of preventive or remedial measures is five years from the date on which the measures were completed or the liable operator, or third party, is identified, whichever is later.

18. Duties of responsible operators

Preventive measures

An operator has a duty to carry out preventive measures if its activities have caused an imminent threat of environmental damage.

Remedial actions (emergency actions)

An operator has a duty to carry out emergency remedial actions if its activities have caused environmental damage.

Remedial measures

An operator has a duty to carry out remedial measures if its activities have caused environmental damage.

Duty to notify / provide information when imminent threat of environmental damage occurs

An operator has a duty to notify the competent authority if its activities caused an imminent threat of environmental damage and preventive measures taken by it did not dispel the threat. The notification should include information on “all relevant aspects of the situation”.

Entity to which notification should be provided

The entity to be notified of an imminent threat of, or actual, environmental damage is the Department of Environment.
19. Access to third-party land to comply with the ELD

The 2007 Law does not mention access to third party land to comply with the ELD regime.

20. Interested parties

The 2007 Law does not extend the right to submit comments / observations to the competent authority to an imminent threat of environmental damage (see ELD, art 12(5), which provides an option for Member States to extend this right beyond environmental damage to an imminent threat of environmental damage).

► Qualification criteria for “sufficient interest”

A company or association whose deed or articles of association provides that it was established for the purpose of, among other things, promoting environmental protection satisfies the criteria for “sufficient interest” and, is thus an “interested party” that is authorised to submit comments / observations to a competent authority concerning environmental damage.

► Method of notifying interested parties of planned remedial measures

The 2007 Law does not specify a method by which the competent authority notifies interested parties of planned remedial measures.

► Information to be provided to competent authority

A request for action by an interested party shall be accompanied by relevant information and data that establishes the claims made about each instance of environmental damage.

► Challenges to competent authority’s decision

The 2007 Law provides that interested parties are deemed to have interests that may be affected by any decision of the competent authority. Such persons may lodge an appeal under article 146 of the Constitution of Cyprus against the decision of the competent authority.

Article 146 of the Constitution of Cyprus provides a right to judicial review of an administrative authority’s decision or omission to the Supreme Court of Cyprus. If the appeal is from a published decision, there is a deadline of 75 days for an appeal. If the appeal is from an omission or unpublished decision, the deadline for an appeal is 75 days from the date on which the interested party became aware of the omission or decision.

► Duty on competent authority to respond to person making comments

The competent authority has a duty to respond to the person making comments whether it accedes to, or denies, the request.

► Inclusion of interested party in any proceedings by the competent authority against an operator

The 2007 Law does not provide for the inclusion of an interested party in proceedings by the competent authority against an operator.
21. **Public access to information regarding environmental damage and related measures**


22. **Charges on land / financial security after environmental damage**

The 2007 Law provides for an operator whose activities cause an imminent threat of, or actual, environmental damage to provide security over property or other appropriate guarantees, to be determined by the Minister, for the cost of preventive or remedial measures.

The Minister has not issued any determination of property or other guarantees for the cost of preventive or remedial measures (see section 3 above).

23. **Offences and sanctions**

The 2007 Law sets out administrative and criminal offences and sanctions for breaching its provisions as follows.

- **Administrative offences**

The competent authority has the power to impose an administrative fine not exceeding EUR 342,000 on any person who breaches or fails to carry out any measures to comply with the provisions of the 2007 Law or any regulations or decrees issued pursuant to it. If the offence is repeated, the competent authority may impose an administrative fine not exceeding EUR 342,000 and, in addition, an administrative fine not exceeding EUR 855 for each day that the breach continues.

Prior to issuing the decision to impose an administrative fine, as indicated above, the competent authority must notify its intention to investigate the breach and impose an administrative fine on any person affected by that decision. Further, the competent authority must indicate to those persons, their rights to submit written opinions and, if they wish, oral opinions to the competent authority. There is a deadline of seven days from receipt of the notice to exercise their right subject to a right to extend the deadline for a further seven days if the person who requests the extension shows its inability to act or another reasonable cause.

The competent authority’s decision to impose an administrative fine shall be duly reasoned and notified in writing to the person concerned.

A person on whom an administrative fine is imposed may appeal it within 21 days from the date of the decision of the competent authority to the Minister. The 2007 Law sets out the procedures for such an appeal.
Criminal offences

The following criminal offences are subject to imprisonment of up to three years or a fine of up to EUR 342,000, or both. The court that hears the case may also order the operator to bear the cost of remedying environmental damage. The offences are:

- refusal, or failure, to carry out preventive measures in the event of an imminent threat of environmental damage;
- refusal, or failure, “to comply with any remedial measures for environmental damage under [the 2007] Law or any regulations or decrees issued pursuant to [the 2007] Law; or
- refusal, or failure, to comply with any decision issued by the competent authority under the 2007 Law.

Directors and officers liability for breaching legislation

If an offence (see directly above) committed by a legal person or grouping of persons is proven to have been committed with the consent and co-operation of, or that its commission has been made easier due to the negligence of, any managing director, chairman, director, secretary or other office of a legal person of grouping of persons, both that person and the grouping of persons are also considered to be guilty of the offence. That is, a natural person specified above may be considered guilty as well as the legal person or grouping of persons.

Publication of penalties

The 2007 Law does not provide for the publication of penalties.

24. Registers or data bases of incidents

The 2007 Law does not provide for the establishment of a register or database of ELD incidents.

25. Cross border damage in another Member State

The provisions of the 2007 Law concerning cross border environmental damage track article 15 of the ELD. In addition, the 2007 Law provides that where environmental damage is identified in another Member State that results from operations carried out in Cyprus and the competent authority of that Member States acts in accordance with article 15(3) of the ELD, the operator whose activities have caused the damage is obliged to pay the costs of such measures to the competent authority in the other Member State.

26. Financial security

Cyprus has not established mandatory financial security.

The 2007 Law tracks article 14(1) of the ELD to provide that the Minister shall encourage the development of financial security instruments and markets. The 2007 Law further
states that, “for the purpose of effectively implementing [such encouragement] the Ministerial Council may issue regulations which regulate any issues not regulated by the provisions of [the 2007 Law to encourage the development of financial security instruments and markets]”.

The Government encouraged the development of financial security instruments by holding a seminar and entering into a consultation with financial security providers. The consultation indicated it would be difficult to create a market for environmental insurance to cover ELD liabilities in Cyprus, at least at the time the consultation was carried out in 2008 and 2009, due to the small size of the country, the small- to medium- size of most companies, the lack of interest in purchasing environmental insurance, the consequent high premiums, and the economic crisis.

27. Establishment of a fund

Cyprus has not established a fund for the ELD regime.

28. Reports

The 2007 Law provides for the submission of the report under section 18(1) of the ELD to the European Commission by 30 April 2013. Annex VI of the Law sets out the information to be provided in the report. Cyprus has submitted this report.

29. Information to be made public

The 2007 Law provides that any decree issued by the Minister to amend or replace the Annexes to the Law shall be published in the Government Gazette of Cyprus.

30. Provisions concerning genetically modified organisms

The 2007 Law does not include any provisions concerning genetically modified organisms other than Annex III legislation.

31. Key features and differences in legislation transposing the ELD and existing legislation

Cyprus did not have liability systems for preventing and remediating damage to water, land, or protected species or natural habitats when the ELD was transposed. The existing legislation was sparse and mainly established criminal offences for causing environmental damage.

Some of the legislative provisions transposing the ELD into national law are largely a copy out of the ELD. The transposing legislation, at 22 pages, is also brief. As a result, its implementation and enforcement depends, in considerable part, on supplementation by national law to fill the gaps in the ELD.
Cyprus imposes both administrative and criminal liability for breaching the provisions of the 2007 Law, depending on the particular offence, with specific provisions for the liability of officers and directors of companies.

Cyprus considered whether to impose mandatory financial security in 2008 / 2009 but decided against doing so at that time due, among other things, to the small size of the country, the small- to medium- size of most companies, high premiums due to a lack of interest in such insurance at that time, and the economic situation.
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1. Existing national environmental legislation

Legislation that existed in the Czech Republic before the transposition of the ELD is fragmented. It imposes liability for remediating water pollution and contaminated land and for restoring damage to protected species, natural habitats and landscapes.

The Czech Republic transposed the ELD as stand-alone legislation that supplements and amends existing legislation.

2. Existing regimes for preventing and remediating environmental damage

The current national environmental legislation in the Czech Republic was enacted after the end of communist rule in November 1989. On the separation of Czechoslovakia into the Czech Republic and the Slovak Republic on 1 January 1993, the Czech Republic adopted the post-1989 environmental legislation enacted by Czechoslovakia.

The general Act is Act No. 17/1992 Coll. on Environment (Environment Act), as amended, which imposes liability for remediating environmental harm on the person who caused the harm.

Section 10 of the Environment Act defines “environmental harm” as “the worsening of its state by pollution or other human activity in excess of the level allowed by applicable laws”. The term “pollution of environment” means “bringing the physical, chemical or biological components into the environment, as a result of human activity, that are extraneous to the given environment by their nature or quantity”.

The Act further defines “ecological harm” as any “loss or weakening of the natural functions of ecosystems caused by damage of its individual elements or by infringement or their internal bonds and processes as a result of human activity”.

The Environment Act may thus be used to impose liability for remediating damage to land, water, fauna and flora. It has, however, been used only once in 20 years due to the lack of provisions concerning the processes for imposing liability.

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17 See Ladislav Miko; Helena Rzková & Eva Kruzikova, Environmental Enforcement in the Czech Republic: The EU Pre-Accession Phase, Fifth International Conference on Environmental Compliance and Enforcement, p. 117, 118. Available at www.inece.org/5thvol2/cizkova.pdf


19 The definitions are from the chapter on the Czech Republic by Baker & McKenzie, Czech Republic, on page 87 of Baker & McKenzie, Contaminated Land 2012. The Environment Act also applies to Slovakia (see the Member State summary for Slovakia, section 2).
Water pollution

Act No. 254/2001 Coll. on Water, as amended (Water Act), together with related secondary legislation, prohibits persons from carrying out any action that causes deterioration in the quality of surface or ground water.

Section 40 of the Water Act imposes liability for remediating water pollution on a person who caused the pollution by an “accident”. Section 40(1) defines an “accident” as “an exceptional serious deterioration or exceptional serious threat to the quality of surface water or groundwater”. Section 40(2) states that such threat of, or actual, deterioration “by oil or oil-derived substances, especially dangerous substances or radiation emitting substances and radioactive waste or deterioration or threat to the quality of surface water or groundwater in protected areas of natural water accumulation or in a protected zone of water resources are always considered to be accidents”.

The person who causes an accident has a duty immediately to notify the Czech Fire Rescue Services, the fire protection units, or the Czech Police Force or, if pertinent, the river basin administrator. The person also has a duty immediately to carry out measures to eliminate the causes and consequences of the accident by following the applicable emergency plan or, if relevant, instructions of the water authority and the Environmental Inspectorate (České inspekce životního prostředí). These authorities have a duty immediately to notify the relevant water authority and the Environmental Inspectorate of the damage. If the accident occurs in a protected area of natural curative resources or mineral water resources, the Environmental Inspectorate must also inform the Ministry of Health.

Section 42 of the Water Act imposes liability for carrying out remedial measures on a person who causes the pollution of surface or ground water by the unauthorised discharge of wastewater or unauthorised operations involving harmful substances or accidents. If such a person fails to carry out the measures, the water authority or the Environmental Inspectorate may carry them out if a delay may result in danger and claim reimbursement from the polluter.

Liability for remediating water pollution is transferred to legal successors of the property.

Regional authorities may carry out measures to remediate surface and ground water, using a fund which is annually supplemented to maintain a balance of CZK 10,000,000 in each of the 14 regions in the Czech Republic, if immediate action is required due to a risk of a serious threat of, or actual, pollution to surface or ground water.

Landowners, whether or not they are liable, must allow access onto their land for remedial measures, subject to the payment of reasonable compensation to non-liable owners by the polluter.

Land contamination

Two Acts, as amended, together with secondary legislation, impose liability for remediating contaminated land. They are:

- Act No. 334/1992 Coll. on the Protection of Agricultural Land; and
- Act No. 185/2001 Coll. on Waste (Waste Act).

Each Act has a different definition of contaminated land. Liability under both is strict. As with other environmental Acts in the Czech Republic, neither contains a permit nor a state-of-the-art defence.
Act on the Protection of Agricultural Land

Under the Act on the Protection of Agricultural Land, an owner or lessee of agricultural land has a duty to use the land so as not to contaminate the soil by substances that may harm human health or the environment, or may adversely affect or damage neighbouring land and soil. An owner or lessee who is not the polluter may apply for reimbursement of the costs of remediating soil contamination from the State Environmental Fund after it has completed remedial works.

If the owner or lessee contaminates soil, it is liable for remediating it pursuant to the instructions of the competent authority. The Act does not include any provisions to allocate the costs of remedial works between the owner or lessee. If there is a lessee as well as an owner of contaminated land, the competent authority must consult with them before requiring them to carry out remedial measures. If the owner and lessee do not agree which of them will carry out the remediation, the authority may select either of them to carry it out. The owner and lessee may then allocate the costs between themselves according to general principles of civil and commercial law, and any applicable contractual provisions.

Regulation of the Ministry of Environment No. 13/1994 Coll. sets out substances that are considered to be contaminants and the concentration level at which soil that is contaminated by them must be remediated. Regulation No. 275/1998 Coll. provides details on testing soil contamination.

Waste Act

The Waste Act imposes liability on the owner of land on which waste has been illegally placed if the competent authority cannot identify the person who placed the waste on it. If the landowner proves that it did not place the waste on the land and took reasonable measures to protect the land from the disposal of waste, the authority will reimburse the landowner for the reasonable costs of removing it.

Other legislation

Other laws with provisions relating to the remediation of contamination include Act No. 157/2009 Coll. on the Management of Mining Waste, and Act 289/1995 Coll. on Forests (Act on Forests). The latter provides that a person who carries out activities that use forestry resources or may cause damage to them is liable for carrying out measures to avoid or reduce the harmful impact of the activities if they cause a risk to, or damage, the forest. The Environment Act may also be used in respect of contaminated land (see above).

Restoring biodiversity damage

Act No. 114/1992 Coll. on the Protection of Nature and the Landscape, as amended, together with secondary legislation, provides protection for flora, fauna, natural habitats, minerals, fossils and rocks. Section 86 of the Act provides that a person who damages, destroys or carries out unauthorised changes to nature or the landscape, protected by the Act, must restore them to their original condition if this is feasible.

Nature conservation authorities are responsible for determining the potential, and conditions, for such restoration. If restoration to its condition before the damage is not feasible, “the nature conservation authorities may order the liable person to carry out an adequate compensatory remedy”. The purpose of the remedy is partially to compensate for the consequences of the damaging acts.
The imposition of an obligation to carry out restoration works or to carry out a compensatory remedy does not affect a person’s liability under the Act for misdemeanours, unlawful acts or criminal offences.

- **Other liability systems for remediating environmental damage**

A new civil code will enter into force on 1 January 2014. This section describes the provisions under the existing and the new code.

- **Civil Code in force until 1 January 2014**

Section 420a of Act No. 40/1964 Coll., as amended (Civil Code)\(^{20}\) provides that a person is strictly liable for damage caused by its activities due to:

- an activity that is operational in nature or things used in the activity;
- the physical, chemical or biological effects on the surroundings; or
- an authorised operation that caused property damage or interfered with another person’s use of their property.

The person who caused the damage may avoid liability by proving that the damage was caused by *force majeure* or that the person claiming damages participated in the activities causing the damage. In contrast to most civil legislation in the Czech Republic, which is fault-based, liability under section 420a is strict. Liability is also joint and several.\(^{21}\)

Section 420 of the Civil Code is the main civil liability provision. It imposes liability on a person:

- who breaches a legal obligation;
- that causes damage; and
- there is a causal link between the breach and the damage.

Liability under section 420 is fault-based. Liability is also subject to a reverse burden of proof. That is, the person alleged to have caused the damage must prove that it did not cause it in order to avoid liability.\(^{22}\)

Section 432 of the Civil Code provides that a person who carries out an extraordinarily dangerous activity is strictly liable for bodily injury and property damage caused by the activity. Section 420a, however, has tended to be used instead of section 432.\(^{23}\)

- **Civil Code in force from 1 January 2014**

From 1 January 2014, the above provisions will be superseded due to the entry into force of Act No. 89/2012 Coll., the new Civil Code.

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\(^{20}\) Act No. 40/1964 Coll. also applies in Slovakia; see Slovakia MS Summary, section 2.


Section 2924, which will supersede section 420a of Act No. 40/1964 Coll., provides:

“Who operates the plant or other facility used for employment, for damages resulting from service, whether it was caused by its own operational activities, objects used in the activity or influence of the surroundings. Obligations shall be relieved if evidence of having taken any care which may reasonably require in order to prevent the damage”. 24

Section 2925, which supersedes section 420 of Act No. 40/1964 Coll., and which imposes liability for harm from damage from particularly hazardous operations, provides:

“(1) Whoever operates a plant or other equipment especially dangerous, for damages caused by the source of increased danger, the operation is particularly dangerous, cannot be reasonably ruled out in advance the possibility of serious damage by the exercise of due care. Otherwise, the obligation to relieve, if he proves that the damage caused by external force majeure or her own actions caused the victim or unavoidable act of a third party; if other grounds for exemption, to disregard it.

(2) If the circumstances evident that the operation significantly increased the likelihood of damage, although may reasonably point to other possible causes, the court commits the operator to pay damages to the extent that corresponds to the probability of damage caused by the operation.

(3) It is understood that the operation is particularly dangerous if the factory operates the way or if it is in similarly explosive or hazardous substance used or dealt with it”.

For further discussion of the new Civil Code, see also section 7 below.

- Remediation of historic ecological harm

In the early 1990s, the Czech Republic began introducing several programmes to remediate land contaminated by historic pollution. Czech law on remediating contamination (discussed above) also applies to the remediation of historic contamination. That is, a polluter may be required to remediate historic, as well as current, contamination; there is no Czech legislation that specifically imposes liability for remediating historic contamination. As a general rule, the State pays the costs of remediating pre-1989 contamination.

Act No. 92/1991 Coll. on Conditions for the Transfer of Property from the State to Other Persons, as amended, authorises funding for the remediation of “historic ecological harm”. 25 The Act and the programme introduced by it, provide for the assessment and remediation of privatised historically contaminated land, related groundwater, and structures on the land. The owner of privatised land is responsible for its remediation but can apply to the State for the costs of the remedial works.

The Act specifies procedures to be followed in remediating privatised contaminated land. They include an assessment of the damage and an evaluation and approval of the assessment by the Ministry of Environment (Ministerstvo životního prostředí). The owner

24 The provisions of the new Civil Code have been translated by machine; see http://www.czechlegislation.com/en/89-2012-sb
25 See the Member State summary for Slovakia, in which Member State the Act also applies.
pays for the assessment. The owner and the Ministry then enter into an environmental liability agreement, with the State financing the remaining procedures.

The next stage is for the owner to prepare a risk assessment, which is reviewed by the Ministry of Environment and the Environmental Inspectorate. Additional statements are prepared by the Geological Survey and the Health Institute. The results of the risk assessment and an evaluation to prioritise remediation at the site are entered into a register of contaminated sites, now called the National Contaminated Sites Inventory (see http://www1.cenia.cz/www/projekt/nikm (in Czech) for details of the project implementing the inventory (Systém evidence kontaminovaných míst). The register is available at http://www.sekm.cz/ (in Czech)).

Next, the Environmental Inspectorate issues a remediation order, specifying criteria to be met by remedial measures and applicable deadlines for such measures. Further procedures include those for selection of the proposal for the remediation project by public tender, preparation and approval of the implementation project, remediation, supervision, verification of the remedial works, and an order for, and carrying out of, post-remediation monitoring. Results of the monitoring programme, together with other information, are entered annually into the register. When the remediation process is finalised, the environmental liability agreement is terminated.²⁶

If a person acquires property on which water pollution exists pursuant to the Act, that person is liable for remediating the pollution if it was aware of the pollution and entered into the contract identifying such pollution or was granted a reduction in the purchase price due to the pollution. A person who acquires polluted property in this manner is liable regardless of whether the polluter still exists.

➢ Other remediation programmes

The State Budget provides funding for the costs of remediating former Soviet Army sites in the Czech Republic, many of which were seriously contaminated.

Programmes to remediate historic contamination are also administered by the Ministry of Industry and Trade (industrial areas and landscapes damaged by coal and uranium mining), and the Ministry for Regional Development (former State enterprises).²⁷

➢ Interface between the existing national liability regimes and the ELD regime

The following are key differences between the existing national environmental liability regimes and the ELD regime:

- there is no permit or state-of-the-art defence in the existing legislation compared to such defences in the legislation transposing the ELD;
- the existing legislation does not include complementary or compensatory remediation;


²⁷ See presentations by Pavla Kačabová, Contaminated Land Management in the Czech Republic (Ministry of the Environment of the Czech Republic, Environmental Damages Department) (Common Forum meeting, 2008); and Zdeněk Suchánek, Contaminated Sites Inventory; Project in the Czech Republic – Methodology Outline ) International Conference Contaminated Sites, Bratislava, 29-31 May 2013)
the thresholds for environmental damage in existing legislation are much lower than the thresholds in the ELD regime;

liability for damage to protected species and natural habitats under existing legislation is very limited;

the imposition of liability for preventive measures under existing legislation is much more limited than liability for preventive measures under the legislation transposing the ELD;

liability for remediating contaminated land is fragmented in existing legislation;

liability is not limited to an operator of occupational activities under existing legislation; and

existing legislation under the Civil Code establishes a rebuttable presumption of liability whereas the legislation transposing the ELD does not establish such a presumption that an operator’s activity caused environmental damage.

3. Integration of the ELD into existing national legislation

Transposing legislation

The legislation that transposed the ELD into Czech law is Act No. 167/2008 Coll. of 22 April 2008 on the prevention and remedying of environmental damage and amending certain laws.

Amendments to existing national legislation

As well as establishing the ELD regime, the transposing legislation amended various Acts. The Acts and amendments to them are as follows:

Act on the Protection of Nature and the Landscape

a conservation authority shall stay proceedings initiated under section 86 of the Act on the Protection of Nature and the Landscape if proceedings have been initiated to impose remedial action in accordance with the legislation transposing the ELD;

Water Act

funds from a region’s special account may be used to defray the costs of remedial measures concerning surface water or groundwater; on request by the competent authority, the relevant region shall send such funds to the competent authority without undue delay;

the water authority or the Environmental Inspectorate shall stay proceedings initiated under sections 42, 110(1), 111(2), or 112(1)(b) of the Water Act if proceedings have been initiated to impose remedial measures concerning surface water or groundwater in accordance with the legislation transposing the ELD;

Act on the Protection of Agricultural Land
the body for the protection of agricultural land shall stay proceedings initiated under section 3(3) of the Act on the Protection of Agricultural Land if proceedings have been initiated to impose remedial measures concerning agricultural land in accordance with the legislation transposing the ELD;

- Act on Forests
  - the competent state forestry authority shall stay proceedings initiated under section 51(1) of the Forestry Act if proceedings have been initiated to impose remedial measures concerning forests in accordance with the legislation transposing the ELD; and

- Act No 164/2001 Coll. on Natural Therapeutic Resources, Natural Mineral Water Sources, Natural Therapeutic Spas and Spa Sites (Spa Act)
  - the Ministry of Environment shall stay proceedings initiated under section 39(1)(c) of the Spa Act if proceedings have been initiated to impose remedial measures concerning natural therapeutic resources or natural mineral water sources in accordance with the legislation transposing the ELD.

**Authorisation in legislation for other governmental entities to issue rules and regulations**

The transposing legislation directs the following governmental entities to issue the following legislation.

The Ministry of the Environment is directed to issue a decree to specify species protected by the transposing legislation.

The decree had not been issued when this summary was prepared (November 2013).

The Ministry of the Environment, in agreement with the Ministry of Health, is directed to issue a decree to set out:

- the methods for the preparation of the risk analysis;
- the method for assessing the appropriateness and feasibility of remedial measures, the establishment of objectives of remedial measures and the attainment of such objectives including post-remediation monitoring;
- the method for comparing alternative procedures to contain or eliminate risks; and
- the method for assessing risks to human health that result from the direct or indirect introduction in, on or under land, of organisms and micro-organisms.

The above decree, the Decree on the Detection and Remediation of Ecological Damage to Land, was issued on 5 January 2009 (see section 15 below).

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28 In addition, Act on the Czech Environmental Inspectorate and its competence in forest protection Section 4 of the Act on the Czech Environmental Inspectorate and its competence in forest protection was amended to replace the term “its activity” by the term “its act or omission”.

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The Czech Government is directed to issue a regulation setting out a methodology for risk assessment, criteria to assess adequate financial security, and more detailed conditions for implementation of procedures for financial security and the performance of preventive and remedial measures.

The above order, Government Regulation No. 295/2011 Coll., was issued on 14 September 2011. The criteria for the assessment were specified in methodological guidelines issued by the Ministry of the Environment.

- **Relationship to other legislation**

The following Acts apply to the ELD regime:

- Act No. 500/2004 Coll. on Administrative Procedure, which applies to administrative provisions in the transposing legislation;
- Act No 182/2006 Coll. on bankruptcy and the methods of handling bankruptcy (the Insolvency Act), as amended, which extends the definition of an “operator”;
- the Spa Act, which are included in the definition of “water damage” (see section 13 below);
- Act No. 62/1988 Coll. on Geological Work, as amended (Act on Geological Work), which specifies persons who may prepare an appraisal of the state of contaminated land (see section 15 below); and
- the Water Act, procedures pursuant to which may apply to measures to remediate water damage (see section 23 below).

The transposing legislation specifically provides that it does not affect specific legislation concerning the powers and competence of state authorities and bodies of local and regional government, the competence of units of the integrated emergency system, and the rights and obligations of persons in preparing for emergencies and during rescue and liquidation work. If a delay in such work would be dangerous, the units of the integrated emergency system shall co-operate with the competent authority.

- **Guidance and other documentation**

The Czech Republic has not issued guidance on the ELD regime.

4. **Effective date of national legislation**

17 August 2008

5. **Competent authority(ies)**

The competent authorities are:

- the Ministry of Environment;
- the Environmental Inspectorate;
- the Ministry of Defence, which is responsible for carrying out executive state supervision of military district authorities;
the Ministry of Health, which is responsible for carrying out executive state supervision of provincial hygiene stations in respect of evaluating risks to human health;

provincial hygiene stations, which are responsible for issuing expert opinions on the analysis of risks to human health and remedial measures in respect of land damage pursuant to a requirement from the Environmental Inspectorate, the management of a national park or a protected landscape area, or a military district authority; and

military district authorities, which are competent authorities within the competence of the Environmental Inspectorate for ELD incidents in their territories.

In addition, the following competent authorities have responsibilities as follows:

- the water authority that is competent to permit operating activities is the authority in proceedings concerning the imposition of preventive or remedial measures concerning surface or ground water;

- the municipal authority of a municipality with extended competence for conservation is the authority in proceedings concerning the imposition of preventive or remedial measures concerning protected species and natural habitats;

- the municipal authority of a municipality with extended competence for forests is the authority in proceedings concerning the imposition of preventive or remedial measures concerning forests;

- the municipal authority of a municipality with extended competence for agricultural land is the authority in proceedings concerning the imposition of preventive or remedial measures concerning such land;

- the district authority for mining is the authority in proceedings concerning the imposition of preventive or remedial measures concerning mining; and

- the regional authority is the authority in proceedings concerning the imposition of preventive or remedial measures related to the operation of equipment subject to the issuance of an integrated authorisation under the Integrated Pollution Prevention and Control Act (now Industrial Emissions Directive).

6. Operators and other liable persons

The term “operator” is defined to include “a person to whom, under the Insolvency Act, decisive economic power over the functioning of operating activities has been delegated” as well as persons who are within the definition of an operator in the ELD.

Secondary liability (e.g., parent company)

The transposing legislation does not provide for secondary liability (but see directly below concerning legal successors).
Death or dissolution of responsible operator

The transposing legislation provides that obligations under the ELD regime “shall pass to the operator’s legal successor”.

If there is more than one legal successor and it has not been determined which legal successor is responsible for carrying out an obligation, all legal successors are jointly and severally liable.

Person other than an operator who may be liable

The legal successor of a responsible operator may be liable (see this section directly above).

7. Annex III legislation

The reference to Directive 90/219/EEC on the contained use of genetically modified micro-organisms in respect of Annex III of the ELD refers only to their disposal in accordance with specific legislation.

The reference to Directive 2001/18/EC on deliberate release into the environment, transport and placing on the market of genetically modified organisms in respect of Annex III of the ELD refers only to their disposal and the disposal of genetic products in accordance with specific legislation. Both these references are narrower than those in Annex III (ELD, Annex III, 10, 11).

Rebuttable presumption that operator’s activity caused environmental damage

Unlike section 420 of the Civil Code, which reverses the burden of proof, the transposing legislation does not establish a rebuttable presumption that an operator’s activity caused environmental damage.

Additional occupational activities subject to strict liability

The transposing legislation does not include any additional occupational activities subject to strict liability (but see section 8 below).

Spreading of sewage sludge for agricultural purposes

The spreading of sewage sludge is not exempted from Annex III activities.

8. Standard of liability for non-Annex III activities

The transposing legislation does not state that fault is required for a non-Annex III activity. It states that “a causal link [is required] between the operator’s operating activities carried out in contravention of legislation and the occurrence or imminent threat of environmental damage”.

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29 Section 2912 of the new Civil Code also reverses the burden of proof. Section 2911 provides for a presumption of negligence if a person breaches legal obligations in causing harm to a person. Section 2912 provides for a presumption that a person was acting recklessly unless that person shows “special knowledge, skill or diligence,” or shows that “the activities for which the special knowledge, skill or diligence” are required do not apply.
The requirement for an activity to have been carried out in breach of legislation appears to be more stringent than a fault-based standard and could potentially limit the scope of non-Annex III activities.

9. **Exceptions**
   - **Application to imminent threat of environmental damage as well as environmental damage**
     The exceptions apply to an imminent threat of, and actual, environmental damage.
   - **Differences with exceptions in the ELD**
     The exceptions for activities to serve national defence or international security are broader than the exceptions in the ELD (ELD, art 4(6)) in that they are not limited to “activities the main purpose of which is to serve national defence or international security” but apply to all such activities. The two exceptions are thus less stringent than the exceptions in the ELD.
     The exception for activities to protect from natural disasters is not limited “to activities the sole purpose of which is to protect from natural disasters” (ELD, art 4(6)) but, instead, excludes “activities, the purpose of which is to protect the lives, health or property of persons from natural disasters”.
     The transposing legislation is thus broader than the exception in the ELD and, consequently less stringent than the ELD. At the same time, the exception is narrower than the exception in the ELD in that it limits the activities to which the exception applies.
     The transposing legislation does not include the exception for the Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.
   - **Diffuse pollution exception**
     The diffuse pollution exception appears to be the same as in the exception to the ELD.

10. **Joint and several or proportionate liability**
    The transposing legislation applies joint and several liability.
    - **Mechanism for contribution between liable operators**
      The transposing legislation does not include a mechanism for contribution between liable operators.

11. **Limitation period**
    The transposing legislation does not include the 30-year limitations period in the ELD (ELD, art 17). It is thus more stringent than the ELD.
12. Defences

► Defences to liability or costs?
The defences are defences to costs. The transposing legislation specifically states that if the mandatory defence of compliance with a compulsory order or instruction by a public authority applies, the public authority shall reimburse the costs to the operator upon proof by the operator of the application of the defence.

► If defences to liability; suspension (or not) of remediation notice during appeal
The transposing legislation specifically states that the duty to carry out preventive and remedial measures is not suspended during an appeal.

► Permit defence
The Czech Republic adopted the permit defence. The defence specifies that the operator must not have breached “any legislation or decisions issued pursuant to such legislation and the environmental damage was caused by an emission or event expressly authorised in accordance with specific legislation”. The defence probably has the same scope as the defence in the ELD, but refers to legislation or decisions issued pursuant to it whereas the defence in the ELD does not do so.

► State-of-the-art defence
The Czech Republic adopted the state-of-the-art defence.

13. Scope of environmental damage

► Percentage of national land area covered by Birds and Habitats Directives (Natura 2000)
14.03%

► Extension of biodiversity to nationally protected biodiversity
The Czech Republic extended biodiversity damage under the ELD regime to nationally protected species and natural habitats. The extension does not include landscapes, fossils and minerals protected under national legislation.

► Biodiversity damage in the exclusive economic zone
The Czech Republic is a land-locked country.

► Water or water body
The transposing legislation applies to waters, not water bodies. The legislation specifies that it applies to “groundwater or surface water, including natural therapeutic resources and natural mineral water sources”. These sources, to which the Spa Act applies, appear to be covered by the definition of “waters” in the Water Framework Directive.
14. Thresholds

► Water damage

The threshold for water damage appears to be the same as in the ELD, with the caveat that it applies to a water body and not waters under the Water Framework Directive.

► Biodiversity damage

The transposing legislation refers to the conservation status of a protected species and natural habitat “in response to a specific case within the territory of the Czech Republic or the natural range of that [protected species or natural habitat]” rather than in respect of “the European territory of the Member States to which the Treaty applies or the territory of a Member State or the natural range of that habitat” (ELD, art 2(4)(a), 2(4)(b)).

The transposing legislation appears to have a more stringent threshold than that in the ELD because damage is measured in respect of a smaller area. The threshold is thus more likely to be exceeded.

► National biodiversity damage

The threshold for national biodiversity damage is the same as the threshold for species and natural habitats protected by the Birds and Habitats Directives to which the ELD applies.

► Land damage

The scope of land damage appears to be broader than that in the ELD due to the inclusion of “land and rock, including natural therapeutic sources of mud”, whereas the term “land” is not defined in the ELD.

15. Standard of remediation

► Land

The transposing legislation and the Decree of 5 January 2009 on the Detection and Remediation of Ecological Damage to Land establish detailed provisions for remediating land damage.

The Decree includes an annex that sets out the Outline of the Final Report of the Investigation into the Ecological Damage to Land, mandatory annexes to the final report, and recommended annexes to it.

The transposing legislation and the Decree do not limit the above provisions to the protection of human health. To a lesser extent, the provisions are designed to enable the discovery of facts relating to the avoidance of damage to protected species, natural habitats and water bodies.

The procedures for land damage are as follows.

If the competent authority suspects that an Annex III activity (that is, an activity set out in Annex 1 of the transposing legislation) has caused environmental damage “to land or rocks, including natural therapeutic resources of peloid [that is, mud prepared and used for natural therapeutic purposes]”, the competent authority arranges, without undue delay, for the preparation of a risk assessment. The authority shall stay proceedings on
the imposition of remedial measures until the risk assessment, which is prepared by the
competent provincial hygiene station, is submitted.

The competent authority then requests the hygiene station to provide an opinion on the
risk analysis. The opinion assesses the risks to human health as a result of the land
damage (as defined in the ELD, that is, “the direct or indirect introduction in, on or under
land, or substances, preparations, organisms or micro-organisms” (ELD, art 2(1)(c)).

If the risk analysis and the opinion of the competent provincial hygiene station show that
there is land damage:

- the competent authority:
  - arranges for the preparation of a proposal of possible remedial
    measures and their evaluation to include a comparison of
    alternative procedures to contain or eliminate the risks, an
    estimate of the costs and time needed for individual alternatives;
    and
  - stays the proceedings on the imposition of remedial measures
    until the above evaluation is submitted.

- the operator must carry out remedial actions directed by the competent
  authority and shall minimise their adverse effects so that the land no
  longer poses a significant risk to human health.

The only persons who may prepare an appraisal of the state of contaminated land and
the above evaluations are professional competent persons, as defined by section 3 of the
Act on Geological Work.

- **Biodiversity**
  - **Primary remediation**
    
    The standard for the primary remediation of biodiversity damage is the same as in the
    ELD.
  
  - **Complementary and compensatory remediation**
    
    The standard for the complementary and compensatory remediation of biodiversity
    damage is the same as in the ELD.

- **Water**
  - **Primary remediation**
    
    The standard for the primary remediation of water damage is the same as in the ELD.
  
  - **Complementary and compensatory remediation**
    
    The standard for the complementary and compensatory remediation of water damage is
    the same as in the ELD.

### 16. Format of determination of environmental damage

The transposing legislation does not set out a specific format for a determination of
environmental damage.
17. **Powers and duties of competent authority**

- **Inspections, investigations, studies and analyses**

Personnel of the Environmental Inspectorate are authorised to enter land and structures in connection with the performance of their duties and carry out inspections, investigations, studies and analyses subject, in doing so, to proving their identity with relevant identity cards.

- **Information orders**

The Environmental Inspectorate may order an operator to provide information “on any imminent threat of environmental damage or on circumstances indicating such a threat” or any environmental damage or circumstances indicating such damage. The operator must provide such information “without undue delay”.

- **Power or duty to require an operator to carry out preventive measures**

The competent authority “may” require an operator to carry out preventive measures before commencing proceedings, and “may” issue a decision requiring the operator to carry them out.

It is not entirely clear whether the word “may” is used in the context of a power rather than a duty due to there being two time periods at which the competent authority may require the operator to carry out preventive measures. It appears to be a duty because the competent authority has a duty to arrange for necessary preventive measures to be carried out if the operator cannot be identified or fails to carry them out (see this section, “Power or duty of competent authority to carry out preventive measures” below).

The competent authority may require an operator to carry out preventive measures by imposing the obligation to do so “on the spot”.

- **Power or duty to require an operator to carry out remedial actions**

The competent authority “may” require an operator to carry out “necessary remedial measures” before commencing proceedings, and “may” issue a decision requiring the operator to carry out “remedial measures”.

It is not entirely clear whether the word “may” is used in the context of a power rather than a duty due to there being two time periods at which the competent authority may require the operator to carry out such measures.

As with preventive measures, it appears to be a duty because the competent authority has a duty to arrange for necessary remedial measures to be carried out if the operator cannot be identified or fails to carry them out (see this section, “Power or duty of competent authority to carry out remedial measures” below).

The competent authority may require an operator to carry out emergency remedial actions and remedial measures by imposing the obligation to do so “on the spot”.

- **Power or duty of competent authority to carry out preventive measures**

The competent authority has a duty to arrange for the implementation of necessary preventive measures “without undue delay” if the operator fails to carry them out “without undue delay or on time”, or the operator cannot be identified.
Power or duty of competent authority to carry out remedial measures

The competent authority has a duty to arrange for the implementation of necessary remedial measures “without undue delay” if the operator fails to carry them out “without undue delay”, or if the operator cannot be identified.

Form of preventive order

The transposing legislation does not specify a form of preventive order. It does, however, state that the competent authority:

- may order an operator to carry out preventive measures, including instructions for carrying them out, within a specified period before the commencement of proceedings; and
- may issue a decision requiring the operator to take preventive measures according to specified conditions for their implementation and a specified deadline.

Form of remediation order

The transposing legislation does not specify a form of remediation order. It does, however, state that the competent authority:

- may order an operator to carry out remedial measures, including instructions for carrying them out, within a specified period before the commencement of proceedings; and
- may issue a decision requiring the operator to take remedial measures according to specified conditions for their implementation and a specified deadline.

Appeal against preventive or remediation order

The operator may appeal a preventive or remediation order but only after it has carried out the preventive or remedial measures (see section 12 above).

Sanctions for delay in complying with preventive or remediation order

There is no specific sanction for delay in complying with a preventive or remediation order. The sanctions outlined in section 23 below apply.

Formal consultees on contents of preventive and remediation orders

The transposing legislation does not provide for formal consultees on the contents of preventive and remediation orders. It does, however, state that a risk assessment for land damage shall be prepared by the competent provincial hygiene station.

Recovery of implementation and enforcement costs

The definition of “costs” is more precise under the legislation transposing the ELD than the ELD itself in that the transposing legislation specifically refers to the costs of determining environmental damage, implementing preventive and remedial measures, and other costs of preventing orremedying environmental damage. Despite these differences, the definition in the transposing legislation appears to have the same scope as that in the ELD.

The ELD defines “costs” to include “the costs of assessing environmental damage, an imminent threat of such damage, alternatives for action as well as the administrative,
legal, and enforcement costs, the costs of data collection and other general costs, monitoring and supervision costs” (ELD, art 2(16)).

The competent authority defrays costs expended by it from the national budget. The authority must then order the operator, without undue delay, to reimburse the costs. Costs recovered by the competent authority are “the income of the national budget”.

The transposing legislation specifically provides that “[i]f an operator is bankrupt or is being wound up, the recovering body shall seek the recovery of costs as a claim in insolvency proceedings, or by procedures under the Insolvency Act or the winding up of a legal person”.

If an operator cannot be identified, is wound up or dies without a legal successor, the debt is not recoverable, or the operator proves that it is not responsible for the costs, the State defrays them. In such a case, the State defrays only the costs that are not covered by the assets of the operator or the financial security required to be taken out by the operator. The State’s defrayal of costs is also subject to the joint and several liability of other operators.

If the State defrays the costs and they relate to measures to remediate damage to surface water or groundwater, a special account may be opened pursuant to the Water Act in the relevant region. The region shall send such funds to the competent authority, at the authority’s request, without undue delay.

18. Duties of responsible operators

► Preventive measures
The operator has a duty to carry out preventive measures.

► Remedial actions (emergency actions)
The operator has a duty to carry out emergency remedial actions.

► Remedial measures
The operator has a duty to carry out remedial measures.

► Duty to notify / provide information when imminent threat of environmental damage occurs
The operator has a duty to notify the Environmental Inspectorate “of all relevant circumstances of the imminent threat of environmental damage and of the preventive measures taken” as well as such a threat that results from preventive actions having failed to dispel the imminent threat of environmental damage.

► Entity to which notification should be provided
The Environmental Inspectorate should be notified of an imminent threat of, or actual, environmental damage.
19. Access to third-party land to comply with the ELD

The authorised employees of an operator or a competent authority, together with auxiliary personnel and other responsible persons, may enter third-party land affected by environmental damage to carry out preventive or remedial measures if it is “strictly necessary” to do so. Entry may be on foot or by vehicle. Prior to entering the land, they shall provide notice to the landowner.

If “implementation of immediate and urgent preventive or remedial measures is necessary”, the above persons may enter private property on foot or by vehicle without the knowledge of the landowner. In such a case, the operator or competent authority shall inform the landowner “without undue delay” and shall provide the grounds for its actions.

When preventive and remedial actions are carried out on a third-party’s land, they must be carried out in a manner that restricts the use of the land by the landowner and persons who use the land with the landowner’s agreement or consent to a minimum.

Third-party landowners are required to allow the preventive and remedial measures to be carried out to the extent and for the period of time necessary. They are also required to grant persons carrying out the measures pedestrian and vehicular access and to allow the normal use of the land to be restricted. They are entitled to compensation for allowing the access.

20. Interested parties

► Qualification criteria for “sufficient interest”

The transposing legislation does not specify the criteria for a “sufficient interest”. It states that “natural and legal persons who are affected or are likely to be affected by environmental damage” may submit comments / observations. Although Czech law provides that an NGO that has protection of the environment as an objective has the right to submit comments / observations concerning environmental impact assessments and permits under the Integrated Pollution Prevention and Control Directive / Industrial Emissions Directive, the legislation that transposed the ELD does not provide any specific rights to environmental NGOs to submit comments / observations.

► Method of notifying interested parties of planned remedial measures

The “competent authority shall publish notice of the initiation of proceedings on the public administration portal and shall, without undue delay, notify this to the administrative body competent to take decisions on preventive or remedial measures in accordance with specific legislation”.

The transposing legislation provides examples of such legislation as the Water Act, as amended, the Act on the Protection of Nature and the Landscape, as amended, the Forest Act, and the Act on the Protection of Agricultural Land.

Information to be provided to competent authority

The request for a competent authority to take action against an operator should be “documented with relevant information and data from which it is evident that environmental damage has occurred or that there is an imminent threat of such damage”.

If the competent authority initiates proceedings pursuant to comments / observations, it may continue the proceedings despite the person who submitted the comments / observations withdrawing them if the authority has ex officio reasons for initiating the proceedings.

Challenges to competent authority’s decision

The transposing legislation does not set out the procedure by which an interested party may challenge a competent authority’s decision, act or failure to act.

Section 81 of the Administrative Act sets out the procedures for an appeal / challenge. Section 81 provides that the interested party must have been subject to administrative procedures. This requirement may be problematic in practice because an interested party may not be able to meet this criterion.

The interested party may also challenge the competent authority’s failure to act under section 80 of the Administrative Act.

Duty on competent authority to respond to person making comments

The transposing legislation does not specify that a competent authority has a duty to respond to an interested party who makes comments / observations.

Inclusion of interested party in any proceedings by the competent authority against an operator

An interested party does not have the right to participate in any proceedings by the competent authority against an operator.

21. Public access to information regarding environmental damage and related measures

The competent authority is directed to publish access or proceedings on the internet. As with other Member States, Directive (2003/4/EC) on access to environmental information also applies.

22. Charges on land / financial security after environmental damage

The transposing legislation does not provide for charges on land / financial security after environmental damage. It does, however, provide for mandatory financial security (see section 26 below).
23. Offences and sanctions

The sanction for the following administrative offences is a fine of up to CZK 1,000,000:

- failure to inform the competent authority of all relevant circumstances of an imminent threat of environmental damage which the person should, or was in a position to, know concerning an imminent threat of environmental damage and preventive measures;
- failure to inform the competent authority of all relevant circumstances of environmental damage or circumstances indicating the occurrence of them which the person should, or was in a position to, know, and remedial measures; and
- carrying out activities not listed in Annex I to the transposing legislation (Annex III of the ELD) without financial security required by the transposing legislation.

The sanction for the following administrative offences is a fine of up to CZK 5,000,000:

- failure to take preventive measures required by the competent authority;
- failure to take all feasible emergency remedial actions; and
- failure to take all feasible remedial measures required by the competent authority.

An operator has a defence to imposition of the above administrative offences “if he proves that he made all efforts that could reasonably be expected of him to prevent the breach of the legal obligation”.

Factors to be taken into account in levying a fine on an operator are the seriousness of the administrative offence, in particular the manner in which it was committed, its consequences, and the circumstances under which it occurred.

There is a limitations period of two years from the date on which the administrative body is aware of the administrative offence for it to bring proceedings, with a long stop of five years from the date on which the offence occurred.

Administrative offences are heard in the first instance as follows:

- the territory of a national park by the management of the national park;
- the territory of a protected landscape area by the management of the protected landscape;
- the territory of a military district by the military district authority; and
- the Environmental Inspectorate in all other cases.

Fines are recovered by the authority that levied them and enforced by the Customs Office. Proceeds from fines are paid into the State Environmental Fund of the Czech Republic.

In imposing preventive or remedial measures, an administrative authority may seek an opinion from the competent authority on whether the case is an imminent threat of, or actual, environmental damage. If the administrative authority states that a case is
urgent, the competent authority shall deliver its opinion within one day of receipt of the request.

If the cause of environmental damage is an accident covered by the Water Act, the procedure concerning the disposal and remediying of its harmful consequences is the procedure under sections 40 and 41 of the Water Act. Procedures under the transposing legislation apply to remedial measures to remedy the consequences of the damage.

In imposing preventive or remedial measures for Natura 2000 areas, the competent authority shall take account of rescue programmes for the particular species in accordance with Section 52 of the Act on the Protection of Nature and the Landscape.

 Directors and officers liability for breaching legislation
The transposing legislation does not specifically impose liability on directors and officers for its breach.

 Publication of penalties
The transposing legislation does not provide for the publication of penalties.

24. Registers or data bases of incidents

The Ministry of Environment maintains summary records of ELD incidents, including the way in which they were handled. The Environmental Inspectorate records cases of environmental damage as well as maintaining overviews of information concerning ELD incidents and preventive and remedial measures related to them.

25. Cross border damage in another Member State

If environmental damage affects or is likely to affect another Member State, the competent authority shall inform the Ministry of the Environment without undue delay.

The Ministry, in co-operation with the competent authority shall:

- provide necessary information to the competent authorities of the potentially affected Member States to enable them to adopt preventive or remedial measures to eliminate, avert or minimise the environmental damage; and
- co-operate with the competent authorities of other Member States in carrying out preventive and remedial measures, and shall take account of their recommendations.

If an imminent threat of, or actual, environmental damage that originates in the territory of another Member State affects or could affect the Czech Republic, the public authority that receives the information shall disclose it to the Ministry without undue delay.

If environmental damage is identified in the Czech Republic that originated in another Member State, the Ministry shall report the damage to the European Commission and all other Member States affected by the damage or preventive or remedial measures connected with it, and make recommendations for the adoption of preventive or remedial measures to the Member States in which the damage originated. The Ministry
shall also identify costs incurred by the Czech Republic for preventing or remediating the damage, and seek recovery of those costs.

26. Financial security

The Czech Republic introduced a mandatory financial security regime that came into effect on 1 January 2013. The regime applies to Annex III operators (that is, operators that carry out activities listed in Annex I of the transposing legislation). The details of the regime, including risk assessments and reports, are set out in Government Regulation No. 295/2011 Coll.

Annex III operators must carry out a basic risk assessment which focuses on an indicative assessment of the vulnerability of the activities carried out by them to the environment. If the total number of points exceeds 50, the operator must carry out a detailed risk assessment that focuses on developing detailed scenarios of environmental damage and its consequences. The calculation of the costs of preventive and remedial measures is based on that detailed risk assessment.

Annex III activities may not be carried out in the absence of such financial security. The sanction for doing so is a fine of up to CZK 1,000,000.

There are exceptions to the above requirement if an operator proves, by carrying out a risk assessment, that:

- the cost of remediating any environmental damage caused by its activities would not exceed CZK 20,000,000; or
- even though the cost of remediating environmental damage would exceed CZK 20,000,000, the operator
  - has an EMAS certificate (EU Eco-management and audit scheme) or can show that it has commenced the registration process for EMAS; or
  - has a certified environmental management system recognised under the standards of CSN EN ISO 14000 (UNE-EN 14000), or can show that it has commenced the process to obtain such certification.

There is a further exception for an operator who discharges wastewater that does not contain “hazardous defective substances or particularly hazardous defective substances”.

If significant changes are made to its activities, the assessment must update the assessment to take the activities into account in determining the new scope, including whether an exemption still applies.

Neither the transposing legislation nor the Regulation specifies the precise types of financial security mechanisms that may be used. The Regulation refers to “insurance products and “banking products”.

The provisions for mandatory financial security under the ELD are not the only such provisions under Czech law. Act No. 353/1999 Coll. on the Prevention of Major Accidents, as amended, also requires operators of facilities subject to the Act to have evidence of financial security for damage to the environment and third-party bodily injury and property damage claims.
27. Establishment of a fund

The Czech Republic has not established a fund.

28. Reports

The Ministry of Environment submitted the report, directed by the ELD, to the European Commission, like other Member States, of the implementation of the ELD.

29. Information to be made public

The transposing legislation does not specify any information to be made public.

30. Provisions concerning genetically modified organisms

The provisions concerning genetically modified organisms in Annex I to the transposing legislation (equivalent to Annex III of the ELD) appear to be more limited than those in the ELD (see section 7 above).

31. Key features and differences in legislation transposing the ELD and existing legislation

The ELD regime differs substantially from environmental liability legislation that existed in the Czech Republic when the ELD was transposed. That national legislation is fragmented and limited in scope.

The Environment Act imposes liability for "environmental harm", which is defined as "the worsening of its state by pollution or other human activity in excess of the level allowed by applicable laws". The Environment Act may, thus, be used to impose liability for all types of environmental media plus damage to fauna and flora, although the Act is rarely used in practice. Specific legislation imposes liability for remediating water pollution, contaminated land, and damage to protected species, natural habitats and landscapes. The water pollution legislation imposes liability for remediating surface and ground water pollution caused by a (serious) accident and (less serious) unauthorised discharges. It also establishes funding to facilitate regional authorities in responding to a risk of a serious threat of, or actual, pollution to surface or ground water. Several Acts may be used to impose liability for the remediation of contaminated land, with the two main Acts pertaining to agricultural land and waste on land. The polluter is liable under both Acts. The owner and lessee of agricultural land are liable for its remediation, with the competent authority being able to select which of them should be required to remediate it if an agreement concerning allocation is not reached. The owner of land on which waste is unlawfully disposed is liable for removing the waste if the polluter is not identified. Existing legislation imposing liability for restoring damage to protected species, natural habitats, and landscapes is minimal.

The Czech Republic does not have a regime that imposes liability for remediating historic contamination although it provide funding to remEDIATE pre-1989 contamination caused
during communist rule, particularly for land that is privatised. The legislation transposing
the ELD helps fill the gap in liability by the inclusion of detailed provisions for
remediating contaminated land. They cover, not only damage to land / soil, but also
damage to therapeutic resources of mud (peloid), natural minerals and mineral water.
Unlike existing legislation, only the operator and its legal successors are liable; not the
owner or lessee of land on which damage occurs.

The transposing legislation does not include provisions relating to the ability of
environmental NGOs to provide comments / observations in the event of environmental
damage. It refers, instead, to persons that are, or may be, affected by such damage.

The Czech Republic introduced mandatory financial security under the ELD. The
transposing legislation also includes other provisions relating to costs, including a more
detailed definition of “costs” than the definition in the ELD, and provisions concerning
procedures for the recovery of costs in insolvency proceedings if the operator becomes
insolvent or is wound up.
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1. Existing national environmental legislation

When Estonia transposed the ELD, it had – and still has – a fragmented liability system for environmental damage. The existing legislation was – and still is – mostly fault-based and media-specific. As a general rule, the existing legislation imposes liability for the payment of compensation rather than requirements to prevent or remediate environmental damage.

Environmental law in Estonia will change as the Environmental Code enters into force. The General Part of the Code was adopted in February 2011 and is anticipated to enter into force around 1 July 2014. The Special Part of the Code, which consists of laws such as the Nature Protection Act and Ambient Air Protection Act, is still in preparation. There were initial plans to harmonise the ELD regime and the existing environmental liability legislation, but these appear to have been abandoned.

The Estonian Government transposed the ELD as stand-alone legislation to supplement existing legislation rather than amending that legislation. Supplementation is reinforced by provisions in the new legislation that are designed to enable its co-ordination with existing legislation.

2. Existing regimes for preventing and remediating environmental damage

The main laws for preventing and remediating environmental damage in Estonia prior to transposition of the ELD were the Water Act 1994, the Earth’s Crust Act 2004, the Waste Act 2004, the Forest Act 2006, and the Nature Conservation Act 2004. Liability under these laws is fault-based. Further, none of the laws establishes a liability regime for the prevention and remediation of environmental damage. Whilst they include some requirements to prevent or remediate environmental damage, their main focus in respect of such damage is liability for monetary compensation for the damage. Other Acts that impose liability for the payment of compensation for damage to the environment are the Fishing Act 1995 and the Hunting Act 2002.30

The threshold of damage under each Act is lower than the ELD, with the threshold differing between the various Acts.

All the Acts have been amended many times. Secondary legislation has been enacted relating to them.

None of the legislation imposes liability for remediating contamination from historic pollution. Severe and widespread contamination occurred in Estonia between 1939 and Estonia’s declaration of independence from the Union of Soviet Socialist Republics in 1991 and the departure of Soviet troops in 1994. In addition to toxic chemicals, the contamination includes nuclear contaminants from the testing of nuclear power. The historic contamination is being remediated by funding, not liability, mechanisms.

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Water pollution

The Water Act imposes fault-based liability on a person who damages a surface water body or a body of groundwater. The Act also includes obligations to prevent and minimise such damage. The remedy for causing damage is the payment of compensation for the damage and its remediation.

Land contamination

The Waste Act imposes fault-based liability on a person who unlawfully disposes of waste on land. If the person who disposed of the waste is not identified within one year after proceedings concerning the disposal have been initiated, the owner of the land on which the waste is disposed is strictly liable for its removal. The Act also includes obligations to prevent and minimise damage from waste, especially hazardous waste. The remedy is the payment of compensation for the damage.

The Earth's Crust Act imposes fault-based liability on a person who damages soil, mineral reserves and resources, and forests by activities associated with the extraction of minerals. The Act also includes obligations to prevent and minimise such damage. The remedy is the payment of compensation for the damage.

The Forest Act imposes fault-based liability on a person who damages soil or forest resources. The Act also includes obligations to prevent damage to soil and forest resources from recreational use. The remedy is the payment of compensation for the damage.

Restoring biodiversity damage

The Nature Conservation Act provides for compensation for damage to species, natural habitats, minerals and fossils protected under the Act. The Act authorises third parties to bring claims for personal injury, property damage and economic loss. Governmental authorities may also bring claims for monetary compensation. The liability provisions are focused on unlawful damage.

Other liability systems for remediating environmental damage

Other liability systems for preventing and remediating environmental damage in Estonia include the Law of Obligations Act which, among other things, imposes civil liability for environmental damage.

Law of Obligations Act

Section 133 of the Law of Obligations Act imposes liability for compensation for damage caused by environmentally hazardous activities. The person causing the damage is liable for compensation for bodily injury and property damage caused by the activity. The person causing the damage is also liable for compensation for any deterioration in environmental quality, measures to prevent an increase in the damage, reasonable measures to mitigate consequences of the damage, and any damage resulting from such measures.

Section 1056 of the Law of Obligations Act imposes strict liability on the operator of a major source of danger or an extremely dangerous activity for bodily injury or property damage resulting from the major source or activity. A major source of danger is a thing or activity which, due to its nature or substances used in connection with it, may result in major or frequent damage even when it is handled or carried out with due diligence by
a specialist. If liability for causing damage by a source of danger is prescribed by law, any similar thing or activity is also deemed to be a major source of danger.

Section 1058 of the Law of Obligations Act imposes strict liability on the owner of a dangerous structure or thing who causes damage, including damage from hazardous substances. Section 1058 provides a rebuttable presumption that the operator is liable for damage caused by the structure or thing. The operator may rebut the presumption by, among other things, proving that the damage resulted from normal operations and the operator carried out the activity in compliance with all requirements pertaining to it. Other means of rebutting the presumption include the damage having been caused by *force majeure* and the victim having participated in the operation of the dangerous structure or thing.

- Environmental Charges Act

In order to set the references to pollution charges in section 15 below in context, the following is a brief description of the Environmental Charges Act and its predecessor, the Pollution Charges Act.

The Pollution Charges Act came into effect in 1991. It introduced charges on businesses for the release of specified pollutants into surface water bodies, groundwater, soil, the air or through the disposal of waste. The charges were regularly increased so as to persuade businesses to invest in equipment to reduce pollutants released by them and, consequently, the amount of the charge. Money levied from pollution charges was payable to the State and used for projects to protect the environment. The Act, and amendments to it, provided that the payment of pollution charges did not bar an obligation to pay compensation for direct damage to third parties resulting from polluting activities.

On 1 January 2006, the Environmental Charges Act superseded the Pollution Charges Act. The Environmental Charges Act, together with secondary legislation, imposes charges for the emission of pollutants into the ambient air, surface water bodies, groundwater and soil, and the disposal of waste into landfills or the environment. Its scope was increased from that under the Pollution Charges Act to include charges for the use of natural resources; such charges having formerly been governed by Acts such as the Water Act and the Hunting Act.

The current version of the Environmental Charges Act establishes charge rates for pollution and natural resources until 2015. A business may apply for the substitution of the obligation to pay the pollution charge if it finances environmental protection measures, as specified in the legislation. If the pollution or use of natural resources is unlawful, the rate of the charge is substantially higher.

Money from the charges is paid to the State and to local governments in the areas in which polluting and natural resource activities are carried out. The money is used to maintain the environment, restore natural resources, and remedy environmental damage. Money from the use of renewable natural resources such as fisheries, forests, and game is used to restock and protect such resources.

The Environmental Charges Act, as amended, does not include the provision that payment of pollution charges does not bar an obligation to pay compensation for direct damage to third parties resulting from polluting activities. However, due to the Act relating only to damage to the environment and not third parties, the obligation to pay compensation for direct damage to third parties from polluting activities remains even if...
the polluter has paid the charges. In this respect, provisions of the Law of Obligations Act apply to such claims.

► **Interface between the existing national liability regimes and the ELD regime**

The ELD differs from the existing national liability regimes in many respects. The following are key differences:

- the threshold for damage under the legislation transposing the ELD is higher than thresholds under existing legislation;
- there is no liability under existing legislation for complementary or compensatory remediation;
- the existing legislation is focused on the imposition of liability for paying compensation for environmental damage rather than liability for preventing or remediating damage;
- the few instances of liability for remediating environmental damage in the existing legislation are limited to pollution or contamination rather than other types of environmental damage;
- liability for restoring biodiversity that is damaged by accidental activities under existing legislation is limited;
- the imposition of liability for preventive measures under existing legislation is much more limited than liability for preventive measures under the legislation transposing the ELD;
- liability under existing legislation tends to be fault-based, with only a few instances of strict liability;
- the existing legislation does not include provisions for interested parties to submit comments / observations to a competent authority;
- the limitation period for claims under the existing legislation is the same as the limitation period for civil claims, that is, 10 years, as opposed to 30 years for application of the legislation that transposed the ELD from the emission, event or incident that resulted in the damage;
- existing legislation includes a partial permit defence in respect of third-party claims for bodily injury, property damage and economic loss; and
- there is no specific state-of-the-art defence under existing legislation.

### 3. Integration of the ELD into existing national legislation

► **Transposing legislation**

The legislation that transposed the ELD is the Act on Environmental Liability, proclaimed on 28 November 2007 with Resolution No. 203 of the President of the Republic of Estonia.

► **Amendments to existing national legislation**

The transposing legislation includes amendments to the following Acts:

- Nature Conservation Act;
Integrated Pollution Prevention and Control Act;
Ambient Air Protection Act; and
Water Act.

The amendments are, however, supplementary to the ELD; they were not necessary to transpose it.

Authorisation in legislation for other governmental entities to issue rules and regulations

The transposing legislation authorised the Minister of the Environment to issue regulations to establish:

- a supplementary list of habitats and species subject to the ELD regime
  - the Minister issued Regulation No. 38, entitled “A complementary list of habitats and species deemed to be habitats and species for the purposes of the Environmental Liability Act”, to establish the supplementary list of habitats and species to which the legislation transposing the ELD applies, on 11 August 2008

- the procedure for submitting, using, increasing, replacing or releasing financial security for payments in instalments to the competent authority
  - the Minister issued Regulation No. 33, entitled “Procedure for submitting, using, increasing, replacing or releasing a financial security”, on 17 July 2008 (see section 22 below)

The transposing legislation also authorised the Ministry of the Environment to issue:

- procedures for the publication of ELD incidents, including the threat of, as well as actual, environmental damage and the implementation of preventive and remedial measures on its website
  - the Minister issued Regulation No. 32, entitled “List of data concerning environmental damage and threat to damage”, on 11 July 2008

Regulation No. 32 sets out a list of information to be submitted to the Environmental Board by the operator who caused the damage; it does not specify how the data should be published on the Ministry of the Environment’s website. Legislation on such procedures is unnecessary, however, because the Public Information Act contains general provisions concerning how the information about the threat of environmental damage should be published. The General Part of the Environmental Code, which is not yet in force (see section 1 above), also includes relevant provisions.

Relationship to other legislation

Several existing Acts apply to, and supplement, the ELD regime as follows:

- the Administrative Procedures Act applies to administrative provisions in the transposing legislation;
- the Substitutive Enforcement and Penalty Payment Act applies to preventive and remedial measures carried out by a competent...
authority, taking into account provisions of the legislation transposing the ELD;

- the Code of Enforcement Procedure applies to a notice for payment issued by a competent authority to a responsible operator;
- the Law of Obligations Act and the Law of Property Act apply to financial security provisions for payments by instalments to the competent authority; and
- the Penal Code and the Code of Misdemeanour Procedure apply to offences and sanctions for breaching the transposing legislation.

**Guidance and other documentation**

Estonia has not published guidance or other documentation on the ELD regime.

### 4. Effective date of national legislation

**16 December 2007**

### 5. Competent authority(ies)

When the ELD was transposed, County Environmental Departments were designated as competent authorities. The Environmental Board, which was established on 1 February 2009, subsequently became the competent authority.

The Environmental Board was formed from the former Ministry of Environment (Environmental Services Department), the State Nature Conservation Centre, and the Radiation Protection Centre. The Board has six regions: Harju-Järva-Rapla, Hiiu-Lääne-Saare, Jõgeva-Tartu, Põlva-Valga-Võru, Pärnu-Viljandi, and Viru.

The Environmental Inspectorate (Keskkonnainspektsioon) of the Ministry of Environment is also a competent authority. The Inspectorate may, among other things, conduct extra-judicial proceedings for breaches of the transposing legislation.

The Health Protection Inspectorate also has a role in the ELD regime in that, if an imminent threat of, or actual, environmental damage affects human health, the person that causes the damage must notify the Inspectorate as well as the Environmental Board.

### 6. Operators and other liable persons

The transposing legislation does not refer to an “operator”. Instead, the legislation provides that “[t]he person causing environmental damage ... is an individual, due to whose activity or inactivity environmental damage or a threat thereof arises”.

This definition is much broader than the definition of an operator under the ELD (see ELD, art 2(6)). It includes any natural or legal, private or governmental, person that causes environmental damage. Its effect, however, is the same as the ELD because the Estonian transposing legislation does not extend strict liability beyond Annex III operators.
Further, there is no need for the activity that caused the damage to be an “occupational activity” under the ELD (see ELD, art 2(7)). The activity may, therefore, be a purely private or recreational activity.

- **Secondary liability (e.g., parent company)**
  The transposing legislation does not establish secondary liability.

- **Death or dissolution of responsible operator**
  The transposing legislation does not include provisions concerning the death or dissolution of a responsible operator.

- **Person other than an operator who may be liable**
  The transposing legislation does not impose liability on any person other than a person who causes environmental damage. As indicated above, the definition of such a person is much broader than the definition of an operator in the ELD.

7. **Annex III legislation**

- **Rebuttable presumption that operator’s activity caused environmental damage**
  Section 6(2) of the Act on Environmental Liability sets out a rebuttable presumption that activities carried out by an Annex III operator caused environmental damage under the ELD regime. That is, a causal connection between an act or omission and environmental damage is assumed to have arisen when “it is probable that the damage has arisen during [an ELD Annex III] activity”.

  In evaluating “the likelihood of a causal relationship” between the damage and an Annex III activity, the following are to be taken into account:
  - “the course of the activity,
  - the spaces, structures and devices used,
  - the essence and concentration of the substances and organisms linked to the damage,
  - the weather conditions, the date, site and circumstances of the occurrence of the damage and
  - the general features of the damage”.

- **Additional occupational activities subject to strict liability**
  The transposing legislation does not extend strict liability beyond activities specified in Annex III of the ELD.

- **Spreading of sewage sludge for agricultural purposes**
  The transposing legislation does not exempt the spreading of sewage sludge for agricultural purposes from Annex III activities.

8. **Standard of liability for non-Annex III activities**

The standard of liability for non-Annex III activities is fault-based.
9. **Exceptions**

► Application to imminent threat of environmental damage as well as environmental damage

The exceptions apply to a threat of, and actual, environmental damage. The transposing legislation does not include the term “imminent”, raising the potential that it is more stringent than the ELD.

► Differences with exceptions in the ELD

The exception for an activity, “the main purpose of which is to serve national defence” (ELD, art 4(6)) is termed “national defence in the territory and to the extent permitted”. The extent of this exception appears to be the same as the ELD despite the lack of reference to “main purpose”.

► Diffuse pollution exception

The transposing legislation provides that it “shall be applied to environmental damage or the threat thereof caused by diffuse pollution if it is possible to establish a causal relationship between the environmental damage or threat thereof and the action or inaction of an individual or individuals”. This provision may be more stringent than article 4(5) of the ELD and may establish a rebuttable presumption of causality in respect of Annex III activities, that is, a presumption that an operator’s activities caused the damage, which is rebuttable by the operator proving that this is not the case (see also section 7 above concerning the rebuttable presumption that an Annex III operator’s activities caused environmental damage).

10. **Joint and several or proportionate liability**

The transposing legislation does not state whether liability is joint and several or whether it is proportionate. Instead, national law applies.

It is not clear, however, whether proportionate liability or joint and several liability apply because the applicable law, which is the Law of Obligations Act, provides for both types of liability.

► Mechanism for contribution between liable operators

The transposing legislation does not provide a mechanism for contribution between liable operators.

11. **Limitation period**

The limitation period under the transposing legislation is 30 years. That is, the ELD regime applies to “environmental damage or the threat [of such damage] if the event, action or inaction causing said environmental damage or threat thereof occurred no more than 30 years ago”.

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The transposing legislation further provides that it “shall not be applied to environmental damage which has been caused by an event, action or inaction occurring after [the Act entered into force] if this is due to an event which has occurred and ended before [its] entry into force”.

The transposing legislation may thus be more stringent than the ELD in that:

- it refers to an “event, action or inaction” whereas the ELD refers to “an emission, event or incident” (ELD, art 17); and
- it refers to “an event, action or inaction ... due to an event which has occurred and ended before [the transposing legislation entered into force]” whereas the ELD refers to a “specific activity that took place and finished [before the ELD entered into force]” (ELD, art 17).

12. Defences

The transposing legislation initially included a defence for “self-defence or emergency situations”. This defence, which is not in the ELD, applied to the duty to bear the costs of remedial measures; it did not apply to preventive measures. Estonia subsequently revised the transposing legislation to bring it into conformity with the ELD.

- Defences to liability or costs?

The defences are defences to costs. That is, the person who causes environmental damage must prevent or remediate it. The person may then claim reimbursement of such costs if it is not obliged to bear them according to the transposing legislation.

- If defences to liability; suspension (or not) of remediation notice during appeal

Not applicable because the defences are defences to costs (see directly above).

- Permit defence

Estonia has adopted the permit defence with the exception of its application to the deliberate release or marketing of genetically-modified organisms.

- State-of-the-art defence

Estonia has adopted the state-of-the-art defence with the exception of its application to the deliberate release or marketing of genetically-modified organisms.

13. Scope of environmental damage

- Percentage of national land area covered by Birds and Habitats Directives (Natura 2000)

17.82%

- Extension of biodiversity to nationally protected biodiversity

The transposing legislation extends biodiversity damage to species and habitats protected under national legislation. The national legislation is the Nature Protection Act, which includes nationally protected fossils and minerals as well as nationally protected species and natural habitats. The ELD regime does not apply to fossils and minerals protected under the Act.
The transposing legislation refers to “a supplementary list of habitats and species ... specified by a regulation of the Minister of the Environment”. The regulation, Regulation No. 38 of the Ministry of the Environment is entitled “A complementary list of habitats and species deemed to be habitats and species for the purposes of the Environmental Liability Act”. The Regulation lists 59 habitats and 36 species under the ELD in addition to species and habitats protected under national legislation.

**Biodiversity damage in the exclusive economic zone**

Biodiversity damage extends to Estonia’s exclusive economic zone.

**Water or water body**

The transposing legislation applies to a body of surface water, coastal water or groundwater, rather than the broader term, “waters”, under the Water Framework Directive. The surface water bodies to which the transposing legislation refers are listed in the environmental register.

The environmental register is available on the website of the Environment Agency, which is governed by the Ministry of the Environment; see [http://register.keskkonnainfo.ee/](http://register.keskkonnainfo.ee/) (in Estonian) The list of water bodies (veekogud) is available at [http://register.keskkonnainfo.ee/envreg/main#HTTPP9icXBhmhhEDGgVYifa7Gw7goyufFz](http://register.keskkonnainfo.ee/envreg/main#HTTPP9icXBhmhhEDGgVYifa7Gw7goyufFz) (in Estonian)

### 14. Thresholds

**Water damage**

The threshold for water damage is a change in the ecological or chemical status or the ecological potential of a body of surface water or coastal waters or a change in the chemical or quantitative status of a body of groundwater. The status class of the body or surface water or groundwater must be sufficiently aggravated so that the status is changed.

The transposing legislation provides that the threshold for water damage is considered to have been met if:

“the good ecological status of a body of surface water or of coastal waters, or, where relevant, the good ecological potential or the good chemical or quantitative status of groundwater is not achieved, or where the deterioration of the status of a body of surface water, of coastal waters or of a body of groundwater is not prevented as a result of new modifications to the physical characteristics of a body of surface water or alterations to the level of a body of groundwater, or if the failure to prevent deterioration from high status to good status of a body of surface water or coastal water is the result development activities and provided that all the following conditions are met:

1) all practicable steps have been taken to mitigate the adverse impact on the status of the body of water;

2) the reasons for those modifications ... have been described and accounted for in a water management plan and the new environmental objectives are reviewed every six years;
3) the reasons for those modifications ... are of overriding public interest or the benefits to the environment and to society of achieving the objectives set out in a water management plan are outweighed by the benefits of the new modifications to human health, to the maintenance of human safety or to sustainable development;

4) the beneficial objectives served by those modifications or alterations of the water body cannot be achieved by other means which are a significantly better environmental option for reasons of technical feasibility or disproportionate cost”.

If the status class of a body of surface water has not been assessed, the assessment is based on an expert opinion, taking account of the status of a comparable body of surface water, the “existence of stress factors and their presumed impact, the general impression of the surface water and a general description of the ecological status”.

► Biodiversity damage

The threshold for biodiversity damage is the same as the ELD, with the exception that the favourable conservation status of a protected species or natural habitat is determined in the context of its natural range and areas within that range. This is the same area used to assess the “favourable condition” of a species or natural habitat under existing national legislation.

The aerial extent of the area contrasts with the ELD, which states that the favourable conservation status of a species or natural habitat is determined by reference to the European territory of the Member States to which the Treaty applies, the territory of a Member State, or the natural range of that species or habitat under the ELD (see ELD, arts 2(4)(a), 2(4)(b)).

Further, whilst the ELD uses the term “population dynamics data” (ELD, art 2(4)(b)), the Estonian legislation uses the term “population abundance”.

► National biodiversity damage

The threshold for national biodiversity damage is the same as for biodiversity damage (see directly above).

► Land damage

The threshold for land damage in the transposing legislation is the same as the ELD.

15. Standard of remediation

The transposing legislation contains provisions to accommodate its introduction into existing environmental legislation that provides for monetary compensation for environmental damage and environmental charges. Those provisions are described below in this section.

► Land

The standard of remediation for land damage in the transposing legislation is the same as the ELD.

If contaminants which have been introduced into soil subject to section 74 of the Earth’s Crust Act, or in accordance with Part IV of the Environmental Charges Act, are remedied
pursuant to the legislation transposing the ELD, the person who caused the damage is not liable for monetary compensation under the Earth’s Crust Act.

If the person remedied the damage pursuant to section 128 of the Waste Act, that person is not liable for the increased environmental charge for introducing contaminants into soil pursuant to the Environmental Charges Act (see the reference to the payment of monetary damage under the Earth’s Crust Act and environmental charges under the Environmental Charges Act in section 2 above).

If the person who remedied land damage has paid the monetary compensation described above in this section, the competent authority deducts the amount of that compensation from costs related to the preventive and remedial measures for which that person is liable, or reimburses it to the person causing the damage if the person who caused the damage has borne all the preventive and remedial costs itself.

► Biodiversity
  ➢ Primary remediation

The standard of primary remediation for biodiversity damage in the transposing legislation is the same as the ELD.

If damage to a habitat or species subject to section 67 of the Forest Act, section 25 of the Fishing Act, section 77 of the Nature Conservation Act, or section 56 of the Hunting Act is remediated pursuant to the transposing legislation, the person who caused the damage is not liable for monetary compensation (see the reference to the payment of monetary compensation in existing legislation in section 2 above).

If the person who remedied the biodiversity damage has paid the monetary compensation described above in this section, the competent authority deducts that amount of compensation from costs related to the preventive and remedial measures for which that person is liable, or reimburses it to the person causing the damage if the person who caused the damage has borne all the preventive and remedial costs itself.

➢ Complementary and compensatory remediation

The standard of complementary and compensatory remediation for water damage is the same as the ELD.

► Water
  ➢ Primary remediation

The standard of primary remediation for water damage in the transposing legislation is the same as the ELD.

If surface or ground water subject to section 391 of the Water Act, or in accordance with Part IV of the Environmental Charges Act, is remedied pursuant to the transposing legislation, the person who caused the damage is not liable for monetary compensation (see the reference to the payment of monetary compensation under the Water Act and charges under the Environmental Charges Act in section 2 above).

If the person who remedied the water damage has paid the monetary compensation described above in this section, the competent authority shall deduct that amount of compensation from costs related to the preventive and remedial measures for which that person is liable, or shall reimburse it to the person causing the damage if the person who caused the damage has borne all the preventive and remedial costs itself.
Complementary and compensatory remediation

The standard of complementary and compensatory remediation for water damage is the same as the ELD.

16. Format of determination of environmental damage

The transposing legislation does not specify a particular format for a determination of environmental damage.

17. Powers and duties of competent authority

- Inspections, investigations, studies and analyses
  The competent authority may carry out inspections, investigations, studies and analyses to establish that environmental damage has occurred or to identify the person whose activities caused the damage. This right includes the right to carry out monitoring activities and to make excerpts, transcripts and copies of documents.

- Information orders
  The competent authority and the Health Protection Inspectorate may issue information orders under the ELD regime.

- Power or duty to require an operator to carry out preventive measures
  The competent authority has the power, but not the duty, to order an operator to carry out preventive measures. The order is deemed to be a rule / direction (precept) under the Substitutive Enforcement and Penalty Payment Act (see section 23 below).

  The Ministry of the Environment has the right to clarify the assessment of interim damage.

- Power or duty to require an operator to carry out remedial actions
  The competent authority has the power, but not the duty, to order an operator to carry out remedial measures. The transposing legislation provides that a competent authority has the right, by issuing an order, to require a responsible operator to carry out remedial measures and “to give obligatory instructions for their implementation”. The order is deemed to be a rule / direction under the Substitutive Enforcement and Penalty Payment Act (see section 23 below).

  The transposing legislation includes emergency remedial actions under the provision relating to preventive actions rather than the provision relating to remedial actions, as in the ELD (see ELD, art 6(1)(a)) (see section 18 below).

  The Ministry of the Environment has the right to clarify the compilation and execution of a plan to carry out remedial measures.

- Power or duty of competent authority to carry out preventive measures
  The competent authority has the power, but not the duty, to carry out preventive measures if the responsible operator fails to carry them out, is not identified, or is not obliged to bear the costs of such measures because a mandatory defence applies (act of a third party or order of a public authority).
The transposing legislation provides that the competent authority also has the right to carry out preventive measures “independently” of the responsible operator except when “another state or local government authority of another state has the legal operational responsibility”.

The competent authority carries out preventive measures in accordance with the Substitutive Enforcement and Penalty Payment Act, taking into account provisions of the legislation transposing the ELD.

► Power or duty of competent authority to carry out remedial measures

The competent authority carries out remedial measures in accordance with the Substitutive Enforcement and Penalty Payment Act, taking into account provisions of the legislation transposing the ELD.

► Form of preventive order

An order to carry out preventive measures is deemed to be a rule / direction under the Substitutive Enforcement and Penalty Payment Act (see section 23 below).

► Form of remediation order

An order to carry out remedial measures is deemed to be a rule / direction under the Substitutive Enforcement and Penalty Payment Act (see section 23 below). The transposing legislation states that the competent authority should set a “realistic due date” for compliance with the order.

The transposing legislation provides that the responsible operator must prepare and submit the remedial measures plan electronically or by hard copy “no later than by the due date” established by the competent authority. If the plan does not provide “suitable and adequate measures”, the competent authority provides the responsible operator with a new deadline to submit an improved plan.

If the competent authority carries out the remedial measures, it prepares the plan for those measures.

An expert may be involved in preparation of the remedial measures plan at the request of the competent authority or the responsible operator.

► Appeal against preventive or remediation order

The Ministry of the Environment resolves any disputes concerning an imminent threat to, or actual, environmental damage and its remediation. The Ministry must make a decision concerning the appeal / challenge within 30 days of it being filed.

Challenges may also be brought by way of an application for judicial review before the administrative court. Prior to filing a complaint concerning implementation of the ELD regime in the administrative court, however, proceedings must have been brought in the Ministry of the Environment. The proceedings are subject to the provisions of the Administrative Procedure Act.

Both the Ministry of the Environment and the person who files the challenge may involve experts. Costs arising from the involvement of experts are borne by the person filing the challenge if the challenge is unsuccessful. Costs arising from the involvement of experts are borne by the competent authority if the expert concludes that environmental damage has not been caused.
Sanctions for delay in complying with preventive or remediation order

The transposing legislation does not provide specific sanctions for delay in complying with a preventive or remediation order. General sanctions apply (see section 23 below).

Formal consultees on contents of preventive and remediation orders

The competent authority may involve internal and external experts in order to establish whether there is an imminent threat of, or actual, environmental damage as well as to determine relevant preventive and remedial measures.

The transposing legislation describes an “expert” as “a natural person who has many years of experience in investigating natural resources and their benefits and who has given reliable assessments in matters concerning the protection or sustainable use of commensurate natural resources”.

Experts are selected by co-operation between the competent authority and the responsible operator. Any disputes in the selection of an expert are settled by the Ministry of the Environment, the decision of which is binding on the competent authority and the responsible operator.

If an imminent threat of, or actual, environmental damage may affect human health, the competent authority “shall base its choice of expert on the opinion of the Ministry of Social affairs regarding the criteria which the expert must fulfil” for that specific case.

Recovery of implementation and enforcement costs

The transposing legislation defines costs as:

“costs of establishing, and preventing and remedying, the costs of environmental damage and the threat thereof, including the costs of implementing preventive and remedial measures, involving an expert, assessing alternative measures, collecting information and of monitoring and controlling, organisational, legal aid and other costs justified by an administrative authority connected to the implementation of this Act”.

The above definition varies from the definition of “costs” in the ELD (see ELD, art 2(16)) in that it specifies costs associated with an expert. Such costs are impliedly included in the ELD definition.

The transposing legislation sets out detailed provisions for the reimbursement of costs by a competent authority. The authority submits an assessment of the costs to the responsible operator and issues a payment notice, as specified by clause 2(1)(21) of the Code of Enforcement Procedure. The deadline for payment of the costs cannot be shorter than 30 calendar days. Interest of 0.1 per cent per day applies to the balance of costs that have not been paid by that date.

The competent authority may agree to the responsible operator paying the costs in instalments for a period of up to 10 years, in which case interest of 0.03 per cent per calendar day is charged. The transposing legislation sets out detailed criteria for the competent authority to consider in approving or denying a request to pay costs in instalments.

The competent authority has the right to revoke an agreement to permit the responsible operator to repay the costs by instalment if the operator fails to comply with the schedule for repayment or fails to carry out an obligation under the Law of Property Act “to keep a thing encumbered with a pledge”, or fails to submit supplementary or
replacement security by the specified deadline if the value of the financial security decreases in value or reliability. Section 22 below describes financial security requirements for the repayment of costs in instalments.

The transposing legislation also sets out the priority for the repayment of costs; that is, the priority is, first, the penalty for late payment, then interest determined chronologically from the earliest event and, finally, the costs themselves.

If the person from whom the costs are payable is bankrupt, the competent authority shall not request financial security when the “cost arrears are to be paid in instalments in order to make a compromise in bankruptcy proceedings”.

► Deadline for competent authority to seek recovery of costs

There is a deadline of five years for a competent authority to seek recovery of its costs from the date when the preventive or remedial measures are completed or the responsible operator is identified, whichever is later.

18. Duties of responsible operators

► Preventive measures

An operator has a duty to carry out preventive measures.

► Remedial actions (emergency actions)

An operator has a duty to carry out emergency remedial actions.

As indicated above, the legislation transposing the ELD includes such measures as preventive measures. Section 7(1) of the transposing legislation provides that “The prevention of environmental damage means the implementation of measures to eliminate the threat of environmental damage due to an event, activity or inactivity or to reduce the extent of potential environmental damage, or to control, contain, eliminate or otherwise manage the relevant contaminants or any other damage factors in order to limit or to prevent further environmental damage and adverse effect on human health or further deterioration in the quality of the benefit afforded by a habitat, species, protected zone or water (hereinafter ‘preventive measures’)”.

► Remedial measures

An operator has a duty to carry out remedial measures.

► Duty to notify / provide information when imminent threat of environmental damage occurs

An operator has a duty to notify the competent authority if there is an imminent threat of, and actual, environmental damage. The transposing legislation does not indicate that the duty to notify a competent authority arises only if the preventive measures taken by the operator do not dispel the threat.

► Entity to which notification should be provided

Notification should be provided to the competent authority. If the environmental damage may affect human health, the Health Protection Inspectorate must also be notified.
19. **Access to third-party land to comply with the ELD**

Officials of the competent authority have the right to access land and the premises of persons who cause, or allegedly cause, environmental damage.

20. **Interested parties**

The transposing legislation authorises interested parties to comment on an imminent threat of, as well as actual, environmental damage.

► **Qualification criteria for “sufficient interest”**

A person who may be affected by environmental damage, as well as a person who is affected by it, may submit comments / observations to the competent authority.

The criteria for qualification as a non-governmental organisation are that it should be “a non-profit association or foundation which, pursuant to its articles of association, promotes the protection of the environment”.

The criteria also include an unincorporated association that promotes “the protection of the environment that represents the positions of a significant proportion of the local population” provided that the association proves that it meets these criteria.

► **Method of notifying interested parties of planned remedial measures**

The transposing legislation does not set out the method by which the competent authority should notify interested parties of planned remedial measures or other provisions of the ELD regime. The Administrative Procedure Act, which grants interested parties the right to information and participation in proceedings, applies.

► **Information to be provided to competent authority**

The transposing legislation does not specify the information that must be provided to the competent authority.

► **Challenges to competent authority’s decision**

The Administrative Procedure Act applies to challenges to the competent authority’s decision. This Act grants interested parties the right to challenge procedural and substantive requirements.

As with an appeal by an operator (see section 17 above), an interested party may bring a challenge in the Ministry of the Environment. The Ministry must make a decision concerning the challenge within 30 days of the challenge being filed.

As also with appeals by an operator, challenges may be brought by way of an application for judicial review before the administrative court. This option is not available, however, unless a challenge has first been brought in the Ministry of the Environment.

► **Duty on competent authority to respond to person making comments**

The transposing legislation does not specifically state that the competent authority has a duty to respond to persons submitting comments / observations. However, the general national law, Response to Memoranda and Requests for Explanations Act, applies. This Act provides that public authorities must respond to statements made to them within 30 days.
21. Public access to information regarding environmental damage and related measures

The Ministry of the Environment publishes details of the threat of, and actual, environmental damage and the implementation of preventive and remedial measures on its website; see http://www.keskkonnaamet.ee/teenused/keskkonnakorraldus-2/keskkonnakahju-ja-kahju-ohuga-seonduv-teave/ (in Estonian and English)

22. Charges on land / financial security after environmental damage

If the competent authority agrees to the repayment of costs in instalments (see section 17, Recovery of implementation and enforcement costs, above), the authority may request the operator to provide security for such costs as a guarantee or mortgage for the benefit of the State pursuant to procedures in the Law of Obligations Act and the Law of Property Act. The value of the security must be at least 115 per cent of the sum that is payable in instalments. The competent authority may require the security to be increased or replaced if the security is no longer adequate to guarantee repayment. The transposing legislation directed the Minister of the Environment to issue a regulation to establish the procedure for submitting, using, increasing, replacing or releasing a financial security.

Regulation No. 33 of the Minister of the Environment, entitled “Procedure for submitting, using, increasing, replacing or releasing a financial security”, was issued 17 July 2008; see https://www.riigiteataja.ee/akt/13132745 (in Estonian) The regulation sets out such procedures, including the documents to be presented for a guarantee or mortgage to be used as a financial security, deadlines, and the information to be exchanged between the Environmental Board and the person responsible for the damage.

23. Offences and sanctions

The Environmental Board may issue mandatory rules / directions to terminate a breach of the transposing legislation, to eliminate and remedy the consequences of the breach, or to carry out other actions.

Such a rule / direction shall contain the following information:

- the name and position of the official issuing the rule / direction;
- the date of preparation of the rule / direction;
- the name and address of the recipient;
- the factual and legal basis for issuance of the rule / direction;
- its content;
- the deadline for compliance with it; and
- a description of the consequences of failing to comply with it.

The Environmental Board shall transmit the rule / direction to the recipient without delay as well as transmitting it to other persons affected by it.

If the recipient fails to carry out measures stated in the rule / direction, the Board may impose a penalty pursuant to the procedure set out in the Substitutive Enforcement and Penalty Payment Act. The maximum amount of a penalty payment is 150,000 kroons.

If an official of the competent authority, or a third party at the request of an official of the competent authority, carries out measures set out in the rule / direction, the recipient of the rule / direction must grant them access to its land and premises and must permit them to carry out such measures. The measures should be carried out only if they are “unavoidably necessary” to enforce the ELD regime.

The following breaches of the ELD transposing legislation are misdemeanours for which the General Part of the Penal Code and the Code of Misdemeanour Procedure apply. The Environmental Inspectorate shall conduct extra-judicial proceedings in respect of such breaches.\(^{31}\)

The sanction for the following misdemeanours is a fine of up to 300 fine units\(^{32}\) for a natural person and up to 500,000 kroons for a legal person:

- failure to carry out “obligatory remedial measures before the approval of a remedial measures plan”;
- failure to submit a plan for remedial measures as directed by the competent authority; and
- disregarding the obligations set out in a plan for remedial measures.

The sanction for the following misdemeanours is a fine of up to 200 fine units for a natural person and up to 300,000 kroons for a legal person:

- failure to notify a competent authority of an imminent threat of, or actual, environmental damage; and
- refusal to submit information requested by a competent authority.

The sanction for the following misdemeanour is a fine of up to 300 fine units for a natural person and up to 500,000 kroons for a legal person:

- failure to carry out preventive measures.

\[\textbf{Directors and officers liability for breaching legislation}\]

The transposing legislation does not specify any offences or sanctions that apply specifically to directors and officers.

\(^{31}\) Extra-judicial proceedings are proceedings such as speeding tickets that are not carried out by a court. The decision of the authority carrying out such proceedings may be challenged in court.

\(^{32}\) Section 47 of the Penal Code provides that a fine unit is the base amount of a fine. Since 2011, one fine unit has been €4 although this may change in the future.
24. Registers or data bases of incidents

The competent authority notifies the Ministry of the Environment of ELD incidents, including the threat of, as well as actual, environmental damage and the implementation of preventive and remedial measures. The competent authority’s (Environmental Board’s) website includes a register of ELD cases; see http://www.keskkonnaamet.ee/teenused/keskkonnakorraldus-2/keskkonnavastutus-2/keskkonnakahju-ja-kahju-ohuga-seonduv-teave/ (in Estonian and English)

The Ministry of the Environment may issue procedures for such publication. The Minister had not done so when this summary was prepared (November 2013).

The register is to be developed further and merged with the environmental information system. As above, this had not been done when this summary was prepared.

25. Cross border damage in another Member State

The transposing legislation states that the Ministry of the Environment must notify another Member State if there is an imminent threat of, or actual, environmental damage. The Ministry must also organise the implementation of cross-border preventive and remedial measures in co-operation with the Member State, environmental authority in that State and the person that caused the damage.

The transposing legislation appears to be more stringent than the ELD by directing the Ministry of the Environment to notify and organise the implementation of cross-border preventive and remedial measures in co-operation with the Member State instead of only providing sufficient information to it (see ELD, art 15(2)).

26. Financial security

The transposing legislation does not require financial security. See, however, the detailed provisions concerning financial security for the repayment to the competent authority of costs in instalments (section 17 above).

27. Establishment of a fund

The transposing legislation does not establish a fund.

28. Reports

The transposing legislation does not specify the preparation or publication of reports.
Section 18(1) of the ELD directed Estonia (and all Member States) to submit a report of experience with the ELD to the European Commission by 30 April 2013. Estonia has submitted this report.

29. Information to be made public

The competent authority (Environmental Board) publishes a register of ELD incidents (details of the threat of, and actual, environmental damage and the implementation of preventive and remedial measures), information on the notification of an imminent threat of, and actual, environmental damage, and the rights of persons concerned with such damage, and on its website; see http://www.keskkonnaamet.ee/teenused/keskkonnakorraldus-2/keskkonnavastutus-2/keskkonnakahju-ja-kahju-ohuga-seonduv-teave/ (in Estonian and English)

30. Provisions concerning genetically modified organisms

Neither the permit nor the state-of-the-art defence apply to an imminent threat of, or actual, environmental damage concerning genetically modified organisms.

31. Key features and differences in legislation transposing the ELD and existing legislation

The ELD is the first regime in Estonia to impose liability for preventing and remediating damage to land, water and protected species and natural habitats. The regime differs substantially from national legislation in Estonia that existed when the ELD was transposed. That national legislation is focused more on the payment of monetary compensation for causing damage to specified media (surface water bodies, groundwater, soil and protected species, natural habitats, and fossils and minerals) than liability for preventing and remediating damage to them. In particular, the legislation transposing the ELD adds liability for preventing and remediating damage to protected species and habitats to Estonian law. Such liability was largely absent prior to the transposition of the ELD.

The transposing legislation includes provisions to enable its incorporation into existing environmental legislation. That is, the transposing legislation provides for a reduction of amounts payable for preventive and remedial measures under the ELD regime if the person who caused the damage has paid compensation for damaging the environment or has paid environmental charges.

As with existing environmental legislation, the definition of an “operator” is broader than the definition in the ELD in that it is not limited to a person who operates or controls an “occupational activity” or, indeed, to an occupational activity. It includes any person who causes an imminent threat of, or actual, environmental damage regardless of their position or the type of activity carried out by them. Whilst this extension of liability does not affect the application of strict liability, which applies only to Annex III operators, it broadens the category of non-Annex III operators.

The legislation transposing the ELD established a rebuttable presumption that an activity carried out by an Annex III operator caused environmental damage if specified criteria
are met. This presumption, which effectively places the burden of proof on the operator to show that its activities did not cause the damage rather than on the competent authority to show that they did cause it, reflects existing national law that imposes civil liability on the owner of a dangerous structure or thing for damage caused by it.
LATVIA

1. Existing national environmental legislation

Legislation that imposed liability for preventing and remediating contaminated land, water pollution, and biodiversity damage in Latvia before the transposition of the ELD was limited. Latvia had a Law on Pollution (likums Par piesārpojumu) (15.03.2001), as amended, which imposes liability for remediating contaminated land. Latvia did not, however, have a dedicated regime for preventing and remediating water pollution. Provisions in the legislation to protect species and biotopes (natural habitats) are not designed to impose liability for the prevention and remediation of damage to the species or natural habitats.

Latvia transposed the ELD by the new Environmental Protection Law (Vides aizsardzības likums) (02.11.2006), as amended, which sets out the basic principles of national environmental law, and by two Regulations.

The Environmental Protection Law, which became effective on 29 November 2006, applies to environmental damage before and after 30 April 2007. The Law applies to environmental damage that occurs after 30 April 2007; transitional provisions of the Law set out procedures for environmental damage that occurred before 30 April 2007. The transitional provisions also state that the Law on Pollution applies to the investigation and remediation of polluted and potentially polluted sites if the pollution occurred before 30 April 2007.

Thus, the current national law is as follows. The Law on Pollution applies to pollution from 1 July 2006, when that Law became effective. The Environmental Protection Law applies to environmental damage that occurred before 30 April 2007 (transitional provisions) and after 30 April 2007 (non-transitional provisions).

2. Existing regimes for preventing and remediating environmental damage

► Water pollution

Section 7(4) of the Water Management Law (12.09.2002), as amended, imposes a duty on a person who uses water resources to prevent the deterioration of the status of ground and surface water and to prevent harm to human health and the environment, including aquatic and terrestrial ecosystems directly dependant on the waters.

Section 7(10) of the Water Management Law provides that a person who uses water resources has a duty “to pay damages which have been caused to the environment or aquatic biological resources as a result of using water resources if the liability of the user of water resources for such damages has been established in compliance with the regulatory enactments in force”.

The regulatory enactments that apply are:

33 For consistency, the dates in brackets after the respective laws indicate the date when the law was passed by the Parliament; it does not indicate the effective date of the law, which may be subject to further changes under transitional provisions.
various provisions of Chapter VI, Liability for Damage Caused to the Environment, of the Environmental Protection Law (for damage that occurs after 30 April 2007);\textsuperscript{34} and

section 4 of the transitional provisions of the Environmental Protection Law (for damage that occurred before 30 April 2007).

► Land contamination

As indicated above, the transitional provisions of the legislation transposing the ELD provide that if pollution has occurred before 30 April 2007, its investigation and remediation are determined and compensated in accordance with the Law on Pollution.

Sections 33 to 44 of the Law on Pollution thus apply before and after 30 April 2007.

The Law on Pollution provides for the assessment of polluted and potentially polluted sites and their registration. Key purposes of the Law include the prevention or reduction of harm to human health, property or the environment including the inspection and investigation of polluted and potentially polluted sites, measures to remediate the sites, and the identification of persons who are liable for the costs of investigatory and remedial measures.

Section 33 of the Law on Pollution provides that the relevant municipality, in cooperation with the relevant regional Environmental Board is responsible for identifying and assessing polluted and potentially polluted sites, except for sites on land owned by the Ministry of Defence, in which case the Ministry is responsible for their assessment. The Ministry is directed to notify the relevant municipality and regional Environmental Board of its conclusions. The results of the above measures are publicly available. The regional Environmental Board is also responsible for supervising and controlling the investigation and remediating of polluted and potentially polluted sites except for sites in the possession of the Ministry of Defence.

The regional Environmental Boards register assessed sites in accordance with Cabinet Regulation No. 483, Regulation on Inventory and Registration of Contaminated and Potentially Contaminated Areas (20.11.2001), as amended, or an opinion from the Ministry of Defence, as appropriate.

The municipality then determines applicable restrictions at the sites that are necessary to protect human health or the environment. The Health Inspectorate determines restrictions necessary to protect human health.

The Environment, Geology, and Meteorological Agency (Vides, ģeoloģijas un meteoroloģijas aģentūra) maintains and operates the combined national list (register) of polluted and potentially polluted sites in Latvia. As of November 2013, 3,569 polluted and potentially polluted sites were listed on it. The list is available on the Agency’s website at \url{http://oas.vdc.lv:7779/p_ppv.html} (in Latvian). The map of respective areas is available at \url{http://www.arcgis.com/home/webmap/viewer.html?webmap=44aa2c97ffad4fcb949bddd1db8a987c4} (in English).

Section 35 of the Law on Pollution provides that the owner or occupier of land containing a polluted site that is not registered, and the operator and other persons who possess

\textsuperscript{34} Chapter VI applies to liability for damage to specially protected areas, micro-reserves, specially protected species and natural habitats, water, soil and underlying strata.
information concerning pollution or potential pollution must submit the information to the regional Environmental Board or municipality. If the pollution may harm human health or the environment, the Board notifies the municipality (if not already notified), and other institutions and persons affected by the pollution. The owner and occupier of land that contains a polluted site must disclose information concerning the pollution or potential pollution to possible successors.

Sites on the register are then investigated to determine whether pollutants at them exceed specified limit values or may harm human health and the environment. If the limit values are exceeded or there is harm or a threat of harm to human health and the environment, the sites must be remediated. Cabinet Regulation No. 804, Regulation on soil and subsoil quality (25.10.2005), as amended, establishes the relevant limit values and assessment procedures. Measures to remediate polluted sites include measures to prevent the migration of pollutants or their entry into groundwater and measures to restore or improve environmental quality at a site.

Section 38 of the Law on Pollution provides that the following persons are liable for investigating and remediating polluted and potentially polluted land:

- the person who carried out a polluting activity as a result of which a polluted or potentially polluted site was created;
- the person who carried out, or intended to carry out a polluting activity at a site that is already polluted or potentially polluted;
- the owner of the polluted land who had a decisive influence in an undertaking that carried out a polluting activity as a result of which a polluted or potentially polluted area in the landowner’s land was created;
- the person who acquired the ownership of land after a polluted site was registered; and
- the owner or occupier of the relevant land or installation who voluntarily agrees to cover the costs of remedial measures fully or partially.

In addition, the owner of land who does not satisfy any of the criteria in the above bullet points is liable for the costs of remedial measures if the measures are carried out with its consent, if the value of the land is increased as a result of the measures, and any of the persons specified above cannot pay the entire costs of the remedial measures.

If more than one person polluted the land, the cost of investigating and remediating the pollution is allocated in proportion to the harm caused by each person, taking into account the quantity and type of pollutant each person contributed and the length of time during which the pollution occurred. If allocation is not possible, joint and several liability applies. The relevant regional Environmental Board determines the allocation of costs.

If it is not possible to identify one or more of the above persons, the Ministry of Environmental Protection and Regional Development or the Ministry of Defence, as appropriate, considers whether to request funding from the State budget or other funds to investigate the site and, if necessary, to remediate it.

Specific provisions apply to the investigation and remediation of sites that are polluted or potentially polluted with military explosives and unexploded ammunition.
The owner of land that was polluted before the owner acquired it has a cause of action against a prior owner who caused the pollution.

► **Restoring biodiversity damage**

The two main nature conservation laws are:

- the Law on Specially Protected Nature Territories (02.03.1993), as amended; and
- the Law on the Conservation of Species and Biotopes (16.03.2000), as amended.

The Law on Specially Protected Nature Territories provides that persons may be subject to administrative, criminal or other liability if they breach legislation to protect or use the protected territories. The Law on the Conservation of Species and Biotopes imposes a duty on owners and other permanent users of land to promote the preservation of biodiversity and to ensure that migratory birds are undisturbed.

The Laws are designed to prevent and cure breaches of the legislation and harm by unlawful activities, as well as imposing administrative penalties.

Various provisions of chapter VI, Liability for Damage Caused to the Environment\(^{35}\) (for damage that occurs after 30 April 2007), or section 4 of the transitional provisions (for damage that occurs before 30 April 2007) of the Environmental Protection Law apply in relation to compensation for damages.

► **Environmental damage that occurred before 30 April 2007**

The transitional provisions of the legislation transposing the ELD provide that if environmental damage occurred before 30 April 2007, it is determined and compensated in accordance with the following procedures.

Private individuals who caused environmental damage are liable for:

- removing or reducing the damage and its consequences as far as possible in order to prevent any adverse effects on the environment and any threat to sustainable development; or
- “to compensate losses that are necessary in order to restore the affected or create close to environmental values, if it is not possible to prevent the environmental damage”.

A commission established by an order issued by the head of the State Environmental Service *(Valsts vides dienests)* (SES) and the director of the regional Environmental Board and either the administration of a protected natural area or the Maritime Environment Administration inspects the site at which environmental damage has occurred. The commission then determines the extent of the damage and calculates the losses caused by it. If the commission concludes that it is not possible to remediate the damage, it sets a deadline by which the monetary amount of the losses must be paid into the State general budget.

The commission calculates the losses by determining the amount and costs of works to be carried out to restore the damaged natural resources. If it is not possible to restore

\(^{35}\) Chapter VI applies to liability for damage to specially protected areas (that is, specially protected nature territories), micro-reserves, specially protected species and biopes (natural habitats), water, soil and underlying strata.
them completely, the commission calculates the losses based on the measures to be carried out to remediate the damage as much as possible, and the losses that result from leaving residual pollution at the site and its effects on the environment. In calculating this amount, the commission takes applicable legislation into account.

If only some of the damage is capable of being remediated, the person who is responsible for the damage must partially remediate it and pay compensation for the remaining losses to the State general budget.

Within two months following the commission’s inspection, the head of the SES and the director of the regional Environmental Board, plus the administration of a protected natural area or the Maritime Environment Administration issue a losses statement to the person who is liable for the damage. The losses statement includes details of compensation for the damage, instructions for remedial measures, and deadlines for beginning and carrying them out.

Before the current Environmental Protection Law became effective, the liability provisions were set out in chapter 9, that is, article 53 of the old Law on Environmental Protection, which was effective from 6 August 1991 to 29 November 2006.

Other liability systems for remediating environmental damage

Latvia, like other States that were formerly under communist rule, has programmes to privatise land and also to remediate sites, including former military, industrial and other sites, that were contaminated prior to 1990. The management of polluted / contaminated sites was included in the National Environmental Policy Plan 2004-2008, and subsequently, the Environmental Policy Strategy 2009-2015. Programmes such as the National Development Plan encourage the remediation and reclamation of contaminated sites. Funding is provided by the State budget and the EU Cohesion Fund and structural funds.

The general civil liability provision in Latvian law is article 1635 of the Civil Law (07.07.1992), as amended, which provides that a person who suffers harm has the right to claim satisfaction from the person who caused the harm. Liability is fault-based. Article 1775 provides that “compensation is payable for any loss which is not accidental”.

Articles 24 to 35 of chapter VI, Liability for Damage to the Environment, of the Environmental Protection Law provide compensation for damage that occurs after 30 April 2007. Section 4 of the transitional provisions of the Environmental Protection Law provides compensation for damage that occurred before 30 April 2007.36

Interface between the existing national liability regimes and the ELD regime

The following are key differences between the existing national environmental liability legislation and the ELD regime:

- there is no permit or state-of-the-art defence in the existing legislation compared to such defences in the legislation transposing the ELD;
- the owner or occupier of land may be liable under existing legislation for remediating damage to it even if they did not cause the damage; and

36 Before the current Environmental Protection Law became effective, article 56 of the old Law on Environmental Protection included civil liability provisions that authorised various specified persons to bring an action for “compensation for losses caused as a result of violation of laws and other regulatory enactments on environmental protection”. Article 56 has been repealed.
there is no statute of limitations for losses to the environment under existing law.

3. Integration of the ELD into existing national legislation

Transposing legislation

Latvia transposed the ELD by:

- the new Environmental Protection Law (Official Gazette 183, 15.11.2006);
- Regulation on the criteria to be used when assessing the significance of the effect of damage to species or habitats subject to special protection measures (Noteikumi par kritērijiem, kurus izmanto, novērtējot īpaši aizsargājamām sugām vai īpaši aizsargājamiem biotopiem nodarītā kaitējuma ietekmes būtiskumu) (Official Gazette 54, 30.03.2007), Regulation No. 213, Record No. 21, section N 32;
- Regulation on preventive and remedial measures and a procedure for the assessment of environmental damage and the calculation of the costs of preventive, urgent and remedial measures (Noteikumi par preventīvajiem un sanācijas pasākumiem un kārtību, kādā novērtējams kaitējums videi un aprēķināmas 1341otope134ve, neatliekamo un sanācijas pasākumu izmaksas) (Official Gazette 78, 16.05.2007), Regulation No. 281, Minutes No. 25, section 31; and
- Amendments to the Environmental Protection Law (e.g. Official Gazette 107, 05.07.2007, etc.).

Amendments to existing national legislation

The transposing legislation amended the Environmental Protection Law.

Authorisation in legislation for other governmental entities to issue rules and regulations

The amendments to the Environmental Protection Law authorise the Cabinet:

- to determine procedures to assess environmental damage and the calculation of the costs of preventive measures, emergency remedial actions and remedial measures;
  - Regulation No. 213 (above) sets out these procedures.
- to determine procedures to assess damage to a natural monument;
  - Regulation No 511 on the Procedure of evaluation and calculation of the remedial costs of the damages inflicted to national monuments (Noteikumi par dabas pieminekļiem nodarītā kaitējuma novērtēšanas un sanācijas pasākumu izmaksu aprēķināšanas kārtību) (Official Gazette 106, 11.07.2008) sets out these procedures.
- to specify procedures for the SES and operators to submit information on ELD incidents to the Environment, Geology and Meteorological Agency;
Regulation No. 281 sets out these procedures.

**Relationship to other legislation**

The Administrative Procedure Law (*Administratīvā Procesa Likums*), as amended, applies to:

- the time period and procedures for an operator’s appeal of a decision to carry out remedial measures;
- consideration by a competent authority of an interested party’s comments / observations;
- decisions by the SES concerning preventive measures and emergency remedial actions;
- the time period for the SES to assess remedial measures submitted by the operator; and
- the procedure by which an operator may apply to the SES for an amendment of the decision to carry out remedial measures if the measures required by the SES do not eliminate the environmental damage.

The Civil Procedure Law, as amended, applies to:

- the recovery of costs for preventive measures and emergency remedial actions carried out by the SES; and
- actions by an operator against a third person for the recovery of the costs of preventive measures, emergency remedial actions and remedial measures if the operator proves that the third party defence (ELD, art 8(3)(a)) applies.

The Law on Reimbursement of Losses Caused by State Administrative Authorities, as amended, applies to an operator’s claim against a public authority to recover the costs of preventive measures, emergency remedial actions and remedial measures if the operator proves that the imminent threat of, or actual, environmental damage occurred as a result of its compliance with a compulsory order or instruction from the public authority.

**Guidance and other documentation**

Latvia has not published guidance or other documentation on the ELD regime.

### 4. Effective date of national legislation

The current Law on Environmental Protection entered into force on 29 November 2006. The transitional provisions established the date at which specific provisions of the law became effective. The provisions establishing the ELD regime became effective on 30 April 2007.

### 5. Competent authority(ies)

The main competent authority is the SES.
6. **Operators and other liable persons**

The definition of an “operator” equates to the ELD (ELD, art 2(6)), with the addition of a person that has applied for, as well as a person who holds, a permit.

In addition, the definition of a public person includes a “derived public person [and an] authority of direct or indirect administration”. This definition appears to equate to the ELD but is simply more detailed.

► **Secondary liability (e.g., parent company)**

The transposing legislation does not refer to secondary liability of, for example, a parent company.

► **Death or dissolution of responsible operator**

The transposing legislation does not mention the death or dissolution of a responsible operator.

► **Person other than an operator who may be liable**

A third party, that is, a “party not deemed to be the operator” is also liable for costs incurred in carrying out preventive measures, emergency remedial actions, and remedial measures from an imminent threat of, or actual, environmental damage. Such liability is fault-based.

7. **Annex III legislation**

► **Rebuttable presumption that operator’s activity caused environmental damage**

The transposing legislation does not establish a rebuttable presumption that an operator’s activity caused environmental damage.

► **Additional occupational activities subject to strict liability**

In addition to activities set out in Annex III of the ELD, the following activities are subject to strict liability:

- “the operation of a petrol filing station or an oil storage facility”; and
- “the transportation of chemical substances or chemical products (preparations) through pipelines”.

The first activity is not necessarily covered by legislation set out in Annex III of the ELD, particularly petrol filling stations and facilities that store small amounts of oil.

The second activity is also not covered by the ELD in respect of pipelines outside facilities subject to the Industrial Emissions Directive.

Further, the Environmental Protection Law applies to damage to land and water from non-Annex III activities and is, thus, more stringent than the ELD.

The Environmental Protection Law also appears to apply to the loss of fisheries resources (see section 15 below).

► **Spreading of sewage sludge for agricultural purposes**

Latvia exempted the spreading of sewage sludge for agricultural purposes from Annex III activities.
8. **Standard of liability for non-Annex III activities**

The standard of liability for non-Annex III activities is fault-based, that is, “deliberate or negligent acts or omissions”. The transposing legislation specifies that a prosecution for administrative or criminal law does not preclude the operator’s liability for costs arising from an imminent threat of, or actual, environmental damage.

9. **Exceptions**

   ► **Application to imminent threat of environmental damage as well as environmental damage**

   The exceptions apply to an imminent threat of, and actual, environmental damage.

   ► **Differences with exceptions in the ELD**

   The exceptions in the Environmental Protection Law equate to the exceptions in the ELD with the following differences. The defences of a natural phenomenon of exceptional, inevitable, and irresistible character (ELD, art 4(1)(b) and an act of armed conflict, hostilities, civil war or insurrection (ELD, art 4(1)(a)) do not apply to emergency remedial actions. These exceptions are, thus, narrower and more stringent than those in the ELD.

   The Environmental Protection Law also requires an operator to inform the SES “without delay in writing” of an imminent threat of, or actual, environmental damage from the two above exceptions. The notification shall include, where possible, measures that have been carried out or measures that are planned to prevent, restrict or reduce the imminent threat of, or actual, environmental damage. When the armed conflict, hostilities, civil war or insurrection, or the natural phenomenon of exceptional, inevitable and irresistible character have ended, the operator is required to submit to the SES information on the type and extent of environmental damage, measures carried out to restrict or prevent it, as well as an assessment of the current environmental situation. These duties are not in the ELD and are, thus, more stringent than the ELD.

   The exception for the discharge of a noxious or other polluting substance from a ship does not apply to “warships, naval auxiliary or other ships owned by a state or operated by a state at the time of discharge, and used only for non-commercial purposes”. The exception is not in the ELD.

   If an imminent threat of environmental damage is “caused by objects to which legislation on a risk assessment procedure for industrial hazards or risk reduction measures applies, or if an imminent threat of damage corresponds to dangers specified in civil defence plans”, the other legislation applies to the measures to be carried out. This exception is not in the ELD.

   ► **Diffuse pollution exception**

   The transposing legislation defines “diffuse pollution” as “pollution in the air, water or soil, which is not detected and eliminated from stationary pollution sources in any organised way”.

   The exception appears to be equivalent to the exception in the ELD (ELD, art 4(6)). If it narrows the term “diffuse pollution”, the exception would be more stringent than the ELD.
10. Joint and several or proportionate liability

Joint and several liability applies. If an operator proves that its activity caused only part of an imminent threat of, or actual, environmental damage, the operator is liable only for that part of the costs. (In such a case, the harm caused by the operator would be distinct and not indivisible; thus, joint and several liability would be inapplicable.)

Mechanism for contribution between liable operators

The transposing legislation does not set out a mechanism for contribution between liable operators.

11. Limitation period

The limitation period is equivalent to that in the ELD, that is, 30 years from the emission, accident or any other incident that caused environmental damage.

12. Defences

Defences to liability or costs?

The provisions in the amendments to the Environmental Protection Law concerning the defences in the ELD differ depending on whether they apply to the mandatory defences (act of a third party despite appropriate safety measures and compliance with a compulsory order or instruction by a public authority) or the optional defences (permit and state-of-the-art defences).

Mandatory defences

The amendments to the Environmental Protection Law provide that an operator is entitled to recover the costs of preventive measures and emergency remedial actions if either of the mandatory defences applies. The amendments further provide that an operator “shall not bear the costs of the remedial measures and is entitled to recover [such] costs”.

It is thus unclear whether the mandatory defences are defences to costs in respect of remedial measures due to the added language “shall not bear the costs”, which is not in the amendments in respect of preventive measures and emergency remedial actions (with the caveat that the amendments closely track article 8 of the ELD in not including this term in respect of preventive measures and emergency remedial actions).

The amendments to the Law also provide that the operator may recover the costs of preventive measures, emergency remedial actions and remedial measures from a third person if the operator proves that the third party defence applies. Procedures in the Civil Procedure Law apply to such a claim.

Further, the amendments provide that the operator may recover the costs of preventive measures, emergency remedial actions and remedial measures from a public authority if the operator proves that the imminent threat of, or actual, environmental damage occurred due to its compliance with a compulsory order or instruction from the public authority. Procedures in the Law on Reimbursement of Losses Caused by State Administrative Authorities apply to such a claim.
Permit and state-of-the-art defences

The permit and state-of-the-art defences appear to be defences to liability.

The amendments to the Environmental Protection Law provide that the “operator shall not bear the costs of the remedial measures” if it proves either defence.

In contrast to the provisions concerning the recovery of costs if the mandatory defences apply, the Law does not state that the operator is entitled to recover such costs if it has carried out preventive measures, emergency remedial actions or remedial measures.

If defences to liability; suspension (or not) of remediation notice during appeal

The transposing legislation provides that a decision requiring an operator to carry out emergency remedial actions is not suspended by the operator contesting the competent authority’s decision or bringing a judicial action to repeal the decision, or to recognise that it is not, or not longer, in force.

The transposing legislation does not, however, provide equivalent provisions suspending a decision concerning preventive measures or remedial measures.

Permit defence

Latvia adopted the permit defence, with the exception of genetically modified organisms.

State-of-the-art defence

Latvia adopted the state-of-the-art defence, with the exception of genetically modified organisms.

13. Scope of environmental damage

The amendments to the Environmental Protection Law define the term “emission” broadly to include “odours, … vibrations, heat, non-ionising radiation, noise or other types of pollution”; these are not in the definition in the ELD (ELD, art 12(8)).

The broader definition may be due to the ELD having been transposed by amending a national law with a wider scope than the ELD. The definition is, however, broader and thus more stringent than the definition in the ELD.

Percentage of national land area covered by Birds and Habitats Directives (Natura 2000)

11.52%

Extension of biodiversity to nationally protected biodiversity

Latvia extended liability under the ELD to nationally protected biodiversity.

The transposing legislation states that liability applies to “specially protected areas, micro-reserves, specially protected species and habitats, water, soil and underlying strata”.

Biodiversity damage in the exclusive economic zone

Latvia has extended the ELD regime to the exclusive economic zone and the Latvian continental shelf.
Water or water body

The transposing legislation defines the term “damage to waters” as “any damage that significantly impairs the ecological, chemical or quantitative status or ecological potential”.

It is not clear from this definition whether “water damage” must occur to “water bodies” or “waters” as defined in the Water Framework Directive.

14. Thresholds

The transposing legislation specifically provides that “damage to the environment shall also include damage caused by air pollution where it causes damage to specially protected areas, micro-reserves or specially protected species and habitats, water, soil and underlying strata”.

Water damage

The threshold for water damage is the same as the ELD.

The transposing legislation extends liability for preventing and remediating water damage to non-Annex III activities, which is more stringent than the ELD.

Biodiversity damage

The definition of biodiversity damage equates to the ELD. The transposing legislation, like the Latvian version of the ELD, uses the term “biotopes” (biotopi), which is synonymous to the term “natural habitats” (dzīvotnes).

National biodiversity damage

The threshold for national biodiversity damage equates to the ELD.

Land damage

The amendments to the Environmental Protection Law define “land damage”, that is, “damage to soil or underlying strata”, as “any modification or contamination caused by the direct or indirect release of chemical substances, chemical products (preparations), organisms or microorganisms into the soil or underlying strata and which has significant adverse effects on human health or the environment”.

The definition is broader than the ELD and, thus, more stringent in that it includes significant adverse effects on the environment as well as human health.

The definition also specifies that “underlying strata” are included whereas the ELD does not define the word “land”.

The definition is, however, potentially narrower than the ELD in that the ELD applies to “any land contamination that creates a significant risk of human health being adversely affected”; the effect itself does not need to be significant.
15. **Standard of remediation**

► **Land**

The transposing legislation provides that the minimum standard of remediation in the ELD, that is, remediation to ensure that “the relevant contaminants are removed, controlled, contained or diminished so that the contaminated land, taking account of its current use or approved future use at the time of the damage, no longer poses any significant risk of adversely affecting human health” (ELD, annex II, section 2) is a minimum.

The transposing legislation also mentions restoration of land to its baseline condition.

► **Biodiversity**

➢ **Primary remediation**

The term “damage to specially protected species or habitats” includes “micro-reserves”.

➢ **Complementary and compensatory remediation**

The transposing legislation sets out detailed criteria for carrying out complementary and compensatory remedial measures.

► **Water**

➢ **Primary remediation**

The standard of primary remediation for water damage is the same as the ELD.

➢ **Complementary and compensatory remediation**

The transposing legislation sets out detailed criteria for carrying out complementary and compensatory remedial measures including the calculation of damage to waters to include losses to fisheries resources.

16. **Format of determination of environmental damage**

There is no specified format for a determination of environmental damage. Regulation No. 281, however, sets out detailed procedures and criteria for the determination of environmental damage and its remediation.

17. **Powers and duties of competent authority**

► **Inspections, investigations, studies and analyses**

Competent authorities are authorised to access property by foot or vehicle to carry out inspections, investigations, studies and analyses.

► **Information orders**

The competent authority may require an operator or other person to provide information necessary for it to carry out its duties and responsibilities.

The competent authority may require an operator to provide information when there are grounds for suspecting an imminent threat of environmental damage as well as when there is an imminent threat of, or actual, environmental damage.
Power or duty to require an operator to carry out preventive measures

The competent authority has a duty to require an operator to carry out preventive measures, together with a power to issue “binding instructions” on the measures to be carried out.

Power or duty to require an operator to carry out remedial actions

The competent authority has a duty to require an operator to carry out emergency remedial actions and/or remedial measures, together with a power to issue “binding instructions” to the operator to carry them out.

The definition of an emergency remedial action in the transposing legislation differs from the definition in the ELD. The ELD describes such action as “all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services” (ELD, art 6)(1)(a)).

The transposing legislation describes “emergency measures” as “all necessary and feasible measures to manage a situation in which polluting substances that have been discharged into the environment are contained and collected, and other damage-inducing factors eliminated, so as to limit or prevent further damage to the environment and adverse effects on human health or the deterioration of natural resources services”. This definition appears to equate to the definition in the ELD.

Regulation No. 281 sets out detailed procedures to be followed by the SES, including the involvement of personnel from municipalities and private individuals, and providing information on the potential damage to residents of the area affected by it.

Regulation No. 281 also provides that the SES “shall immediately carry out a check on the location of the environmental damage to provide an initial assessment of damage to the environment and to establish what [emergency remedial actions] should be taken. The investigation includes the location of the environmental damage, an assessment of its extent and type, any natural resources and human health affected by it, the likely extent of the damage and the chances of preventing it.

The investigation is followed by a check of the damage and specification of the deadline by which the operator must provide the SES with a plan to carry out emergency remedial actions. The SES assesses the plan within 30 days and decides whether such actions should be carried out. If the SES issues a decision, the decision may include instructions on measures to be carried out as well as deadlines for carrying them out. The operator must immediately notify the SES when it has carried out the measures.

Further checks on the location of the environmental damage are carried out if further information is required.

Regulation No. 281 sets out detailed assessment criteria that include, in addition to an assessment of natural resources specifically protected by the ELD, fisheries resources. The assessment criteria for such resources include opinions from fisheries experts.

Power or duty of competent authority to carry out preventive measures

The SES “shall, where necessary” organise the carrying out of preventive measures in accordance with procedures set out in Regulation No. 281 (see section 3 above).
Regulation No. 281 also provides that the SES “shall organise preventive measures when there is an imminent threat of damage that results in the breach of environmental quality standards or the threats could have a detrimental effect on public health provided that:

- the operator whose activities resulted in the imminent threat is not carrying out necessary preventive measures requested by the SES;
- the operator is not complying with the SES’ instructions, with the result that the threats of imminent damage are not being dispelled or reduced;
- the responsible operator has not been identified;
- the preventive measures carried out by the responsible operator are not sufficiently effective and the imminent threat has not been dispelled; or
- the operator does not have to cover the costs of the preventive measures, as specified in the Environmental Protection Law.

Power or duty of competent authority to carry out remedial measures

The SES must immediately investigate the location of environmental damage to provide an initial assessment of the damage and to establish the emergency remedial actions to be carried out. The investigation includes an inspection of the location, an assessment of the extent and type of damage, any natural resources and human health affected by it, the likely extent of the damage and the chances of preventing it.

The SES has a duty to organise the carrying out of emergency remedial actions if the identity of the operator that caused the environmental damage is not established, or a responsible operator is not carrying out the measures or is not complying with binding instructions to carry them out.

The SES has a duty “to organise remedial measures in accordance with the funding allocated”.

Form of preventive order

There is no specific format for preventive orders / decisions.

Form of remediation order

Regulation No. 281 sets out the format of remediation orders, called decisions on the carrying out of remedial measures.

The decision, which may be for land as well as water and protected species and natural habitats, includes:

- remedial measures to be carried out;
- an amount to be paid by the operator into the State general budget and the deadline for its payment if eliminating the environmental damage is not possible, or is only partially possible;
- the date for the remedial measures to begin being carried out, the procedure for carrying them out and the deadline for their completion;
- the deadline for the operator to submit information on the progress of the remedial measures; and
The operator may apply to the SES for an amendment of the decision if the remedial measures required by the SES do not eliminate the environmental damage. Such an application is subject to procedures in the Administrative Procedure Act.

Regulation No. 281 sets out detailed criteria for the SES to verify that the operator has eliminated environmental damage in accordance with the SES’ decision and for monitoring to be carried out to verify that the remedial measures are adequately effective and the environmental situation has not worsened.

**Appeal against preventive or remediation order**

An operator may appeal a decision by the SES for the operator to carry out emergency remedial actions to the State Environmental Monitoring Bureau within 15 days after the SES has informed the operator of that decision. An operator may appeal a decision by the SES for the operator to carry out remedial measures to the State Environmental Monitoring Bureau within the time period and in accordance with procedures set out in the Administrative Procedure Law.

**Sanctions for delay in complying with preventive or remediation order**

There are no specific sanctions for the delay in complying with a preventive or remediation order.

**Formal consultees on contents of preventive and remediation orders**

The SES may issue an order establishing a committee of “various institutions, experts or specialists” in order to assess environmental damage and make a decision on remedial measures. Members of the committee shall include representatives of the SES and other entities that report to the Ministry of Environmental Protection and Regional Development. Representatives of municipalities in the area of the environmental damage and other entities may also be included. If damage to forest land occurs, representatives of the State Forestry Service are also included on the committee.

The transposing legislation directs the SES to call on specialists from organisations reporting to the Ministry of Health to assess and prevent an imminent threat of environmental damage when there is or may be a threat to, or detrimental effect on, public health. In addition, the legislation directs the SES to call on such specialists to prevent environmental damage, and to establish, organise and assess emergency remedial actions and remedial measures.

Further, the transposing legislation directs the SES to call on such specialists to prevent environmental damage and to establish, organise and assess emergency remedial actions and remedial measures.

Still further, the legislation directs the SES to involve relevant specialists in checking that remedial measures have been carried out pursuant to the SES’ instructions.

**Recovery of implementation and enforcement costs**

The definition of “costs” in the amendments to the Environmental Protection Law track the definition in the ELD (ELD, art 2(16)).

Procedures in the Civil Procedure Law apply to the recovery of costs for preventive measures and emergency remedial actions carried out by the SES. Payment of the State
fee for claims on collection of funds covering preventive measures, emergency remedial actions, and remedial measures is waived.

Income from payments to assess or prevent environmental damage or the carrying out of preventive measures, emergency remedial actions or remedial measures is paid into the State general budget except for such costs incurred by a municipality, which are paid into the municipality’s budget.

► Deadline for competent authority to seek recovery of costs

The deadline for the SES to submit an application for a claim to the court for the recovery of costs incurred in carrying out preventive measures, emergency remedial actions or remedial measures is five years from the date on which the measures have been completed or the date on which the liable operator or third party are identified, whichever is later.

18. Duties of responsible operators

► Preventive measures

An operator has a duty to carry out preventive measures in the event of an imminent threat of environmental damage. The transposing legislation sets out detailed criteria for such measures (see section 17).

The operator must also notify the SES when the measures have been carried out.

► Remedial actions (emergency actions)

An operator has a duty to carry out emergency remedial actions. This duty applies to an operator whose activity “has, or may have, caused” the damage. The transposing legislation sets out detailed criteria for such actions (see section 17).

The operator must also notify the SES when the measures have been carried out.

The term “has, or may have, caused” arguably relates to a situation in which there is environmental damage that may have been caused by an operator but the operator is not sure whether the damage has actually been caused by its activities.

► Remedial measures

An operator has a duty to carry out remedial measures. As with emergency remedial actions, this duty applies to an operator whose activity “has, or may have, caused” the damage. The transposing legislation sets out detailed criteria for such measures (see section 17).

The operator must also notify the SES when the measures have been carried out and provide, among other things, test reports of analyses by accredited laboratories.

► Duty to notify / provide information when imminent threat of environmental damage occurs

An operator has a duty immediately to notify the SES in writing if there is an imminent threat of environmental damage, and preventive measures have not succeeded in dispelling the threat.

An operator also has a duty immediately to notify the SES in writing if its activity “has, or may have, caused” the damage.
Entity to which notification should be provided

The SES should be notified of an imminent threat of, or actual, environmental damage.

19. Access to third-party land to comply with the ELD

The transposing legislation does not set out provisions for access to third-party land to comply with the ELD regime.

20. Interested parties

Qualification criteria for “sufficient interest”

The transposing legislation does not include criteria to qualify the term “sufficient interest”. The definition of an interested person is, thus, broader and more stringent than the ELD.

The transposing legislation, which is not limited to the ELD regime, provides that “Every private individual and association, organisation and group of persons … has the right … to request that central and local government authorities, officials or private individuals put an end to any act or omission which is detrimental to the quality of the environment and damages human health or threatens their life, lawful interests or property” and “to provide central and local government authorities with information on activities or measures that affect or may affect the quality of the environment, as well as information on adverse changes observed in the environment which have resulted from such activities or measures”.

The above right includes the right to provide comments / observations on an imminent threat of, and actual, environmental damage.

Method of notifying interested parties of planned remedial measures

The amendments to the Environmental Protection Law do not specify a method of notifying interested parties about planned remedial measures.

Information to be provided to competent authority

The amendments to the Environmental Protection Law state that the information concerning the imminent threat of, or actual, environmental damage shall be “as precise … as possible”.

Challenges to competent authority’s decision

An interested party may challenge the competent authority’s decision according to procedures established by the Administrative Procedure Law. Pursuant to that Law, a person must exhaust administrative procedures before seeking judicial review. This requirement is in accordance with the ELD (ELD, art 13(2)).

Duty on competent authority to respond to person making comments

The amendments to the Environment Protection Law do not specifically state that a competent authority must respond to a person making comments / observations but provide that procedures in the Administrative Procedure Law apply. The amendments state that the SES or another competent authority shall evaluate the comments / observations “in as short a period of time as possible”.

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Article 11(1) of the Environmental Protection Law provides that a competent authority shall provide requested environmental information as soon as possible but no later than one month following receipt of the request for information. If the requested information is extensive or complex the time for a response can be extended to two months.

If the competent authority refuses to provide the requested information, its decision can be appealed in accordance with the Administrative Procedure Law.37

► Inclusion of interested party in any proceedings by the competent authority against an operator

The transposing legislation does not provide for the inclusion of an interested party in proceedings by a competent authority against an operator.

21. Public access to information regarding environmental damage and related measures

Latvia has established a public database on ELD incidents (see section 28 below). In addition, as in all other Member States, Directive 2003/4/EC on environmental information applies.

22. Charges on land / financial security after environmental damage

The transposing legislation does not provide for charges on land / financial security after environmental damage has occurred.

23. Offences and sanctions

Latvia established administrative (and criminal) offences and sanctions for breaching the ELD regime. In addition, it enacted legislation, beyond the extent of the ELD regime, for compensation for harm to protected species and natural habitats.

The compensation payable for damaging protected species and natural habitats varies according to the species or natural habitat and their location. Monies from it are payable into the State general budget.

► Breaches of the legislation transposing the ELD


Damage to protected species

The amount of compensation is affected by whether a species is endangered, its distribution and its significance; as follows:

-  “compensation of damage of 40 months’ minimum wages for each individual shall be paid for the destruction of or damage to individuals from specially protected species in Group 1 [as set out in Annex 2 to Regulation No. 281; and]
-  compensation of damage of 10 months’ minimum wages for each individual shall be paid for the destruction of or damage to individuals from specially protected species in Group 2 [as set out in Annex 3 to Regulation No. 281; and]
-  compensation of damage of 5 months’ minimum wages for each individual shall be paid for the destruction of or damage to individuals from specially protected species in Group 3 [as set out in Annex 4 of Regulation 281].”

The official minimum monthly wage in Latvia is subject to annual adjustments. In 2013, it is 200 Lats; in 2014, it will rise to 225 Lats.

If a specially-protected species is not mentioned in Annexes 2, 3 or 4 of Regulation No. 281, compensation of damage of three months’ minimum wages is payable for each individual “destroyed or damaged in the territory of a small-scale restricted area created to protect it”.

Damage to species includes “the killing or injuring of individual animals from a species and the destruction of their habitats, the felling, plucking, digging up, gathering, damaging or picking of individuals from plant species and the destruction of their habitats”.

Losses for damage to individuals from specially-protected species, as set out in annexes to Regulation No. 281, are multiplied by three if the individuals are in specified nature reserves, national parks or biosphere reserves.

The amount of compensation for damages for the destruction or damage to specially-protected laying or brood birds is doubled for each individual pursuant to the Group to which the birds belong. Damage includes damage to, or the removal of, eggs or chicks from the nest.

Damage to protected natural habitats

Compensation of five months’ minimum wages is payable for damage to specially-protected natural habitats for each 10m² of habitat destroyed or damaged.

Losses to specially-protected forest and shrub-land habitats is not calculated if losses to the forest have been calculated pursuant to the rules and regulations on the procedure for establishing such losses.

Damage to natural habitats includes “contamination, ploughing up, construction, transformation of land, change in the water system [and] extraction of valuable minerals”.

These provisions, which are supplementary to the ELD, are not fines as such but rather specific compensation for damage to natural habitats.
Directors and officers liability for breaching legislation

The transposing legislation does not specify any particular liability for directors and officers who breach it.

Publication of penalties

The transposing legislation does not provide for the publication of penalties.

24. Registers or databases of incidents

The transposing legislation directed the Latvian Environmental, Geological and Meteorological Agency to establish and maintain a database of ELD incidents. The SES and operators must submit information concerning such incidents to the Agency in accordance with procedures specified by the Cabinet.

Those procedures require the submission of information to the Agency by hard copy and electronically. The Agency must then create, maintain and update the database. Information on the database is available to the public on the Agency’s website.

An operator must submit information concerning incidents to the Agency no later than three months after the occurrence of the imminent threat of, or actual, environmental damage. If the damage has not been completely remediated by that time, the operator must also submit information on measures taken up to that time, with further information to be submitted when the measures have been completed but at least once each year.


25. Cross border damage in another Member State

If environmental damage affects or is likely to affect another Member State, the SES shall inform the Ministry of Foreign Affairs and the State Fire Fighting and Rescue Service.

The above authorities shall then co-operate with the competent authority of the Member States, provide information concerning the nature, amount and distribution of the environmental damage, and preventive measures, emergency remedial actions and remedial measures that have been carried out and are necessary in order to ensure that preventive and emergency remedial actions and, if necessary remedial measures, are carried out.

If environmental damage that originates in another Member State affects or could affect Latvia, the SES, in co-operation with the competent authority of the other Member State, determines the necessary emergency remedial actions or remedial measures. The SES then notifies the relevant municipalities in Latvia of the measures.

If an operator who carries out activities in another Member State, fails to carry out necessary emergency remedial actions or remedial measures voluntarily, the SES may request the operator to reimburse the costs of the measures either by agreement or legal proceedings.
26. **Financial security**

Latvia did not introduce mandatory financial security. The amendments to the Environmental Protection Law provide that an operator may use financial guarantees, including insurance, funds and bank guarantees to insure the performance of preventive measures, emergency remedial actions and remedial measures.

27. **Establishment of a fund**

Latvia has not established a fund.

28. **Reports**

Latvia submitted the report, directed by the ELD, to the European Commission, like other Member States, of the implementation of the ELD.

29. **Information to be made public**

The database of ELD incidents must be made available to the public on the website of the Latvian Environmental, Geological and Meteorological Agency.


30. **Provisions concerning genetically modified organisms**

The permit and state-of-the-art defences do not apply to genetically modified organisms.

31. **Key features and differences in legislation transposing the ELD and existing legislation**

Latvia transposed the ELD into national law by amending the Environmental Protection Law, the framework environmental law, and by issuing two Regulations. The transposing legislation is supplemented by existing legislation, in particular, the Administrative Procedure Law and the Civil Procedure Law. In addition, the transposing legislation sets out liability provisions and procedures for remediating environmental damage that occurred before the ELD regime entered into force on 30 April 2007.

A substantial number of provisions in the transposing legislation are more stringent than those in the ELD. These include:

- application of the ELD regime to water and land damage from non-Annex III activities;
- the dis-application of the exceptions for a natural phenomenon of exceptional, inevitable, and irresistible character and an act of armed conflict, hostilities, civil war or insurrection to emergency remedial actions;
- a broader definition of an “interested party” than that in the ELD;
- a duty on the SES to organise the carrying out of preventive measures and emergency remedial actions; and
- a duty on the SES to organise the carrying out of remedial measures “in accordance with the funding allocated”.

The procedures for investigating environmental damage and issuing decisions to prevent and remediate it are detailed and include many practical requirements to facilitate such measures.

The Latvian transposing legislation also includes requirements to monitor and verify that remedial measures have been carried out effectively, including a requirement for a responsible operator to provide test reports of analyses by accredited laboratories and involving relevant specialists to check that remedial measures have been carried out pursuant to the SES’ instructions.

Further, Latvia enacted legislation, beyond the extent of the ELD regime, for liability for compensation for harm to protected species and natural habitats, with monies from the payments for compensation payable into the State general budget.
LITHUANIA

1. Existing national environmental legislation

The Law on Environmental Protection, Law No. I-2223, 21.01.1992, as amended, is the framework environmental legislation for Lithuania. The Law not only sets out the principles for environmental protection, environmental rights and duties, and the use of natural resources, and includes provisions on many other areas of environmental law; it specifically provides that other laws that regulate the use of natural resources and environmental protection must be adopted on the basis of the Law.

The crucial role of the Law on Environmental Protection in Lithuanian environmental law is essential to understanding the transposition of the ELD into national law.

Lithuania transposed the ELD by amendments to the Law on Environmental Protection and the Law on State Monitoring of Environmental Protection, Law No. VIII-529, 20.11.1997, as amended. In amending the Law on Environmental Protection, Lithuania adapted the provisions in the ELD to that Law. The result is substantial differences between the provisions of the ELD and the provisions of the legislation transposing the ELD into Lithuanian law. This has led to ambiguities in places, both as to whether certain provisions of the amended Law on Environmental Protection fully transpose the ELD due to their different terminology and the scope of the transposed legislation.38

2. Existing regimes for preventing and remediating environmental damage

The current national environmental legislation in Lithuania was enacted after the end of communist rule in March 1990.

► Law on Environmental Protection

The 1992 version of the Law on Environmental Protection provided, among other things, that “legal and natural persons who, by way of unlawful activities, cause damage to the environment, to the life or health of a given person(s), or to the property or interests of other legal and natural persons, must compensate all losses, and, if possible, must restore the environmental state of the object in question”.

The obligation to carry out measures to remediate environmental damage and to pay compensation for damage that cannot be restored has, therefore, existed in Lithuania since 1992. Revisions to the Law have broadened the obligation.

The current version of the Law on Environmental Protection provides an obligation “to utilise natural resources in a rational and sparing manner, not violate the requirements of environmental protection [and to] implement measures eliminating or reducing the adverse effect on the environment”.

One thing that has remained constant is the broad definition of the person to whom the obligations apply. That is, since 1992, the obligations, as revised, apply to any person who is involved in activities that could cause damage to the environment.

The current Law on Environmental Protection further provides that if there is an imminent threat to the environment “[the user of natural resources must] take measures to prevent the danger, and where adverse effects have occurred, eliminate them without delay and inform the appropriate officers and institutions of environmental protection”. The user of natural resources must also “compensate for the damage caused to the environment by an unlawful act”.

That is, under the current version of the Law on Environmental Protection a person who causes environmental damage has a duty to reinstate the environmental condition to its state prior to the damage if it is possible to do so. If it is not possible fully to reinstate the environment to its condition before the damage, the person who caused the damage must pay monetary compensation for the damage that cannot be repaired. The amount of the compensation is calculated by measuring the environmental damage according to specified methodologies, such as the methodology approved by the order of the Minister of Environment No 471, dated 9 September 2002 (including later changes).

Until the ELD was transposed, the above non-media-specific provisions were the basis of environmental law in Lithuania for preventing and remediating environmental damage.

► Water pollution

As indicated above, Lithuania does not have a specific law that imposes liability for remediating water on a person who pollutes it because the relevant law is non-media-specific.

That is, if a water body is damaged, the Law on Environmental Protection, described above, applies. The polluter must remediate the damage and, if it is not possible to remediate it fully to its condition prior to the damage, must also pay monetary compensation for the damage that cannot be remediated.

In addition, the Law on Water, Law No. VIII-474, 17.12.2009, as amended, provides, among other things, that “users of water resources” shall not pollute water.

► Land contamination

As indicated above, Lithuania does not have specific legislation on remediating contaminated land. Instead, the Law on Environmental Protection applies.

Lithuania has a programme to remediate historic contamination of State-owned land. Between 2007 and 2013, the Geological Survey of Lithuania carried out a preliminary inventory of potentially contaminated sites owned by the State. The programme, which was funded by the Lithuanian Government and the EU, resulted in the investigation of over 11,000 sites at which pollutants, including hydrocarbons, persistent pesticides, waste (landfills), and heavy metals, had been used. The sites were then assessed, and ranked in order of the threat posed by them to human health and the environment. Further detailed assessments were carried out at the highest risk sites. The location of the sites was mapped, and the maps and information concerning the sites was provided to district authorities. In addition to the inventory compiled and maintained by the Ministry of the Environment, each district authority compiles and maintains an inventory of potentially and actually polluted sites in its area.
In 2012, the Minister of the Environment issued the Plan of management of contaminated sites for 2013-2020, No. D1-790. The plan includes developing the methodology for prioritising sites for remediation, inventorying the sites, and remediating them.

► Restoring biodiversity damage

Again, as above, the Law on Environmental Protection applies if a person damages fauna and flora.

The amount of the loss that cannot be remediated is calculated using specified methodologies:

- if flora is damaged, the methodology approved by the order of the Minister of the Environment No. 179, dated 28 April 2000, as amended, applies; and
- if fauna is damaged, the methodology approved by the order of the Minister of the Environment No. D1-695, dated 12 August, 2010, applies.

Other specified methodologies apply to calculate damage to forests, protected areas, fish resources, etc.

In addition, Lithuania has several Laws on nature conservation. The main Laws are:

- Law on Wildlife, Law No. VIII-498, 22.06.2010, as amended;
- Law on Wild Flora, Law No. VIII-1226, 17.02.2004, as amended;
- Law on the Protected Species of Fauna, Flora and Fungi, Law No. VIII-499, 17.12.2009, as amended; and

These Laws, however, do not impose liability for preventing and remediating damage to fauna and flora protected under them. Instead, they are designed to prevent and cure breaches of the legislation and harm by unlawful activities, as well as imposing administrative penalties.

The Law on Forests, Law No. IX-240, 10.04.2001, as amended, establishes obligations to protect forests. In addition, the Law imposes liability on persons who breach its provisions, including compensation for persons harmed by a breach and, if feasible, restoration of the condition of the forestry resources prior to the damage.

► Other liability systems for remediating environmental damage

Lithuania has legislation that imposes civil, as well as administrative (and criminal), liability.

- Civil Code

The main provision that establishes civil liability for bodily injury and property damage from a tortious act or omission (non-contractual (delictual) liability) is article 6.263 of the Civil Code, Law No. VIII-1864, 18.07.2000, as amended. Article 6.263(1) provides that every person has a duty not to cause damage to another person by their acts or omissions. Article 6.263(2) provides for full compensation if bodily injury or property damage is caused to another person. Liability is fault-based (article 6.248).
Article 6.270(1) of the Civil Code imposes strict liability for bodily injury and property damage on a person who, among other things, causes damage by “the operation of potentially hazardous objects which constitute a special danger for surrounding persons” or the use of “poisonous materials”. Article 6.270(1) establishes a presumption of liability which the defendant may rebut by proving “that the damage was caused by superior force or it occurred due to the aggrieved person’s actions exercised either intentionally or by his own gross negligence”.

Article 6.279 of the Civil Code provides for joint and several liability. In determining the degree of harm for which each person is liable when more than one person causes indivisible damage, “their respective fault shall be taken into consideration, except in cases when it is otherwise provided for by laws”. The person who is responsible for paying compensation has a right of recourse against other responsible persons, again “in proportion to the degree of gravity of the fault of each of them”. If it is not possible to establish the proportion of damage of each, “compensation attributable to each of them shall be considered to be equal”.

Law on Environmental Protection

The Law on Environmental Protection also includes civil liability provisions. It provides that legal and natural persons whose “health, property, or interests have been damaged” may bring a claim for such damage if the damage was caused by unlawful activities.

Privatisation

After independence in 1991, Lithuania introduced the first major privatisation programme under the Law on Initial Privatisation of State Property. A second major programme began when the Law was revised in 1995. The legislation did not, however, include specific environmental provisions. Despite the lack of such provisions, at least one major privatisation included environmental requirements. The inclusion of environmental provisions in privatisation contracts appears, however, to have been rare.39

Interface between the existing national liability regimes and the ELD regime

The following are key differences between the existing national environmental liability regimes and the ELD regime:

- the main liability provisions under existing legislation are non-media-specific;
- the imposition of liability for preventive measures under existing legislation is more limited than liability for preventive measures under the legislation transposing the ELD;
- the existing legislation does not include complementary or compensatory remediation;

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the existing legislation authorises the payment of compensation for environmental damage if the damage cannot be remediated; and
existing legislation for harm from a dangerous activity under the Civil Code establishes a rebuttable presumption of liability whereas the legislation transposing the ELD does not establish a presumption that an operator’s activity caused environmental damage.

Some differences between existing national environmental liability regimes and the ELD regime are, however, difficult to recognise due to ambiguities in the transposing legislation. In particular, the thresholds for liability under existing legislation and the legislation transposing the ELD are unclear despite the Minister of the Environment having approved detailed provisions in the Regulation on Recognising Damage to the Environment and Other Losses as Minor and Methodology for Calculation of Costs of Minor Damage (see section 3 below).

3. Integration of the ELD into existing national legislation

Transposing legislation

Lithuania transposed the ELD by amending the Law on Environmental Protection and the Law on State Monitoring of Environmental Protection.

The Law on Environmental Protection has been amended twice, the first time quite extensively and the second time to define the term “interested parties” who may provide comments / observations (complaints) to a competent authority, as follows:

- Law No. IX-147, 24.03.05, Official Gazette, 2005, No. 47-1558 (12.04.05), Law amending and supplementing Articles 1, 2, 6, 7, 8, 14, 19, 26, 31, 32, 33 and 34 of and the Annex to and repealing Article 24 of the Environmental Protection Law and supplementing the law with articles 32(1) and 32(2) transposed most provisions of the ELD; and
- Law No. XI-858, 28.05.10, Official Gazette, 2010 No. 70-3472 (2010.06.17), Law amending and supplementing Articles 1, 7, 8, 9, the name of Chapter II and the Annex to and of the Environmental Protection Law.

The Law on State Monitoring of Environmental Protection has been amended three times, as follows.

- Law No. IX-648, 08.06.06, Official Gazette, 2006, No. 72-2667 (28.06.06), Law amending Articles 1, 2, 3, 12, 18, 20 and 24 of and incorporating an Annex into the Law on State Monitoring of Environmental Protection;
- Law No. IX-1299, 18.10.07, Official Gazette, 2007, No. 116-4741 (13.11.07), Law amending Article 12, Supplementing Section IV with a fourth Section and amending the Annex of the Law on State Monitoring of Environmental Protection; and
- Law No. IX-1510, 24.04.08, Official Gazette, 2008, No. 53-1954 (10.05.08), Law amending Articles 3, 6, 7, 11, 21, 22, 23, 27, 29, 30,
36 and 37 of and the Annex to the Law on State Monitoring of Environmental Protection.

► Amendments to existing national legislation
See directly above.

► Authorisation in legislation for other governmental entities to issue rules and regulations
The transposing legislation directed the Minister of the Environment to establish procedures for selecting environment-restoration (remedial) measures and their prior approval.

The transposing legislation also directed the Minister of the Environment, in agreement with the Minister of Finance, to establish the procedure for “recognising damage to the environment and other losses as negligible and the method for calculating the costs of recovering negligible damage”.

- The Regulation on Recognising Damage to the Environment and Other Losses as Minor and Methodology for Calculation of Costs of Minor Damage, was approved by the order of the Minister of the Environment No. D1-230, dated 16 May, 2006 (including later changes).

► Relationship to other legislation
The following two Laws supplement the legislation transposing the ELD:
- the Law on Public Administration establishes procedures for challenges to a competent authority’s decision, act or omission under the ELD regime (and other environmental matters); and
- the Code of Administrative Offences applies to sanctions against natural persons under the ELD regime.

The Law on State Environmental Control establishes the format of preventive and remedial orders.

► Guidance and other documentation
Lithuania has not published any guidance or other documentation on the ELD regime.

4. Effective date of national legislation

Law X-147, which amended the Law on Environmental Protection, entered into force on 12 April 2005.

Law No. IX-648, which amended the Law on State Monitoring of Environmental Protection, entered into force on 26 May 2006.

5. Competent authority(ies)

The transposing legislation designated the Ministry of the Environment or its authorised institutions as competent authorities. In turn, the Ministry designated the Regional Environmental Protection Departments as the competent authorities for assessing and determining remedial measures and the recovery of costs.
The transposing legislation also specifies that the Minister of the Environment must approve “environment-restoration” (remedial) measures before they are carried out. Further, the transposing legislation refers to municipal or State authorities as the authorities to carry out preventive and remedial measures in certain circumstances.

6. **Operators and other liable persons**

The transposing legislation defines an “operator” by the term “economic operators”, which term is defined as “users of natural resources and persons engaged in economic activities”. The term “economic activities” is defined as “economic and other activities affecting or likely to affect the environment”.

The definition of an “economic operator” is broader, and thus more stringent than the definition of an “operator” in the ELD (see ELD, art 2(6)). The definition is, however, imprecise.

The definition of an “operator” does not include the optional extension to a person to “whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity” (ELD, art 2(6)). The breadth of the definition, however, implies that this extension is included.

- **Secondary liability (e.g., parent company)**

The transposing legislation does not establish secondary liability.

- **Death or dissolution of responsible operator**

The transposing legislation does not mention the death or dissolution of a responsible operator.

- **Person other than an operator who may be liable**

The transposing legislation does not provide that any person other than an operator may be liable. The legislation, however, provides a very broad meaning of the term “operator” (see this section above). It also specifies that a third party may be liable in certain circumstances, as indicated below.

7. **Annex III legislation**

Strict liability applies to activities carried out under Annex III legislation in the ELD. The transposing legislation provides that “economic operators shall be subject to civil liability irrespective of their guilt for any environmental damage or an imminent threat thereof as a consequence of their economic activities”.

Although the term “civil liability” is used in the transposing legislation rather than “administrative liability”, the former term includes civil and administrative liability under Lithuanian law.

- **Rebuttable presumption that operator’s activity caused environmental damage**

The transposing legislation does not provide a rebuttable presumption that an operator’s activity caused environmental damage.
Additional occupational activities subject to strict liability

The transposing legislation extends strict liability to non-Annex III activities.

Spreading of sewage sludge for agricultural purposes

Lithuania did not exempt the spreading of sewage sludge for agricultural purposes from Annex III activities.

8. Standard of liability for non-Annex III activities

The standard of liability for non-Annex III activities is strict liability.

9. Exceptions

Application to imminent threat of environmental damage as well as environmental damage

The exceptions apply to an imminent threat of environmental damage as well as to environmental damage.

The transposing legislation does not, however, include the word “imminent“ or define it. Instead, it uses the term “real threat of damage to the environment“. It is thus unclear whether this term has the same meaning as an imminent threat under the ELD (ELD, art 2(9)).

Differences with exceptions in the ELD

The exception for “a natural phenomenon of exceptional, inevitable and irresistible character” in the ELD (ELD, art 4(1)(b)) is described as “force majeure” in the transposing legislation.

The exception in the transposing legislation for damage to protected species and natural habitats for damage pursuant to acts specifically authorised under articles 6(3) and (4) of the Habitats Directive and article 9 of the Birds Directive (ELD, art 2(1)(a)) is broader than that in the ELD. The exception states that “no assessment shall be made of the negative effect caused earlier, i.e. prior to the occurrence of damage to the environment, as a result of specific economic activities which are authorised in accordance with the prescribed procedure by competent authorities and which are carried out in compliance with the environmental protection requirements”.

Diffuse pollution exception

The transposing legislation does not include the diffuse pollution exception.

10. Joint and several or proportionate liability

The transposing legislation does not indicate whether it applies joint and several or proportionate liability.

Instead, article 6.279 of the Civil Code, which provides for joint and several liability, applies (see section 1 above).
Mechanism for contribution between liable operators

The transposing legislation does not mention a mechanism for contribution between liable operators.

Article 6.280 of the Civil Code, which establishes the right of recourse against another person who caused the damage, applies to the ELD regime.

11. Limitation period

Lithuania transposed the ELD on 12 April 2005, with the transposing legislation being effective as of that date instead of the deadline for transposition of the ELD on 30 April 2007.

Further, the transposing legislation does not mention any limitations period. The transposing legislation is thus more stringent than the ELD.

12. Defences

Defences to liability or costs?

It is unclear whether the defences are defences to liability or defences to costs.

If defences to liability; suspension (or not) of remediation notice during appeal

See directly above.

Permit defence

Lithuania adopted the permit defence.

The transposing legislation refers to the defence as an exception by stating that:

“no assessment shall be made of the negative effect [on the environment], as a result of specific economic activities which are authorised in accordance with the prescribed procedure by competent authorities and which are carried out in compliance with the environmental protection requirements.

The negative environmental effect caused by economic activities which are authorised in accordance with the prescribed procedure by competent authorities and which are pursued in compliance with environmental-protection requirements shall be repaired (compensated for) by economic operators in accordance with the environmental-protection and other requirements laid down by this Law and other laws”.

The transposing legislation thus appears to be less stringent than the ELD because an operator has the burden of proving a defence, whereas the State has the burden of proving that the ELD regime applies despite an exception to it.

State-of-the-art defence

Lithuania has not adopted the state-of-the-art defence.
13. **Scope of environmental damage**

- Percentage of national land area covered by Birds and Habitats Directives (Natura 2000)
  
  12.07%

- Extension of biodiversity to nationally protected biodiversity

Lithuania extended liability under the ELD to nationally-protected species and natural habitats. It also appears to have extended liability to forests and landscapes.

- Biodiversity damage in the exclusive economic zone

Lithuania has extended protection for biodiversity damage to the exclusive economic zone.

- Water or water body

“Water damage” under the ELD regime applies to surface and ground water, not “water bodies”.

That is, article 32 of the Law on Environmental Protection provides that:

> "It shall be recognised that damage has been caused to the environment where there is a direct or indirect adverse effect:

> ...

> 2) on the ecological, chemical, microbial and/or quantitative condition of surface and ground water and/or ecological capacity (potential) as defined in the Law of the Republic of Lithuania on Water".

14. **Thresholds**

In addition to the thresholds for water, biodiversity and land damage, the transposing legislation states that environmental damage also occurs “if there is a direct or indirect negative effect ... on other elements of the environment (their functions), where environmental protection requirements are breached”.

- Water damage

As indicated in section 13 above, the transposing legislation states that the threshold for water damage is “a direct or indirect negative effect ... on the ecological, chemical, microbial and (or) quantitative condition and/or ecological capacity (potential) of surface and underground water, as described in the Law on Water of the Republic of Lithuania”.

- Biodiversity damage

The transposing legislation states that the threshold for biodiversity damage is “a direct or indirect negative effect ... on the appropriate conservation status of species or habitats being supported or which it is being sought to maintain and on the state of biological diversity, forests, the landscape and protected areas”.

The transposing legislation does not refer to the conservation status of natural habitats.

The transposing legislation implies that the definition of the “favourable conservation status” of a natural habitat should be determined according to “other legal Acts”.

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The Law on Protected Areas defines the “conservation status” of a natural habitat. The definition does not, however, refer to the European territory of the Member States to which the Treaty applies, the territory of a Member State, or the natural range of that species or habitat under the ELD (see ELD, arts 2(4)(a), 2(4)(b)).

The threshold for biodiversity damage thus appears to be different from the definition in the ELD.

► National biodiversity damage

The threshold for national biodiversity damage is the same as that for biodiversity damage under the ELD, with the caveat that the legislation transposing the ELD also extends liability to forests and landscapes. This extension goes beyond the optional extension in the ELD (ELD, art 2(1)(1)), and is more stringent than the ELD.

► Land damage

The transposing legislation states that the threshold for land damage is “a direct or indirect negative effect … on land, i.e. land pollution when pollutants are spread over the land surface or are embedded in the land or underneath it (in the subsoil)”.

Other sections of the transposing legislation refer to restricting negative effects of economic activities on the environment by indicators, including indicators for limit values.

The transposing legislation is as stringent as the ELD and may be more stringent because it does not require human health to be affected.

15. Standard of remediation

► Land

The standard of remediation for land damage is the elimination of “any threat of a negative impact on human health”. This standard equates to the ELD.

► Biodiversity

➢ Primary remediation

The standard of primary remediation for biodiversity damage is the same as the ELD.

➢ Complementary and compensatory remediation

The standard of complementary and compensatory remediation for biodiversity damage is the same as the ELD.

► Water

➢ Primary remediation

The standard of primary remediation for water damage is the same as the ELD.

➢ Complementary and compensatory remediation

The standard of complementary and compensatory remediation for water damage is the same as the ELD.
16. **Format of determination of environmental damage**

The transposing legislation does not contain a specific format for a determination of environmental damage.

17. **Powers and duties of competent authority**

- **Inspections, investigations, studies and analyses**

  A competent authority has broad powers, on production of an identity card, to enter, on foot or by vehicle, any firm, body, organisation, farm, military unit, frontier-zone or private territory and the facilities located therein (buildings, installations, premises, etc), and other facilities intended for economic activities.

  The activities that may be carried out by competent authorities include carrying out tests or measurements related to monitoring, obtaining samples of chemical substances and preparations, examining their composition and properties, obtaining information and data, and examining documents.

- **Information orders**

  The competent authority may “require than an economic operator supply all information on any situation involving damage to the environment or such a threat or where there are grounds to believe that such a situation may occur”. The transposing legislation also authorises a competent authority to obtain information necessary to prevent breaches of environmental protection legislation, to investigate breaches, and to obtain information concerning the effect of economic activities on the environment.

- **Power or duty to require an operator to carry out preventive measures**

  The competent authority has a duty to require an operator to carry out preventive measures. The duty includes issuing mandatory instructions or orders concerning the application of preventive measures.

- **Power or duty to require an operator to carry out remedial actions**

  The competent authority has a duty to require an operator to carry out remedial actions. The duty includes issuing mandatory instructions or orders concerning the application of “environment-restoration measures”. This term is used in the transposing legislation in lieu of the term “remedial measures” in the ELD (see ELD, art 6(1)(b)).

  The competent authority must approve the measures before they are carried out.

- **Power or duty of competent authority to carry out preventive measures**

  A competent authority appears to have a duty to carry out preventive measures if the responsible operator does not do so.

  The transposing legislation states that:

  - the competent authority has “the right and duty to ... itself take all necessary preventive ... measures”;
  - the competent authority “shall, acting within the scope of their competent, apply the necessary [preventive] measures themselves or through third parties” if the economic operator does not carry them out,
is not required to bear the expenses, or the person responsible for the damage has not been identified; and

- the “expenses of an economic operator incurred in implementing preventive ... measures ... shall be met by the persons who caused the damaged to the environment or, if it is impossible to identify those persons, by municipal or State bodies”.

Power or duty of competent authority to carry out remedial measures

A competent authority appears to have a duty to carry out environment-restoration (remedial) measures if the responsible operator does not do so, although this is not clear.

The transposing legislation states that:

- the competent authority "shall ... have the right and duty to ... itself take all necessary ... environment-restoration measures”;
- the competent authority “shall, acting within the scope of their competent, apply the necessary [environment-restoration] measures themselves or through third parties” if the economic operator does not carry them out, is not required to bear the expenses, or the person responsible for the damage has not been identified; and
- the “expenses of an economic operator incurred in implementing ... environment-restoration measures ... shall be met by the persons who caused the damage to the environment or, if it is impossible to identify those persons, by municipal or State bodies”.

The competent authority must approve the measures before they are carried out.

Form of preventive order

The transposing legislation does not specify the form of a preventive order.

The Law on State Environmental Protection Control applies. That Law established procedures for orders including deadlines for carrying out measures specified in them. The orders must, among other things, specify the procedure to appeal them.

Form of remediation order

The transposing legislation does not specify the form of a remediation order.

It states, however, the mandatory orders to carry out environment-restoration measures may include deadlines for such measures and must contain the procedure for appealing the order.

As with preventive orders, the Law on State Environmental Protection Control applies. That Law established procedures for orders including deadlines for carrying out measures specified in them. The orders must, among other things, specify the procedure to appeal it.

Appeal against preventive or remediation order

The transposing legislation sets out the procedures for appealing a mandatory order to carry out preventive and remedial measures including deadlines for the appeal.
An appeal against the director of the institution implementing State monitoring of environmental protection “may be lodged with the courts in accordance with the procedure laid down by law”.

The procedure is laid down in the Law on State Control, the Law on Environmental Protection, and the Law on Administrative Proceedings.

► **Sanctions for delay in complying with preventive or remediation order**

The transposing legislation does not provide any specific sanctions for delay in complying with a preventive or remediation order.

► **Formal consultees on contents of preventive and remediation orders**

The transposing law does not provide for any formal consultees on the contents of preventive and remediation orders.

► **Recovery of implementation and enforcement costs**

The transposing legislation does not include a definition of “costs” (see ELD, art 2(16)).

► **Deadline for competent authority to seek recovery of costs**

The Ministry of the Environment, bodies under its authority or other State or municipal bodies have five years from the date on which preventive or remedial measures are completed, or an economic operator or other person is identified, whichever is later, to bring an action “against the economic operator or other person that caused [the imminent threat of, or actual, environmental damage]” to seek the recovery of their costs.

The Law on Environmental Protection further provides that “Environmental damage and other losses may be recognised as minor damage and shall not be recovered where environmental damage is not extensive and the costs of recovery thereof exceed the amount to be recovered”.

The Minister of the Environment is directed to establish methods to calculate the procedure for determining that environmental damage and other losses are minor damage, and the costs of recovering minor damage.

The Minister issued the Regulation to establish the methodology (see section 3 above).

### 18. Duties of responsible operators

► **Preventive measures**

An economic operator has a duty to “take all necessary preventive measures without delay” when “there is a real threat of damage to the environment”.

The transposing legislation defines the “environment” as “the entirety of mutually related elements functioning in nature (the earth’s surface and subsoil, air, water, soil, plants, animals, organic and inorganic material, and anthropogenic components) as well as the natural and anthropogenic systems united them”.

This definition is broader than the definition of “natural resource” in the ELD (ELD, art 2(12)).
Remedial actions (emergency actions)
An operator has a duty to carry out emergency remedial actions if environmental damage occurs.

Remedial measures
An operator has a duty to carry out remedial measures if environmental damage occurs.

The transposing legislation states that economic operators “who cause damage shall, if possible, restore the environment to its original condition as existed before the environmental damage occurred and shall compensate for any losses sustained”. This provision is less precise than the provisions in the ELD.

Duty to notify / provide information when imminent threat of environmental damage occurs
An economic operator has a duty to notify the competent authority if “a real threat” of damage is not dispelled despite preventive measures.

Entity to which notification should be provided
The entity to be notified is the Ministry of the Environment or an institution authorised by it. As indicated in section 5 above, the Ministry designated the Regional Environmental Protection Departments as competent authorities under the ELD regime.

19. Access to third-party land to comply with the ELD
The transposing legislation does not include any provisions providing for access to third-party land to carry out preventive or remedial measures.

20. Interested parties

Qualification criteria for “sufficient interest”
Persons with a “sufficient interest” are the “public concerned”, which is defined by the Law on Environmental Protection as “one or more natural or legal persons affected or likely to be affected by decisions, acts or omissions in the field of the environment and protection thereof as well as utilisation of natural resources or having an interest in the process of adoption of these decisions”.

The definition of the “public concerned” includes an association that promotes environmental protection and is established in accordance with relevant criteria under Lithuanian law.

In order to be established in accordance with the relevant criteria, an association or other public institution (with the exception of legal persons established by the State or a municipality or institutions of the State or municipality) must be established under the Law on Associations or the Law on Public Institutions.

Method of notifying interested parties of planned remedial measures
The transposing legislation does not specify the method for notifying interested persons of planned remedial measures.

► Information to be provided to competent authority

Any natural or legal person may submit comments / observations (complaints) to a competent authority in respect of an imminent threat of, or actual, environmental damage. Lithuanian law does not specify any format or criteria for information that should be provided to the competent authority.

► Challenges to competent authority’s decision

A person who submitted a complaint may file a judicial complaint to appeal the substantive or procedural legality of the competent authority’s decision, act or omission concerning the environment, environmental protection and the utilisation of natural resources. It is not necessary to allege the impairment of a right to do so.

The Law on Administrative Proceedings, 14 January 1999, No. VIII-1029, as amended, establishes procedures for challenges, including deadlines for documents to be submitted.

► Duty on competent authority to respond to person making comments

The transposing legislation provides that the competent authority must “either comply with or justifiably decline the proposals of citizens, public organisations and other legal and natural persons concerning environmental issues”. The competent authority must respond in writing to the person who submitted comments / observations (complaint).

► Inclusion of interested party in any proceedings by the competent authority against an operator

The transposing legislation does not specify that an interested party has a right to be included in any proceedings by the competent authority against an operator.

21. Public access to information regarding environmental damage and related measures

The transposing legislation does not specify any measures for public access to information concerning environmental damage and related measures.

As with other Member States, legislation transposing Directive 2003/4/EC on public access to environmental information applies.

22. Charges on land / financial security after environmental damage

The transposing legislation does not include charges on land or financial security after environmental damage.
23. Offences and sanctions

The transposing legislation does not specify any offences or sanctions for breaching such legislation.

The Code of Administrative Offences, Law No. 1-1, 01.03.1985, as amended, establishes administrative offences and penalties, including procedures, against natural persons including government officials. The Code does not apply to legal persons, although such persons may be liable under other legislation.40

Thus, an economic operator must pay monetary compensation, employees of the legal person responsible for environmental matters may be fined according to the Code of Administrative Offences. In addition, criminal liability may be imposed on a legal person for environmental damage, etc.

► Directors and officers liability for breaching legislation

The transposing legislation does not mention the liability of directors and officers for breaching the legislation transposing the ELD.

► Publication of penalties

The transposing legislation does not provide for the publication of penalties.

24. Registers or data bases of incidents

The transposing legislation does not provide for registers or databases of incidents under the ELD regime.

25. Cross border damage in another Member State

The transposing legislation does not include any provisions concerning cross border environmental damage.

26. Financial security

Lithuania has not adopted mandatory financial security.

27. Establishment of a fund

Lithuania has not established a fund under the ELD.

28. Reports

The transposing legislation does not provide for the submission of any reports.
Lithuania submitted the report directed by the ELD to the European Commission by 30 April 2013.

29. Information to be made public

The transposing legislation does not specify any information under the ELD regime to be made public.

30. Provisions concerning genetically modified organisms

The transposing legislation does not include any specific provisions concerning genetically modified organisms.

31. Key features and differences in legislation transposing the ELD and existing legislation

Lithuania’s transposition of the ELD by amending its framework law, the Law on Environmental Protection (and the Law on State Monitoring of Environmental Protection), resulted in substantial differences between the provisions of the ELD and the provisions of the legislation transposing the ELD into Lithuanian law. This has led to ambiguities, both as to whether certain provisions of the amended Law on Environmental Protection fully transpose the ELD due to their different terminology, and the scope of the transposed legislation.

There are also gaps in the transposing legislation. For example, neither the transposing legislation nor existing legislation:

- set out the legislation in Annex III of the ELD although this may not be a problem because strict liability applies to non-Annex III activities;
- include provisions concerning access to third party land to carry out preventive and remedial actions;
- include charges on land or financial security following environmental damage; or
- include provisions concerning cross-border environmental damage.

The transposition of the ELD follows existing Lithuanian environmental law in some areas. For example, the definition of an “operator” as a “user of natural resources” reflects the broad definition of persons who may be liable for remediating environmental damage (and paying compensation for damage that cannot be remediated) under existing law. Also, the adoption of the permit defence under the ELD reflects the concept under Lithuanian law that a person is not liable for the lawful emission of pollutants, a concept which goes beyond the permit defence.
1. **Existing national environmental legislation**

Environmental law in Luxembourg imposes liability for remediating, and to a lesser extent preventing, damage to natural resources and for removing unlawfully disposed waste. These, and other, environmental laws are gathered in an informal Environmental Code (*Code de l'Environnement*). This compilation of laws has existed since 1997.

Luxembourg transposed the ELD by the Law of 20 April 2009 relative to environmental responsibility concerning the prevention and remedying of environmental damage, as amended (2009 Law). The 2009 Law is stand-alone legislation. It did not amend other national legislation.

2. **Existing regimes for preventing and remediating environmental damage**

► **Water pollution**

Luxembourg does not have a dedicated liability system for remediating water pollution. The Law of 19 January 2004 concerning the protection of nature and natural resources, as amended (*Loi du 19 janvier 2004 concernant la protection de la nature et des ressources naturelles*), establishes, among other things, criminal penalties for harming natural resources including surface water.

A court that hears a prosecution under the Law may order the person who has harmed the natural resources to restore them to their state before the damage. The restoration to their original state must also be carried out if the land on which the natural resources have been damaged has been transferred to a new owner after the breach of the Law.

► **Land contamination**

Luxembourg does not have a dedicated liability system for remediating contaminated land.

The Law of 21 March 2012 on waste management (*Loi du 21 mars 2012 relative à la gestion des déchets*), provides that it is a criminal offence to dispose of waste in breach of the provisions of the Law.

A court that hears a prosecution for carrying out an unlawful disposal of waste may order the person who committed the offence to remove the waste and remediate contamination caused by it.

► **Restoring biodiversity damage**

A court may order a person who is prosecuted for harming natural resources, including fauna and flora, pursuant to the Law of 19 January 2004 concerning the protection of nature and natural resources, as amended, to remediate the harm and to restore the fauna and flora to their state before the damage.

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The Law of 19 January 2004, as amended, also includes specific provisions concerning the protection of fauna and flora, and the protection of areas designated under the Birds and Habitats Directives and areas designated under the law concerning communal and national interest. These provisions are designed to prevent and cure breaches of the legislation and harm by unlawful activities, as well as imposing penalties.

Other liability systems for remediating environmental damage

Luxembourg has legislation concerning the remediation of sites contaminated by historic pollution, and civil (not administrative) legislation that imposes liability for environmental damage.

Remediation of historic contamination

Article 34(3) of the Law of 21 March 2012 on the management of waste directed municipalities (communes), in consultation with the Environment Administration and the Nature and Forest Administration, to establish a register of current and former landfills, other sites at which waste disposal activities had been carried out or are currently being carried out, and operating and abandoned contaminated sites. The Law provides that each municipality must maintain its own register for sites in its area, but the Environment Administration is responsible for establishing such registers.

When a potentially contaminated site is entered onto the register, it is assessed to determine whether it is actually contaminated and, if so, whether the contamination should be remediated. Information for sites listed in the register is continually updated. The register currently includes over 10,000 sites (including any potentially contaminated site and sites where the contamination has been remedied).

If the person who caused the contamination at a site listed in the register cannot be identified, or is insolvent, or if there is no relevant and/or adequate financial security, the public authorities are responsible for the costs of remediating the contamination.

Civil liability provisions of waste management legislation

Article 18 of the Law of 21 March 2012 on the management of waste imposes administrative and civil liability on a producer of waste for harm caused by the waste. Liability is strict. The producer of the waste has a defence to liability if it proves that the harm is caused by a force majeure, the person suffering the harm, or another person for which the person suffering the harm is responsible, is at fault.

Compliance with a permit is not a defence. Limitation of liability provisions do not apply (that is, the producer cannot contractually limit its liability towards the person suffering the harm). The Law also provides for the liability of the producer of the product, the municipalities and the State.

If the harm is caused by more than one person, joint and several liability applies.

Civil Code

Articles 1382 and 1383 of the Civil Code are the main provisions that establish civil (not administrative) liability for bodily injury and property damage by fault and negligence, respectively. Liability is joint and several. Force majeure is a defence to a claim under the Civil Code but only if the force is external, irresistible and unpredictable in respect of a reasonable person.

Article 1384(1) of the Civil Code establishes a presumption that a person who uses, supervises or controls property is liable for harm caused by that property. The
presumption applies when the person who suffered harm proves that the harm was due to the property.

In order to rebut the presumption, the custodian of the property may prove, among other things, that the property did not cause the damage or that the harm was caused by an external, unforeseeable and irresistible force (force majeure).

► Interface between the existing national liability regimes and the ELD regime

The following are key differences between the existing national environmental liability legislation and the ELD regime:

- the existing legislation applies to waste and natural resources; it is not environmental media specific like the ELD;
- liability for remediating waste and natural resources under the existing legislation is linked to a conviction for unlawfully disposing of waste or harming natural resources instead of applying regardless of an unlawful act or a prosecution;
- the existing legislation focuses more on the remediation of damage to natural resources than its prevention;
- the existing legislation does not include complementary or compensatory remediation;
- compliance with a permit is not a defence to civil liability for harm caused by waste under the existing legislation (although this is not necessary for fault-based liability); and
- the thresholds for remediating environmental damage in the existing legislation are lower than the thresholds in the ELD regime.

3. Integration of the ELD into existing national legislation

► Transposing legislation

Luxembourg transposed the ELD by:


The 2009 Law was amended by:

- Law of 27 August 2012 relating to the geological storage of carbon dioxide (adding the storage of carbon dioxide, as amended by the ELD, to the list of Annex III activities).

► Amendments to existing national legislation

The 2009 Law did not amend existing national legislation.
Authorisation in legislation for other governmental entities to issue rules and regulations

The 2009 Law does not authorise any governmental entity to issue rules or regulations.

Relationship to other legislation

The 2009 Law applies, without prejudice to legislation that has more stringent provisions for the prevention and remedying of environmental damage and without prejudice to legislation that provides for an indemnification in case of environmental damage.

The Law of 10 June 1999 on classified establishments, as amended (Loi du 10 juin 1999 relative aux établissements classés), and the Law of 21 March 2012 on the management of waste, establish the powers under which competent authorities may carry out inspections, investigations, studies and analyses of ELD incidents as well as other environmental matters.

Non-governmental organisations (NGOs) promoting environmental protection that have been approved according to the Law of 10 June 1999 on classified establishments, as amended, (Loi du 10 juin 1999 relative aux établissements classés) and the Law of 19 January 2004 concerning the protection of nature and natural resources, as amended, have the power to submit to the competent authority any observations relating to instances of environmental damage.

NGOs are also entitled to request the competent authority to take action.

Guidance and other documentation

Luxembourg has not published guidance or other documentation on the ELD regime.

4. Effective date of national legislation


The 2009 Law entered into force on 1 May 2009. The 2009 Law applies from that date, that is, it does not have retrospective effect to 30 April 2007.

5. Competent authority(ies)

The competent authorities are the:

- Environment Administration (Administration de l’Environnement);
- Nature and Forests Administration (Administration de la Nature et des Forêts); and
- Water Management Administration (Administration de la Gestion de l’Eau).

each acting within the scope of its respective competencies, together with the member of the Government with responsibility for each of the above competent authorities (Minister).
6. **Operators and other liable persons**

The definition of an “operator” in the 2009 Law is the same as the definition in article 2(6) of the ELD.

- **Secondary liability (e.g., parent company)**
  The 2009 Law does not mention secondary liability.

- **Death or dissolution of responsible operator**
  The 2009 Law does not mention the death or dissolution of an operator.

- **Person other than an operator who may be liable**
  In respect of the defence for an imminent threat of, or actual, environmental damage caused by the act of a third party despite appropriate safety measures being in place (ELD, art 8(3)(a)), the 2009 Law states that the Minister shall be entitled to initiate cost recovery proceedings against a third party who has caused the imminent threat or damage in relation to any measures taken in pursuance of the 2009 Law.

7. **Annex III legislation**

- **Rebuttable presumption that operator’s activity caused environmental damage**
  The 2009 Law does not establish a rebuttable presumption that an operator’s activity caused environmental damage.

- **Additional occupational activities subject to strict liability**
  The 2009 Law does not extend strict liability to any occupational activities other than those under legislation listed in Annex III.

- **Spreading of sewage sludge for agricultural purposes**
  Luxembourg excluded the spreading of sewage sludge for agricultural purposes from strict liability under Annex III.

8. **Standard of liability for non-Annex III activities**

The standard of liability for non-Annex III activities is fault or negligence.

9. **Exceptions**

- **Application to imminent threat of environmental damage as well as environmental damage**
  The exceptions in the 2009 Law apply to an imminent threat of environmental damage as well as environmental damage.

- **Differences with exceptions in the ELD**
  The exceptions in the 2009 Law are largely the same as those in the ELD with the exception that the 2009 Law does not refer to any future amendments to the Conventions and instruments listed in Annexes IV and V of the ELD.
Diffuse pollution exception

The diffuse pollution exception is largely a copy out of article 4(5) of the ELD.

10. Joint and several or proportionate liability

The 2009 Law does not specify whether it imposes joint and several, or proportionate, liability. Instead, the Law tracks article 9 of the ELD.

The Civil Code applies to impose joint and several liability under the ELD regime.

Mechanism for contribution between liable operators

The 2009 Law does not specify a mechanism for contribution between liable operators.

The Civil Code applies to provide that a liable operator who pays the costs of preventive or remedial measures has a right of recourse against other operators who are liable for the same environmental damage.

11. Limitation period

The limitations period in the 2009 Law is 30 years from the date at which the emission, event or incident causing the damage occurred. This is the same as article 17 of the ELD.

12. Defences

Defences to liability or costs?

The defences appear to be defences to costs.

The 2009 Law tracks article 8(3) of the ELD in respect of the mandatory defences (act of a third party despite appropriate safety measures, and compliance with a compulsory order or instruction from a public authority). In such a case, the 2009 Law provides that “the operator is entitled to recover costs incurred by it”.

The 2009 Law also tracks article 8(4)(b) of the ELD, by providing that the cost of remedial measures cannot be charged to the operator if the operator proves that it was not at fault or negligent and the damage results from an emission or activity or any manner of using a product in the course of an activity which the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place.

If defences to liability; suspension (or not) of remediation notice during appeal

The 2009 Law does not mention the suspension of a remediation notice during its appeal.

Permit defence

Luxembourg did not adopt the permit defence.

State-of-the-art defence

Luxembourg adopted the state-of-the-art defence.
13. **Scope of environmental damage**

- Percentage of national land area covered by Birds and Habitats Directives (Natura 2000)
  
  18.08%

- Extension of biodiversity to nationally protected biodiversity

The 2009 Law refers to species and habitats as species and habitats as defined in the Law of 19 January 2004 concerning the protection of nature and natural resources, as amended. The Law of 2004 itself refers back to the provisions of the Birds and Habitats Directives. The 2009 Law also refers to protected zones under the Birds and Habitats Directives and areas designated as areas of communal or national interest.

The 2009 Law thus extends liability under the ELD to nationally protected biodiversity. That is, the species and habitats to which liability under the ELD applies are those protected under the Birds and Habitats Directives and areas of communal or national interest.

- Biodiversity damage in the exclusive economic zone

Luxembourg is a land-locked country.

- Water or water body

The definition of “waters” in the 2009 Law refers to surface water (i.e. all the water that flows or stands on the surface) and underground water (i.e. all the water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil), as defined in the Law of 19 December 2008 relating to Water, as amended (*Loi du 19 décembre 2008 relative à l’eau*).

Liability under the 2009 Law thus applies to “waters” under the Water Framework Directive, rather than “water bodies” under that Directive.

14. **Thresholds**

- Water damage

The 2009 Law refers to the objectives of the Law of 19 December 2008 relating to water, as amended.

The threshold for water damage in the 2009 Law is thus specifically linked to national law.

- Biodiversity damage

The 2009 Law refers to the objectives of the Law dated 19 January 2004 relating to the protection of nature and natural resources.

The definition of “conservation status” in the 2009 Law does not refer to “the European territory of the Member States to which the Treaty applies or the territory of a Member State”, the term that is in the ELD (ELD, arts 2(4)) but refers instead only to the national territory, that is, only to the “territory of a Member State” and to the natural range.
The threshold for biodiversity damage is, thus, measured against the favourable conservation status of a species or natural habitat only in the territory of the Grand-Duchy of Luxembourg or the natural range of the species or habitat.

**National biodiversity damage**

The 2009 Law refers specifically to the Law of 19 January 2004 relating to the protection of nature and natural resources.

The threshold for nationally protected biodiversity damage and biodiversity protected by municipalities is thus the same or roughly the same as the threshold for damage to species and natural habitats protected by the Birds and Habitats Directives.

**Land damage**

The 2009 Law specifies that not only land contamination that creates a significant risk of human health being adversely affected (see ELD, see ELD, art 2(1)(c)), but also to land contamination that risks adversely affecting the environment in a natural habitat protected by the Law of 19 January 2004, as amended. That is, “land damage” specifically includes damage to natural habitats protected under the Birds and Habitats Directives, nationally protected areas, and areas of communal importance.

The threshold for “land damage” in the 2009 Law is, thus, more stringent than the threshold in the ELD.

**15. Standard of remediation**

**Land**

The standard of remediation for land damage in the 2009 Law is the same as in the ELD.

**Biodiversity**

- **Primary remediation**

  The standard of primary remediation for biodiversity damage in the 2009 Law is the same as the ELD.

- **Complementary and compensatory remediation**

  The standard of complementary and compensatory remediation for biodiversity damage in the 2009 Law is the same as the ELD except that in order to compensate for interim losses, complementary (and not compensatory) remediation is undertaken.

**Water**

- **Primary remediation**

  The standard of primary remediation for water damage in the 2009 Law is the same as the ELD except that the 2009 Law also provides that not only the risk of adversely affecting human health must be prevented (see ELD, Annexes I and II), but also the risk of adversely affecting the environment in natural habitats protected by the Law of 19 January 2004, as amended, i.e. certain habitats protected under the Birds and Habitats Directives, nationally protected areas, and areas of communal importance.
Complementary and compensatory remediation

The standard of complementary and compensatory remediation for water damage in the 2009 Law is the same as the ELD.

16. Format of determination of environmental damage

The 2009 Law does not specify a format for a determination of environmental damage.

17. Powers and duties of competent authority

The 2009 Law distinguishes between preventive actions, which are carried out by the competent authority, and remedial actions, which are carried out by the Minister who has responsibility for the competent authority.

► Inspections, investigations, studies and analyses

The 2009 Law does not mention any power of the competent authority or the Minister to carry out inspections, investigations, studies and analyses.

As noted in section 3 above, the Law of 10 June 1999 on classified establishments, as amended and the Law of 21 March 2012 on the management of waste, establish the powers under which competent authorities may carry out inspections, investigations, studies and analyses of ELD incidents as well as other environmental matters.

► Information orders

Articles 6(3) and 7(2) of the 2009 Law provide that the competent authority can oblige a potential liable operator to provide information concerning an imminent threat of, or actual, environmental damage.

In addition, article 8(2) of the 2009 Law provides that the Minister shall, among other things, be entitled to require the relevant operator to supply any information and data necessary to assist the Minister in assessing the significance of the damage.

► Power or duty to require an operator to carry out preventive measures

The competent authority has the power, but not the duty, to require an operator to carry out preventive measures.

► Power or duty to require an operator to carry out remedial actions

The Minister has the power, but not the duty, to require an operator to carry out remedial actions.

► Power or duty of competent authority to carry out preventive measures

The competent authority has the power, but not the duty, to carry out preventive measures if the operator:

- does not carry them out or follow the competent authority’s instructions for carrying them out;
- has not been identified; or
- is not required to bear the cost of such measures.
Power or duty of competent authority to carry out remedial measures

The Minister has the power, but not the duty, to carry out emergency remedial actions and, as a last resort, remedial measures, if the operator:

- does not carry them out or follow the Minister’s instructions for carrying them out;
- has not been identified; or
- is not liable to bear the cost of such measures.

As indicated above, the 2009 Law does not include entirely article 11(2) of the ELD which provides that the competent authority has a duty to establish the identity of the operator who caused the imminent threat of, or actual, environmental damage and to assess the significance of the damage. The 2009 Law provides only that the Minister determines the remedial measures that should be carried out.

Form of preventive order

An order (decision) to carry out preventive measures must include reasons for requiring the operator to carry them out. The operator is notified of the order and the procedures and deadlines for appealing the order. At the same time, a copy of the order is notified to the relevant municipality(ies). The order is also published electronically.

The competent authority must inform the Minister of any preventive measures taken.

Form of remediation order

An order (decision) to carry out emergency remedial actions or remedial measures must include reasons for requiring the operator to carry them out. The operator is notified of the order and the procedures and deadlines for appealing the order. At the same time, a copy of the order is notified to the relevant municipality(ies). The order is also published electronically.

Appeal against preventive or remediation order

An operator has 40 days (from the date on which the decision has been served) to appeal the competent authority’s decision to the Administrative Tribunal.

Sanctions for delay in complying with preventive or remediation order

The 2009 Law does not specify a sanction for delay in complying with a preventive or remediation order.

Formal consultees on contents of preventive and remediation orders

The 2009 Law does not provide for formal consultees on the contents of preventive and remediation orders.

Recovery of implementation and enforcement costs

The definition of “costs” in the 2009 Law is virtually a copy out of article 2(16) of the ELD.

Deadline for competent authority to seek recovery of costs

The deadline for the Minister to seek recovery of its costs is five years from the date at which preventive or remedial measures have been completed or, the date on which the operator or third party was identified, whichever is the later. The provision is a copy out of article 10 of the ELD.
18. Duties of responsible operators

► Preventive measures
An operator has a duty to carry out preventive measures. The 2009 Law provides a deadline of seven days from the imminent threat for the operator to carry them out, which would seem to be too long.

► Remedial actions (emergency actions)
An operator has a duty to carry out emergency remedial actions.

► Remedial measures
An operator has a duty to carry out remedial measures.

► Duty to notify / provide information when imminent threat of environmental damage occurs
An operator has a duty to notify the competent authority and the Minister, as soon as possible, whenever an imminent threat of environmental damage is not dispelled despite the preventive measures taken by the operator. Operators are to inform the competent authority and the Minister of all relevant aspects of the situation.

► Entity to which notification should be provided
The person / entity to be notified of an imminent threat of, and actual, environmental damage is the Minister, the competent authority (see section 5 above), and the Civil Defence Service (*Administration des Services de Secours*).

19. Access to third-party land to comply with the ELD

The 2009 Law does not mention access to third party land to comply with the ELD.

20. Interested parties

The 2009 Law authorises interested parties to comment on an imminent threat of, as well as actual, environmental damage.

► Qualification criteria for "sufficient interest"
An NGO that has been authorised pursuant to the Law of 10 June 1999 concerning classified establishments, as amended, or the Law of 19 January 2004 on the protection of nature and natural resources, as amended, is considered to have a "sufficient interest".

► Method of notifying interested parties of planned remedial measures
The 2009 Law does not specify the method of notifying interested parties of planned remedial measures.

► Information to be provided to competent authority
The request must be supported by relevant information and data supporting the comments / observations concerning the environmental damage at issue.
The 2009 Law states that if the comments / observations show in a plausible manner that environmental damage exists, the Minister will consider them.

► Challenges to competent authority’s decision

An interested party has 40 days (from the date on which the decision has been published electronically) to appeal the competent authority’s decision to the Administrative Tribunal.

If the Minister does not respond within 30 days to the request for action, the absence of a response is deemed to be a refusal. The interested party has 30 days from the deemed decision to appeal it.

► Duty on competent authority to respond to person making comments

The Minister must, as soon as possible, inform the interested party who submitted the request of its decision to accede or to refuse its request and to provide the reasons for it.

If the Minister does not respond within 30 days to the request, the absence of a response is deemed to be a refusal.

► Inclusion of interested party in any proceedings by the competent authority against an operator

The 2009 Law does not provide for the inclusion of an interested party in any proceedings by the competent authority against an operator.

21. Public access to information regarding environmental damage and related measures

The 2009 Law does not specifically provide for public access to information regarding environmental damage and related measures.

As with other Member States, Directive (2003/4/EC) on access to environmental information applies. The Law of 25 November 2005 on access to environmental information, as amended, implemented this Directive.

22. Charges on land / financial security after environmental damage

The 2009 Law provides that the Minister or the competent authority may recover the costs of its preventive or remedial measures, via “security over property or other appropriate guarantees” from the operator who has caused an imminent threat of, or actual, environmental damage. The provision largely tracks article 8(2) of the ELD.

23. Offences and sanctions

The 2009 Law does not specify any offences or sanctions for breaching its provisions.

No other law fills this gap. There is, therefore, no legislation to provide either an administrative or criminal sanction against a person who breaches the 2009 Law.
Directors and officers liability for breaching legislation

The 2009 Law does not include provisions that specifically impose liability on directors and officers.

Publication of penalties

The 2009 Law does not provide for the publication of penalties.

24. Registers or data bases of incidents

Luxembourg has not established a register or database of ELD incidents.

25. Cross border damage in another Member State

The provisions concerning cross border environmental damage track article 15 of the ELD.

26. Financial security

Luxembourg has not established mandatory financial security.

27. Establishment of a fund

Luxembourg has not established a fund for the ELD regime.

28. Reports

The 2009 Law does not specify the preparation or publication of reports.

Section 18(1) of the ELD directed Luxembourg (and all Member States) to submit a report of experience with the ELD to the European Commission by 30 April 2013. Luxembourg has submitted this report.

29. Information to be made public

The 2009 Law does not specify information that should be made public.

30. Provisions concerning genetically modified organisms

The 2009 Law does not include any provisions concerning genetically modified organisms other than Annex III legislation.
31. Key features and differences in legislation transposing the ELD and existing legislation

The 2009 Law differs from existing legislation in Luxembourg in its extent. That is, liability for remediating damage to natural resources and for removing waste that has been unlawfully disposed under existing national legislation is largely linked to a prosecution for an unlawful act. The 2009 Law extends such liability so that a person may be liable even if they have not carried out unlawful acts.

Whereas existing legislation did not apply to specific environmental media, but rather to “nature and natural resources”, the ELD regime is media specific.

The 2009 Law reflects existing law in which compliance with a permit is not a defence to civil liability by rejecting the permit defence in the ELD.

The land damage and water damage for which an operator may be liable are more extensive than under the ELD in that not only does the risk of adversely affecting human health have to be prevented, but also the risk of adversely affecting the environment in a natural habitat protected under the Birds and Habitats Directives, nationally protected areas, and areas of communal importance.

The 2009 Law does, however, contain gaps. Perhaps the most significant of these is the absence of any legislative provisions that provide a penalty for a breach of the law.
1. **Existing national environmental legislation**

When Malta transposed the ELD, it did not have dedicated liability systems to remediate contaminated land or water pollution. Neither did it have a liability system for restoring damage to protected species and natural habitats.

Malta transposed the ELD in Subsidiary Legislation 504.85 which, like all Maltese legislation, was published in Maltese and English. The form of the subsidiary legislation was regulations enacted under Malta’s then Environmental Protection Act, 2001 (Cap. 435), as amended. That Act was subsequently merged with the Development Planning Act, 1992 (Cap. 356), as amended, into a new Act, the Environment and Development Planning Act, 2010 (Cap. 504) (EDPA). The purpose of merging the Acts was to include planning and management of development in the same Act as environmental protection.

2. **Existing regimes for preventing and remediating environmental damage**

The environmental liability law that existed in Malta prior to the transposition of the ELD was “triggered” by an unlawful act. The law did not, therefore, include “significance thresholds” for its application, as does the ELD.

The EDPA was enacted on 13 July 2010, and mostly came into effect in November and December 2010 with the exception of a few remaining provisions some of which were brought into force over the course of 2011 and 2012. The EDPA, like its predecessors, the Environmental Protection Act, 2001, and the Development Planning Act, 1992, is framework and enabling legislation. That is, the EDPA is a "parent" Act that sets out broad environmental and spatial planning principles and provides for the issuance of secondary legislation in the form of regulations to provide details of the many aspects of environmental and spatial planning legislation.

Article 3 of the EDPA provides that it shall be “the duty of every person together with the Government to protect the environment and to assist in the taking of preventive and remedial measures to protect the environment and manage natural resources in a sustainable manner”. Article 4 provides, among other things, that the Government should “take such preventive and remedial measures as may be necessary to address and abate the problem of pollution and any other form of environmental degradation in Malta and beyond”.

Article 5 of the EDPA provides that articles 3 and 4 are not directly enforceable. It further provides that the principles contained in them are fundamental to the Government of Malta and should guide the interpretation of other provisions of the EDPA or any other law that relates to matters governed by the EDPA. The duty set out in articles 3 and 4, therefore, is implemented through regulations issued under the EDPA, as described below.

Prior to the enactment of the EDPA, section 24 of the Environmental Protection Act had provided that “Any person who causes damage to the environment, shall without prejudice to any other civil liability to make good any damages to any person or
authority, be liable to pay to the Fund ... such sum, as may in the absence of agreement be fixed by the court ... to make good for the damage caused to environment and suffered by the community in general by the non-observance of any law or regulation by such person or by his negligence or wilful act or inability in his art or profession”. Section 24 was repealed by the EDPA.

**Water pollution**

Legislation that imposes liability on a person who causes water pollution in Malta mainly stems from the transposition into Maltese law of EU law and the implementation of international agreements. The main focus is on groundwater due to Malta having only limited freshwater from springs.

Subsidiary Legislation 423.20 on the Water Policy Framework Regulations designates, in respect of those Regulations, the Malta Resources Authority as the competent authority in respect of inland waters and the Malta Environment and Planning Authority (MEPA) in respect of coastal waters.

Regulation 16 of the Water Policy Framework Regulations establishes offences, among other things, for their breach. The Regulations do not impose liability for remediating water pollution.

The Code of Police Laws, Chapter 10 of the Laws of Malta, which is one of the earliest sources of law concerning the pollution of surface water, prescribes very general articles regarding the pollution of inland and marine waters. Article 227 provides that “No person shall leave in any harbour or on any wharf anything which may cause injury to public health, or a nuisance; or throw into the waters of any harbour or into any part of the internal waters or of the territorial waters of Malta any rubbish or dirty liquid which may cause a nuisance”.

Article 228 of the Code of Police Laws regulates the pollution of harbours and territorial waters from petroleum and other oil. Any person who breaches the above Articles commits an offence punishable by a fine and/or imprisonment.

Further, in respect of fresh water, the Code of Police Laws provides that “any person shall avoid causing through his negligence, any rubbish, mud or other noxious or offensive matter to enter into any fountain, aqueduct or any other place used for the preservation of public water or any putrid water or other offensive matter to run into a public water source or in any other thing whereby public water is rendered foul or unwholesome”.

**Land contamination**

Malta does not have dedicated legislation that establishes liability for remediating contaminated land.

Regulation 34 of the Waste Regulations, Subsidiary Legislation 504.37, as amended, establishes offences for the unlawful disposal of waste. Regulation 35 provides that a person who has been convicted of such an offence may be ordered by the court to pay the expenses incurred by the competent authority that result from the offence. The court, thus, has the power, in addition to imposing a penalty, to require a defendant, among other things, to reimburse the competent authority for the costs of removing the waste and remediating its effects on the environment.
Restoring biodiversity damage

Malta does not have a specific regime that imposes liability for restoring damage to protected species and natural habitats.

Article 87 of the EDPA authorises MEPA to serve a notice on the owner or occupier of land to require the owner or occupier to cease causing harm to protected species or natural habitats.

The Flora, Fauna and Natural Habitats Protection Regulations, 2006, LN 311/2006, as amended, are designed to prevent and cure breaches of nature conservation legislation and harm by unlawful activities, as well as imposing administrative penalties.

Other liability systems for remediating environmental damage

The legislation described above is the main legislation that includes provisions that impose liability for remediating environmental damage. Malta also has legislation that imposes civil (not administrative) liability concerning environmental damage.

Trees and woodlands

Malta has specific legislation to protect trees and woodlands. The Trees and Woodlands Protection Regulations, 2011, Subsidiary Legislation 504.16, as amended, set out various prohibitions in respect of trees, tree protected areas and other protected areas, as well as penalties for breaching the legislation.

Regulation 29(3) provides that any person who is convicted of breaching the Regulations is liable for “all applicable penalties and compensatory planning measures by way of civil liability”. That is, a person who is guilty of an offence must pay damages by way of civil liability to the person who suffered the damage.

More specifically, a person who is convicted of breaching the Regulations is liable for:

- the full expenses incurred for remedying to the competent authority’s satisfaction the damage caused by the said infringement to the site, or to the conservation status of the tree species, or to both, as relevant;
- any other expense incurred or mitigation measures required to remedy such doings, damage and infringement, or to contain or prevent more widespread impact; and
- the liquidated value of any irreparable loss or damage to the environment, biological diversity, landscape, natural heritage or cultural heritage, as may be relevant to these regulations”.

Civil Code

Section 1031 of the Civil Code is the main civil (not administrative) liability provision. Section 1031 provides that every person is “liable for damage that occurs through his fault”. This provision means, among other things, that a person who causes damage but does not breach the terms and conditions of an environmental permit in doing so, is not liable because that person is not at fault.

Somewhat similarly, section 1029 of the Civil Code provides that “Any damage which is produced by a fortuitous event, or in consequence of an irresistible force, shall, in the absence of an express provision of the law to the contrary, be borne by the party on whose person or property such damage occurs”.
Section 1049 of the Civil Code provides for joint and several liability if the damage is caused by two or more defendants who acted with malice. If some defendants acted with malice and others did not do so, joint and several liability applies only to the defendants who acted with malice. Proportionate liability applies to the other defendants.

If the damage is indivisible, section 1050 of the Civil Code provides that the injured person may bring a claim against any of the persons who caused the damage regardless of whether some tortfeasors acted with malice and others did not do so. The defendants have a right of contribution against other tortfeasors. Further, a defendant has a right to demand that all tortfeasors are joined in the proceedings. In such a case, the court may apportion damages between the defendants in equal or unequal shares, according to the relevant circumstances.

Interface between the existing national liability regimes and the ELD regime

The ELD differs from existing environmental liability regimes in many respects. The following are key differences:

- the legislation transposing the ELD is more comprehensive than existing legislation;
- whereas the threshold for liability for damage under the legislation transposing the ELD depends on the significance of the harm to a natural resource, the threshold for liability under existing environmental legislation is an unlawful act;
- there is no liability under existing legislation for complementary or compensatory remediation;
- liability for restoring biodiversity that is damaged by accidental activities under existing legislation is limited and, as indicated above, restricted to unlawful acts;
- the imposition of liability for preventive measures under existing legislation is much more limited than liability for preventive measures under the legislation transposing the ELD; and
- the existing environmental legislation does not include provisions for interested parties to submit comments / observations to a competent authority on potential environmental damage.

3. Integration of the ELD into existing national legislation

Transposing legislation

Malta transposed the ELD by enacting:


Subsidiary Legislation 504.85 entered into force under two Acts:

- the Environment Protection Act, 2001 (Cap. 435), as amended; and
- the Development Planning Act, 1992 (Cap. 356), as amended.
Subsidiary Legislation 504.85 was subsequently amended by:

- LN 439/2011, Environment and Development Planning Act (Cap. 504), Prevention and Remediying of Environmental Damage (Amendment) Regulations, 2011. The amendment:
  - added the management of extractive waste pursuant to the Waste Management (Management of Waste from Extractive Industries and Backfilling) Regulations, 2009, to Schedule III of Subsidiary Legislation 504.85 (following the addition of Directive (2006/21/EC) on the management of waste from extractive industries to Annex III of the ELD); and

As indicated above, the Environment Protection Act and the Development Planning Act were subsequently merged into the EDPA.

- Amendments to existing national legislation

See directly above.

- Authorisation in legislation for other governmental entities to issue rules and regulations

Subsidiary Legislation 504.85 does not authorise any governmental entity to issue rules or regulations.

- Relationship to other legislation

Subsidiary Legislation 504.85 is secondary legislation under the EDPA. Various provisions of the EDPA, therefore, apply to it.

The following legislation also applies to the implementation and enforcement of Subsidiary Legislation 504.85:

- the Environmental Impact Regulations, 2007, as amended, provide that a consultee under such Regulations qualifies as an “interested party” (see section 17 below); and

- the Voluntary Organisations Act, 2007 (Cap. 492), as amended, specifies criteria for recognition of an environmental non-governmental organisation (NGO).

- Guidance and other documentation

Malta has not published guidance on the ELD regime.

4. Effective date of national legislation

Subsidiary Legislation 504.85 entered into force on 29 April 2008.

Malta applied Subsidiary Legislation 504.85 retrospectively to 30 April 2007, the deadline for transposition of the ELD.
5. **Competent authority(ies)**

The competent authority is MEPA.

6. **Operators and other liable persons**

The definition of an “operator” is a copy out of article 2(6) of the ELD, as is the definition of an “occupational activity” (ELD, art 2(7)).

- **Secondary liability (e.g., parent company)**
  Subsidiary Legislation 504.85 does not impose secondary liability on any person.

- **Death or dissolution of responsible operator**
  Subsidiary Legislation 504.85 does not mention the death or dissolution of a responsible operator.

- **Person other than an operator who may be liable**
  Subsidiary Legislation 504.85 does not mention any person other than an operator who may be liable under the ELD regime.

7. **Annex III legislation**

- **Rebuttable presumption that operator’s activity caused environmental damage**
  Subsidiary Legislation 504.85 does not establish a rebuttable presumption that an operator’s activity caused environmental damage.

- **Additional occupational activities subject to strict liability**
  Malta has not extended strict liability to any occupational activities other than those under legislation set out in Annex III. Schedule III of Subsidiary Legislation 504.85 is largely a copy out of Annex III of the ELD.

- **Spreading of sewage sludge for agricultural purposes**
  Malta exempted the spreading of sewage sludge for agricultural purposes from Annex III legislation (Schedule III of Subsidiary Legislation 504.85).

8. **Standard of liability for non-Annex III activities**

The standard of liability for non-Annex III activities is fault or negligence.

9. **Exceptions**

- **Application to imminent threat of environmental damage as well as environmental damage**
  The exceptions apply to an imminent threat of environmental damage as well as environmental damage.
Differences with exceptions in the ELD

The exceptions in Subsidiary Legislation 504.85 are mainly a copy out of the exceptions in article 4 of the ELD.

Diffuse pollution exception

The diffuse pollution exception is a copy out of the diffuse pollution exception in article 4(5) of the ELD.

10. Joint and several or proportionate liability

Subsidiary Legislation 504.85 does not specify that an operator is jointly and severally, or proportionately, liable if an imminent threat of, or actual, environmental damage is caused by the activities of more than one operator.

Instead, Regulation 10 states that “The provisions of these regulations are without prejudice to any provisions of other relevant legislation concerning cost allocation in cases of multiple party causation especially concerning the apportionment of liability between the producer and the user of a product”. Regulation 10 is, thus, largely a copy out of article 9 of the ELD.

Section 1089 of the Civil Code provides that joint and several liability does not apply unless it is specifically declared by law. Under Maltese law, therefore, if joint and several liability is not declared by law, it must be expressly stipulated by the parties. Therefore, joint and several liability applies to the ELD regime only if it is expressly stipulated in respect of environmental damage under the ELD by a competent authority and liable operators.

Mechanism for contribution between liable operators

Subsidiary Legislation 504.85 does not establish a mechanism for contribution between liable operators.

11. Limitation period

The limitations period under Subsidiary Legislation 504.85 is the same as that in the ELD, that is, 30 years from the date of an emission, event or incident that caused environmental damage.

12. Defences

Defences to liability or costs?

It is not possible to deduce whether the defences are defences to liability or defences to costs due, in large part, to Subsidiary Legislation 504.85 largely being a copy out of the ELD.

If defences to liability; suspension (or not) of remediation notice during appeal

Subsidiary Legislation 504.85 does not mention the suspension, or not, of a remediation notice during an appeal by an operator.
 Permit defence
Malta adopted the permit defence.

 State-of-the-art defence
Malta adopted the state-of-the-art defence.

13. Scope of environmental damage

 Percentage of national land area covered by Birds and Habitats Directives (Natura 2000)
13.35%

 Extension of biodiversity to nationally protected biodiversity
Malta did not extend liability under the ELD to nationally protected biodiversity.

 Biodiversity damage in the exclusive economic zone
Malta has not established an Exclusive Economic Zone. It has, however, established a continental shelf (Continental Shelf Act, 1966 (Cap.194)), in which it carries out oil and gas operations. Subsidiary Legislation 504.85, therefore, extends liability for biodiversity damage in the continental shelf.

 Water or water body
The definition of “water damage” in Subsidiary Legislation 504.85 largely tracks the definition in article 2(1)(b) of the ELD.
It is not clear from Subsidiary Legislation 504.85 whether “water damage” under the ELD regime is damage to “waters” or “water bodies” under the Water Framework Directive.

14. Thresholds

 Water damage
The threshold for water damage in Subsidiary Legislation 504.85 is the same as in the ELD.

 Biodiversity damage
The threshold for damage to species and natural habitats protected by the Birds and Habitats Directives in Subsidiary Legislation 504.85 is the same as the ELD, with the caveat that the Regulations refer only to those Directives and not the national legislation that transposed them.

 National biodiversity damage
Not applicable because Malta has not extended liability under the ELD to nationally protected biodiversity.

 Land damage
The threshold for land damage in Subsidiary Legislation 504.85 is the same as in the ELD.
15. **Standard of remediation**

► **Land**

The standard of remediation for land damage in Subsidiary Legislation 504.85 is the same as in the ELD.

► **Biodiversity**

  ➢ **Primary remediation**

The standard for the primary remediation of biodiversity damage in Subsidiary Legislation 504.85 is the same as in the ELD.

  ➢ **Complementary and compensatory remediation**

The standard for the complementary and compensatory remediation of biodiversity damage in Subsidiary Legislation 504.85 is the same as in the ELD.

► **Water**

  ➢ **Primary remediation**

The standard for the primary remediation of water damage in Subsidiary Legislation 504.85 is the same as in the ELD.

  ➢ **Complementary and compensatory remediation**

The standard for the complementary and compensatory remediation of water damage in Subsidiary Legislation 504.85 is the same as in the ELD.

16. **Format of determination of environmental damage**

Subsidiary Legislation 504.85 does not set out a specific format for a determination of environmental damage.

17. **Powers and duties of competent authority**

► **Inspections, investigations, studies and analyses**

Subsidiary Legislation 504.85 does not include any provisions concerning the competent authority’s right to carry out inspections, investigations, studies and analyses.

Article 83 of the EDPA, which applies to the implementation and enforcement of Subsidiary Legislation 504.85, provides authority to the “Board of [MEPA], the Commission, the Tribunal and such officer, servant or committee or any other person as may be authorised by [MEPA] for this purpose, and if so required by [MEPA] with the assistance of the Police Force” to enter any public or private premises at a reasonable time to carry out, among other things, inspections, investigations, studies and analyses.

► **Information orders**

MEPA may issue orders to require an operator whose activities pose an imminent threat or a suspected imminent threat of, or actual, environmental damage to provide information concerning the threat or damage.
Power or duty to require an operator to carry out preventive measures
MEPA has a duty to require an operator whose activities have caused an imminent threat of environmental damage to carry out preventive measures.

Power or duty to require an operator to carry out remedial actions
MEPA has a duty to require an operator whose activities have caused environmental damage to carry out emergency remedial actions and remedial measures.

Power or duty of competent authority to carry out preventive measures
MEPA has the power, but not the duty, to carry out preventive measures if the operator:
- fails to carry them out;
- cannot be identified; or
- is not required to bear the cost of the measures.

Power or duty of competent authority to carry out remedial measures
MEPA has the power, but not the duty to carry out emergency remedial actions and remedial measures as a means of last resort if the operator:
- fails to carry them out;
- cannot be identified; or
- is not required to bear the cost of the emergency remedial actions or remedial measures.

Form of preventive order
An order that requires an operator to carry out preventive measures must state the exact grounds on which it is based.

At the same time that the order is served on the operator, MEPA must inform the operator of the remedies available to him under relevant laws, and the deadlines for the application of such remedies.

Form of remediation order
An order that requires an operator to carry out remedial measures must state the exact grounds on which it is based.

At the same time that the order is served on the operator, MEPA must inform the operator of the remedies available to him under relevant laws, and the deadlines for the application of such remedies.

Appeal against preventive or remediation order
Subsidiary Legislation 504.85 does not mention the format for appealing an order to carry out preventive or remedial measures.

Article 41 of the EDPA sets out rules for proceedings before the Environment and Planning Review Tribunal. The rules state, among other things, that an application for review shall contain the grounds for the appeal.

Sanctions for delay in complying with preventive or remediation order
Subsidiary Legislation 504.85 does not set out any specific sanctions for a delay in complying with a preventive or remediation order.
Subsidiary Legislation 504.85 does not provide for formal consultees on the contents of preventive and remediation orders. However, Subsidiary Legislation 504.85 does state that a consultee under the Environmental Impact Assessment Regulations, 2007, as amended, qualifies as an “interested party” (see section 20 below).

**Recovery of implementation and enforcement costs**

The definition of “costs” in Subsidiary Legislation 504.85 is a copy out of article 2(16) of the ELD.

**Deadline for competent authority to seek recovery of costs**

The competent authority has five years from the date on which preventive and/or remedial measures are completed, or the liable operator or third party is identified, to bring an action to seek recovery of its costs, whichever is later.

### 18. Duties of responsible operators

**Preventive measures**

An operator has a duty to carry out preventive measures if its activities cause an imminent threat of environmental damage.

**Remedial actions (emergency actions)**

An operator has a duty to carry out emergency remedial actions if its activities cause environmental damage.

**Remedial measures**

An operator has a duty to carry out remedial measures if its activities cause environmental damage.

**Duty to notify / provide information when imminent threat of environmental damage occurs**

An operator has a duty to notify the competent authority if its activities cause an imminent threat of environmental damage and preventive measures that have been carried out have failed to dispel the threat.

**Entity to which notification should be provided**

The operator must notify MEPA of an imminent threat of, or actual, environmental damage.

### 19. Access to third-party land to comply with the ELD

Subsidiary Legislation 504.85 does not mention access to third-party land to carry out preventive or remedial measures under the ELD regime.
20. Interested parties

The submission of comments / observations by an interested party applies only to environmental damage, not an imminent threat of environmental damage.

► Qualification criteria for “sufficient interest”

The qualification criteria for a “sufficient interest” in Maltese law are geared towards planning legislation and environmental impact assessments. That is, a person has a “sufficient interest” if that person:

- has complied with the requirements of article 68(4) of the EDPA (formerly article 32(5) of the Development Planning Act). This provision provides for objections against development under the planning process; or
- qualifies as a consultee or an identified stakeholder under the provisions of the Environmental Impact Assessment Regulations, 2007.

In order to having standing, such a person must have a direct, personal and actual interest that would be affected by the authority’s decision.

The EDPA provides that an NGO that promotes environmental protection and meets any requirements under national law is recognised under Subsidiary Legislation 504.85. The applicable national law is the Voluntary Organisations Act, 2007 (Cap. 492).

The recognised NGO must also meet the test for a “sufficient interest”, that is, standing, under Maltese law, as stated above.

► Method of notifying interested parties of planned remedial measures

Subsidiary Legislation 504.85 does not state the method by which MEPA should notify interested parties of planned remedial measures and invite them to submit comments / observations.

► Information to be provided to competent authority

The request for action to MEPA shall be accompanied by relevant information and data supporting the observations submitted in respect of the environmental damage at issue.

► Challenges to competent authority’s decision

Subsidiary Legislation 504.85 does not mention the right of a person who submitted comments / observations to challenge / appeal the competent authority’s decision, act or failure to act. Article 41 sets out the procedure for appeals of the competent authority’s decisions concerning “the prevention and remedying of environmental damage” (as well as decisions on development control and “environmental protection, including environment assessments [and] access to environmental information”). Appeals are to the Environment and Planning Tribunal.

► Duty on competent authority to respond to person making comments

Subsidiary Legislation 504.85 does not mention any duty on a competent authority to respond to persons making comments.
Inclusion of interested party in any proceedings by the competent authority against an operator

Subsidiary Legislation 504.85 does not state that an interested party may be included in any proceedings by the competent authority against an operator.

21. Public access to information regarding environmental damage and related measures


22. Charges on land / financial security after environmental damage

Subsidiary Legislation 504.85 states that the competent authority shall recover costs incurred by it in carrying out preventive and remedial actions by, among other things, security over property or other appropriate guarantees from the operator whose activities caused the imminent threat of, or actual, environmental damage. The Regulations are largely a copy out of article 8(2) of the ELD.

23. Offences and sanctions

Subsidiary Legislation 504.85 does not specify any offences or sanctions for breaching them. Article 94 of the EDPA, which establishes offences for obstructing an officer and for making a false declaration, applies to Subsidiary Legislation 504.85.

Directors and officers liability for breaching legislation

Subsidiary Legislation 504.85 does not specifically impose liability on directors and officers for breaching them.

Publication of penalties

Subsidiary Legislation 504.85 does not provide for the publication of penalties.

24. Registers or data bases of incidents

Subsidiary Legislation 504.85 does not establish any registers or databases of ELD incidents.
25. Cross border damage in another Member State

The provisions in Subsidiary Legislation 504.85 concerning cross border environmental damage are a copy out of article 15 of the ELD.

26. Financial security

Malta has not adopted mandatory financial security provisions.

27. Establishment of a fund

Malta has not established a fund under the ELD regime.

28. Reports

The Ministry of the Environment (now the Ministry for Sustainable Development, the Environment and Climate Change) submitted the report directed by the ELD, to the European Commission, like other Member States, of the implementation of the ELD.

29. Information to be made public

Subsidiary Legislation 504.85 does not specify any information concerning the ELD regime that must be made public.

30. Provisions concerning genetically modified organisms

Subsidiary Legislation 504.85 does not include any provisions concerning genetically modified organisms other than Annex III legislation.

31. Key features and differences in legislation transposing the ELD and existing legislation

Malta did not have specific liability systems for preventing and remediating damage to water, land, or protected species or natural habitats when the ELD was transposed. The existing environmental legislation was fragmented and sparse, mainly consisting of transposed EU legislation and legislation enacted as a result of the ratification of international agreements.

Since the ELD was transposed, Malta merged its Acts on spatial planning and environmental protection into the EDPA. Subsidiary Legislation 504.85 is, like many other environmental regulations, enacted pursuant to the EDPA. Various provisions of the EDPA that relate, among other things, to procedures for appealing a competent authority’s decision, thus apply to Subsidiary Legislation 504.85.

Subsidiary Legislation 504.85 is largely a copy out of the ELD. Whilst this procedure ensured that Malta complied with EU legislation in transposing the ELD, it makes it
difficult to determine the nature and extent of the transposing legislation in some key aspects. It has also resulted in gaps in the transposing legislation, such as the establishment of offences for breaching its provisions, and access to third-party land to carry out preventive and remedial measures.
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1. **Existing national environmental legislation**

Legislation that existed in Slovakia before the transposition of the ELD imposes liability for remediating water pollution and contaminated land and for restoring damage to protected species and natural habitats and landscapes.

Slovakia transposed the ELD as stand-alone legislation that supplements and amends existing legislation. In 2012, new legislation for remediating contaminated land was introduced. This legislation introduced thresholds for remediating contaminated land that differ from those in the legislation transposing the ELD as well as a different liability system.

2. **Existing regimes for preventing and remediating environmental damage**

The current national environmental legislation in Slovakia was enacted after communist rule ended in November 1989. On the separation of Czechoslovakia into the Czech Republic and Slovakia on 1 January 1993, Slovakia adopted the post-1989 environmental legislation enacted by Czechoslovakia.

The general Act, as in the Czech Republic, is Act No. 17/1992 Coll. on the Environment (Environment Act), as amended. The Act imposes liability on a person who causes ecological harm to remEDIATE it. Section 10 of the Environment Act defines “ecological harm” as the “loss or weakening of the natural functions of ecosystems caused by damage of its individual elements or by infringement of their internal bonds and processes as a result of human activity”. The term “pollution of the environment” means “bringing the physical, chemical or biological components into the environment, as a result of human activity, that are extraneous to the given environment by their nature or quantity”. The Act further defines “damage to the environment” as “the worsening of its state by pollution or other human activity in excess of the level allowed by applicable laws”.

The Environment Act may thus be used to impose liability for remediating damage to land, water, fauna and flora. As a practical matter, however, the Act is rarely used although it sets a general framework for liability for breaching obligations in environmental protection.

- **Water pollution**

Act No. 364/2004 Coll. on water, as amended, provides a duty to conserve and protect water.

The Act also imposes a duty on a person who caused pollution to remediate it (see section 42 of Act No. 364/2004 Coll. on water, as amended).

- **Land contamination**

The main Act for the remediation of contaminated land in Slovakia is Act No. 409/2011 Coll. on Certain Measures in Relation to Environmental Burdens, as amended. Among other things, Act No. 409/2011 Coll. introduced a procedure for the identification and
remediation of environmental burdens. The Act refers to the precise definition of environmental burdens and the register of environmental burdens established pursuant to Act No. 569/2007 Coll. on Geological Works, as amended (Geological Act). The Geological Act also applies, among other things, to geological licences and geological works.

Prior to the introduction of the register on contaminated land, over 8,000 old landfills were inventoried between 1993 and 1997, with monies to remediate them being granted by the Environmental Fund under the programme on waste management. Between 2006 and 2008, the Environment Agency carried out a systematic identification of contaminated sites in Slovakia, followed in 2008 and 2010 by inventorying the sites onto the register.

➢ Geological Act

The Geological Act, which entered into force on 1 January 2008, defines a contaminated site (environmental burden) as a site at which pollution by human activity poses a serious threat to human health, rock, soil or groundwater, with the exception of environmental damage. It also defines a potentially contaminated site (potential environmental burden) as a site at which the risk of a serious threat (the presence of an environmental burden) is reasonably likely / expected.

The Geological Act established the Information System of Contaminated Sites (Environmental Burdens), the current version of which is at http://envirozataze.enviroportal.sk/ (in Slovak)

The website also includes details of sites on the register, registers of geological licences, and information concerning measures to remediate contamination.

The System divided sites into four categories:

- Register A contained information on probable contaminated sites;
- Register B contained information on verified contaminated sites;
- Register C contained information on remediated and rehabilitated contaminated sites; and
- Register D contained information on contaminated sites that were removed from the register.

A site could be listed on more than one register simultaneously, depending on the extent and progress of the remediation.

Regulation of the Ministry of the Environment SR No. 51/2008 Coll. implementing the Geological Act, which entered into force on 15 February 2008, contains further details including procedures for investigating contaminated sites and potential contaminated sites, risk analyses and remedial procedures.

➢ Act on Certain Measures in Relation to Environmental Burdens

Act No. 409/2011 Coll. on Certain Measures in Relation to Environmental Burdens entered into force on 1 January 2012. The Act, which was in preparation for eight years before its enactment, established a regime to remediate contaminated land.

Act No. 409/2011 Coll. refers to the definition of an “environmental burden” set out in the Geological Act as pollution of the site (i.e., land or area) by human activity which constitutes a serious threat to human health, rock, soil or groundwater, with the
exception of environmental damage. Schedule 3 of the Act provides detailed criteria for classifying environmental burdens into three sub-categories. The final “K” classification consists of the sum of the sub-categories. The criteria are used to provide points and a detailed scoring system for determining whether an environmental burden is low, medium, or high priority for remediation. The three classifications, and sub-categories, are:

- **K1:** risk of pollution spreading into groundwater and by means of the groundwater as a pathway
- **K2:** risk from volatile and toxic substances to human health
  - K2A: risks for landfills from unknown substances in leachate and the potential for the creation of landfill gas;
  - K2b: risks for industrial sites and waste sites where leachate is known to exist.
- **K3:** risk of pollution of surface water
  - K3a: risk of pollution of surface water where pollution is evident (e.g., by unnatural colouring, smell, reduced vegetation growth and the bodies of dead animals);
  - K3b: risk of pollution of surface water where pollution is not evident.

A person who suspects that land is an environmental burden may notify the Ministry of Environment or a regional environment office, with the latter notifying the Ministry on receipt of the notice. If the land is not already registered in the Environmental Burdens Information System, the Ministry investigates it. If the Ministry determines that the land meets specified criteria, it enters the site on the System, classifies it as low, medium or high priority for remediation according to the risk posed by it, and arranges for the record of information about the environmental burden to be entered onto the Land Register. Within 15 days of the entry of the record into the Land Register, the Ministry notifies the owner, occupier, or administrator of the land and the relevant municipality that the land is on the register.

The “originator” of the environmental burden must then prepare and carry out a “work plan” to remove the burden. The “originator” is defined as the person whose activities caused the burden.

There are exceptions to liability as an “originator” if:

- the State entered into an agreement to remediate the burden before 1 January 2012 or made a decision to do so; or
- the burden was created as a result of the authorised disposal of waste.

If the originator does not carry out the above measures, the competent Ministry carries them out with public funds if there is an immediate threat to human life or the environment. The originator must reimburse the costs within one year from the date on which the decision on completion of the work plan comes into force.

If an originator has been dissolved or died, the regional environmental office issues a decision to determine that the originator’s legal successor is an “obliged person”. An heir or person referred to in other legislation is not deemed to be the legal successor of an originator. If the originator is not identified, the owner of the land on which the
environmental burden is located is the “obliged person”, that is, the person liable for remediating the contamination.

A person is not an obliged person if it satisfies at least one of the following criteria:

- expenses to carry out works to improve the condition of the environmental burden have been agreed under other legislation;
- all works to improve the condition of the environmental burden have been carried out satisfactorily;
- the State has agreed to remedy the environmental burden under an agreement entered into before 1 January 2012 or issued a decision to do so; or
- the burden was created as a result of the authorised disposal of waste.

The owner of the land on which the environmental burden is located is not an obliged person if the owner proves that:

- it acquired the land by inheritance and did not continue the activities that led to the creation of the environmental burden;
- it could not have been aware of the environmental burden when it acquired the land and did not continue the activity that led to the creation of the environmental burden; or
- it continued the activity that led to the creation of the environmental burden after it acquired the land but did not damage the “mineral environment”, groundwater, soil or human health.

If the environmental burden was present on land before 1 January 2012, the owner of the land is not entitled to compensation from an originator, obliged person or the competent Ministry for costs incurred in carrying out the work plan.

If there are multiple originators or obliged persons for an environmental burden, the scope of liability for remediating the burden is as follows:

- each originator is liable in the same proportion that they contributed to the creation of the burden; with a default to joint and several liability if such allocation is not possible;
- each obliged person who is not the owner of the location of the burden is jointly and severally liable;
- each obliged person who is an owner of land on which the burden is located is liable in proportion to their share of the ownership of the land; or
- each obliged person, of which at least one obliged person is the owner or co-owner of the land on which the burden is located and at least one obliged person is not an owner or co-owner, are jointly and severally liable.

Before an originator or obliged person who is also the owner of the land on which an environmental burden is located can transfer the land to another person, they must ensure that an environmental geological survey, pursuant to the Geological Act, is carried out. The contract transferring the land must include the final report of the survey. The originator or obliged person must also notify the regional environment office.
in writing of such a transfer, enclosing the contract transferring the land. This provision does not require an investigation into the potential contamination of land when it is transferred; it applies only if an environmental burden has been identified at it.

The deadlines for submitting a work plan to the regional environment office for approval vary from one year for land classified as high priority to five years for land classified as medium or low priority. The draft work plan must include, among other things, details of the environmental geological survey, remedial works, monitoring works, and necessary expenses. After issuing a decision on approval of the work plan by the regional environment office, the originator, the obliged person or respective Ministry ensures the realisation and implementation of the work plan. Following receipt and approval of the final reports on remedying and monitoring the environmental burden and a report by the professional geological supervision that the objectives of the remedial works have been achieved, the regional environment office issues a decision on completion of the implementation of the work plan.

The Act sets out details on supervision of the regime, sanctions for breaching provisions related to it, access to third-party land, and proceedings under it. Qualified environmental NGOs have the right to participate in proceedings on written request. Many of these provisions are the same as, or similar to, equivalent provisions in the legislation transposing the ELD.

Section 34 of Act No. 359/2007 Coll. on the prevention and remedying of environmental damage and amendments to some Acts states that it does not apply to environmental damage that was caused prior to the Act entering into force (i.e. prior to 1 September 2007).

There are two separate parallel regimes within which land contamination could fall. First, there is the regime of "environmental damage" under Act No. 359/2007 Coll. on the prevention and remedying of environmental damage and amendments to some Acts that came into force on 1 September 2007. Secondly, there is the regime of "environmental burdens" under Act No. 569/2007 Coll., the Geological Act in connection with its implementing regulation of Ministry of Environment No. 51/2008 Coll. that came into force on 1 January 2008. This regime of remediation of environmental burdens was replaced by a new regime under Act No. 409/2011 Coll. on Certain Measures in Relation to Environmental Burdens as of 1 January 2012, however the definition of environmental burdens still remained in the Geological Act.

As from 1 September 2007, land contamination can be determined as environmental damage. Since 1 January 2008, it can fall within the parallel environmental burden regime. Finally, as of 1 January 2012, the new regime of environmental burden remediation came into force, superseding the former environmental burden remediation regime. The issue as to which legislation applies to land contamination depends strictly on a determination of whether the land contamination falls within the scope of "environmental damage" or "environmental burden". In this respect, it should be noted that the "environmental damage" definition is narrower than the "environmental burden" definition.

As set out above, the ELD and the legislation transposing the ELD (i.e. Act No. 359/2007 Coll.) define "environmental damage" caused on land in a relatively narrow way. Act No. 409/2011 is applied to land contamination which does not meet all the criteria for environmental damage under ELD and Act No. 359/2007 Coll. As mentioned above, Act No. 409/2011 Coll. uses a definition of environmental burden as the pollution of a site...
caused by human activity, which poses a serious threat to human health, rock, soil or groundwater, with the exception of environmental damage.

Other legislation

Other Acts that impose liability for preventing and remediating contaminated land include Act No. 220/2004 Coll. on Protection and Use of Agricultural Land, which provides that owners and lessees of agricultural land (defined as agricultural soil fund) must carry out their activities so as not to contaminate the land. If a person causes damage to agricultural land, that person shall immediately take steps to remedy the damage. If they fail to do so, the agricultural protection authority may require the person who caused the damage to remediate / eliminate it following a proposal by the land office.

In addition, Act No. 223/2001 Coll. on Waste imposes liability on a person who unlawfully disposes of waste on land to remove the waste. If the polluter cannot be found, the appropriate district office carries out the waste recovery or disposal of waste at its own expense. In the case of municipal waste and construction waste, the municipality in whose territory the waste materials were unlawfully placed will ensure the recovery or disposal of waste at its own expense.

Act No. 92/1991 Coll. on the Conditions of Transfer of State Property to Others Persons, as amended, together with secondary legislation, authorises funding for the remediation of historic contamination. The Act provides for the assessment and remediation of privatised historically contaminated land, related groundwater, and structures on the land. The owner of privatised land is responsible for its remediation but can apply to the State for the costs of the remedial works. The Act also provides that the State may retain environmental liabilities on privatisation.

As a practical matter, Act No. 92/1991 Coll. on the Conditions of Transfer of State Property to Other Persons is now used infrequently because, for the most part, the privatisation process took place in the 1990s. Nevertheless, Act No. 92/1991 Coll. provides for the transfer of State property to private persons based on a privatisation project, following a decision on privatisation. Section 10a states that the decision on privatisation may stipulate that the National Property Fund enters into an agreement with the acquirer on the reimbursement of costs incurred on settlement of environmental obligations incurred prior to privatisation. In this respect, pursuant to section 19 of Act No. 409/2011 Coll., legal relations relating to identification of an environmental burden, drafting and implementation of a work plan that began before 1 January 2012 will be finished under existing laws.

Act No. 409/2011 Coll. does not distinguish between privatised or non-privatised land. The main criterion is the time at which the environmental burden is identified, in this case the identification of land contamination. If it was identified before 1 January 2012, it is remediated under "old laws", meaning Geological Act No. 569/2007 Coll. with its secondary legislation.

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42 See the Member State summary for the Czech Republic for a description of this Act in that Member State.
**Restoring biodiversity damage**


Section 3(1) provides that everyone has a duty to protect nature and the landscape against its endangerment, harm and destruction and to conserve and protect it. Section 3(4) provides that entrepreneurs and legal persons who interfere with ecosystems and their components are liable for adopting measures to cease and limit harm and destruction caused by them.

Further, section 8(2) provides that the Nature Preservation Body can require a person who harms or destroys natural resources by an unregulated activity to remove the effects of the action or, if the person fails to do so by the deadline specified in the decision, the Nature Preservation Body can carry out the necessary measures and seek reimbursement for its costs from that person.

**Other liability systems for remediating environmental damage**

Section 420a of Act No. 40/1964 Coll., as amended (Civil Code) provides that a person is strictly liable for damage caused by:

- its activities due to:
  - an activity that is operational in nature or things used in the activity;
  - the physical, chemical or biological effects on the surroundings; or
  - an authorised operation that caused property damage or interfered with another person’s use of its property.

The person who caused the damage may avoid liability by proving that the damage was caused by *force majeure* or that the person claiming damages participated in the activities causing the damage. In contrast to most civil liability in Slovakia, which is fault-based, liability under section 420a is strict.

Section 420 of the Civil Code is the main provision for civil liability. It imposes liability for damage on a person

- who breaches a legal obligation,
- that causes damage, and
- there is a causal link between the breach and the damage.

Liability under section 420 is fault-based. Liability is also subject to a reversed burden of proof, that is, the person alleged to have caused the damage must prove that it did not cause the damage in order to avoid liability.

Section 432 of the Civil Code provides that a person who carries out extraordinarily dangerous activities is strictly liable for bodily injury and property damage caused by those activities.

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43 Act No. 40/1964 Coll. also applies in the Czech Republic; see Czech Republic Member State Summary, section 2.
Interface between the existing national liability regimes and the ELD regime

The following are key differences between the existing national environmental liability regimes and the ELD regime:

- there is no permit or state-of-the-art defence in the existing legislation compared to such defences in the legislation transposing the ELD;
- the existing legislation does not include complementary or compensatory remediation;
- the thresholds for environmental damage in the existing legislation are much lower than the thresholds in the ELD regime;
- the threshold for an “environmental burden” in respect of contaminated land and related groundwater is particularly well defined and differs from that in the legislation transposing the ELD;
- liability for damage to protected species and natural habitats under existing legislation is very limited (i.e. Act No. 15/2005 Coll. on protection of species of wild fauna and flora by regulating trade therein, as amended);
- liability for damage to water under existing legislation is very limited;
- the imposition of liability for preventive measures under existing legislation is much more limited than liability for preventive measures under the legislation transposing the ELD;
- liability is not limited to an operator under existing legislation;
- the legal successor of a polluter is liable under both existing legislation and legislation transposing the ELD; and
- the owner of a site may be liable for remediating damage to its land even if it did not cause the damage under existing legislation but only the operator of the activities that caused environmental damage and its legal successors may be liable under the legislation transposing the ELD.

3. Integration of the ELD into existing national legislation

Transposing legislation

The legislation that transposed the ELD is Act No. 359/2007 Coll. of 21 June 2007 on the prevention and remedying of environmental damage and amendments to some Acts.

There have been five amendments to Act No. 359/2007 Coll., as set out below:

- Act No. 514/2008 Coll. was adopted in relation to the management of waste from the mining industry;
- Act No. 515/2008 Coll. related to the introduction of the Euro;
- Act No. 258/2011 Coll. was adopted in relation to the permanent storage of carbon dioxide in the geological environment, following the addition of Directive (2009/31/EC) on the geological storage of carbon dioxide to Annex III of the ELD; and
Acts 39/2013 Coll. and 180/2013 Coll. relate to the introduction of the mandatory financial security regime (see section 26 below).

**Amendments to existing national legislation**

The transposing legislation amended the following Acts:

- Act No. 145/1995 Coll. on Administrative Fees as amended (including administrative charges for an application for consultation (approximately EUR 33.2), an application for approval of remedial measures (approximately EUR 33.2), and an application for a decision on the bearing of costs (approximately EUR 33.2));
- Act No. 543/2002 Coll. on Nature and Landscape Protection, as amended;
- Act No. 220/2004 Coll. on the Protection and Use of Agricultural Land, as amended;
- Act No. 364/2004 Coll. on Water, as amended;
- Act No. 326/2005 Coll. on Forests, as amended; and

**Authorisation in legislation for other governmental entities to issue rules and regulations**

The transposing legislation does not include authorisation for other governmental entities to issue rules and regulations.

**Relationship to other legislation**

Other legislation applies to the implementation of the ELD regime as follows:

- Act No. 71/1967 Coll. on administrative proceedings (Administrative Code), as amended, which applies to administrative provisions in the transposing legislation;
- Act No. 7/2005 Coll. on bankruptcy and restructuring, as amended, which extends the definition of an operator;
- special rules in Act No. 364/2004 Coll. on Water, as amended, and other environmental legislation (see, for example, section 14 below);
- standards in other legislation such as Act No. 126/2006 Coll. on Public Healthcare, as amended (see, for example, section 15 below);
- the Civil Code, which applies to access to third-party land; and
- Act No. 99/1963 Coll. on Civil Procedure, as amended, which applies to procedures concerning the adjudication about complaints against the decisions and procedures of administrative authorities and deadlines for filing claims.

**Guidance and other documentation**

The Information System is designed to include the following information:

- the type of imminent threat of, or actual, environmental damage including the place where it occurred, the date on which it occurred or was discovered, its extent, and the dates of the beginning and end of proceedings brought under the transposing legislation;
- the title, name, address of the operator and code of the operator’s activity that caused the damage;
- preventive measures, emergency remedial actions (mitigation measures), and remedial measures that have been adopted and carried out, including the result of them;
- the costs of preventive and remedial measures:
  - paid directly by the operator, when such information is available;
  - subsequently acquired from the operator directly or from the financial security provided by the operator;
  - not covered from an operator, with a statement of reasons why the costs were not recovered; and
  - expended from the State Budget.
- details of court proceedings involving operators and other persons and their results; and
- data on the state of the environment and baseline conditions and other associated data gathered under the legislation transposing the ELD or other legislation.

Public administration bodies and legal entities that manage public resources are required to provide the Environment Agency, on request, with the above data and information free-of-charge when they have acquired it through public resources they can make available. The same bodies and legal entities have the right to free information and data from the Information System that is required to enable them to provide such data and information.

In addition, the Environment Agency has produced:

- an “operator’s handbook” describing the ELD regime, including sample applications and forms;
- a brochure on the ELD regime for the public and operators; and
- methodological guideline No. 1/2012-7 for analysing the risk of contaminated land.

Further, the Environment Agency’s Centre for the Assessment of Environmental Quality in the Regions has prepared a methodology for differentiating the risk of environmental damage in relation to separate regions of Slovakia.

In addition, J. Frankovská, I. Slatinka, and J. Kordík have published an “Atlas of remediation methods for environmental burdens” (2010).
4. **Effective date of national legislation**

1 September 2007

5. **Competent authority(ies)**

The main competent authority is the Ministry of the Environment of the Slovak Republic (*Ministerstvo životného prostredia*).

The Ministry’s responsibilities include monitoring, operating an information system, recovering costs of preventive and remedial measures carried out by the State, taking action if there is cross-border environmental damage and co-ordination with central State administrative bodies, and reporting to the European Commission.

The other competent authorities are:

- district offices at the seat of the region;
- district offices; and
- the Slovak Environmental Inspectorate.

These competent authorities are responsible for carrying out State administration in the prevention and remedying of environmental damage.

The transposing legislation sets out the specific responsibilities for each competent authority.

In addition, the Environment Agency has information duties, including establishing and maintaining an Information System for the Prevention and Remedying of Environmental Damage (see section 3 above).

6. **Operators and other liable persons**

The definition of an “operator” in the legislation transposing the ELD tracks the definition in the ELD (ELD, art 2(6)). In addition, it specifically refers (by footnote) to section 88 of Act No. 7/2005 Coll. on bankruptcy and restructuring, in respect of a person “to whom were transferred the decisive economic power over the technical functioning of such an activity”.

► **Secondary liability (e.g., parent company)**

The transposing legislation does not provide for secondary liability (but see directly below concerning legal successors).

► **Death or dissolution of responsible operator**

The transposing legislation provides that “the liability of the operator for environmental damage transfers to its operator’s legal successor”.

► **Person other than an operator who may be liable**

The legal successor of a responsible operator may be liable (see directly above).
7. **Annex III legislation**

- **Rebuttable presumption that operator’s activity caused environmental damage**
  The transposing legislation does not establish a rebuttable presumption that an operator’s activity caused environmental damage.

- **Additional occupational activities subject to strict liability**
  The transposing legislation, as amended, does not impose strict liability on any activities other than activities listed in the equivalent to Annex III of the ELD, as amended.

- **Spreading of sewage sludge for agricultural purposes**
  The transposing legislation exempts sewage sludge from Annex III activities.

8. **Standard of liability for non-Annex III activities**

The standard of liability for non-Annex III activities is fault-based (see section 7 above).

9. **Exceptions**

- **Application to imminent threat of environmental damage as well as environmental damage**
  The exceptions apply to an imminent threat of environmental damage as well as environmental damage.

- **Differences with exceptions in the ELD**
  The transposing legislation has an exception for “hostilities ... or states of war”, compared to the exception in the ELD for “an act of armed conflict, hostilities, civil war or insurrection” (ELD, art 4(1)(a)). The exceptions appear to be the same.

  The transposing legislation has an exception for “a natural phenomenon of exceptional, uncontrollable and inevitable character” compared to the exception in the ELD for “natural phenomenon of exceptional, inevitable and irresistible character” (ELD, art 4(1)(b)). The exceptions appear to be the same.

- **Diffuse pollution exception**
  The transposing legislation excludes “pollution of a diffuse character, where it is not possible to establish a causal link between the damage and the activities of individual operators”. The ELD exception states that it “shall only apply 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” (ELD, art 4(5)).

10. **Joint and several or proportionate liability**

The transposing legislation applies proportionate liability, with a default of joint and several liability. That is, the legislation provides that if multiple operators cause environmental damage, their liability is apportioned by their share in the damage. If the
extent of each operator’s share of the damage is not clear, the competent authority shall determine the appropriate allocation of liability. If allocation cannot be determined clearly or the authority's decision would result in disproportionate cost, the operators are jointly and severally liable.

The transposing legislation sets out procedures for proceedings to determine the extent of the share of multiple liable operators. Initiation of the proceedings does not suspend the duty of operators to carry out remedial measures.

► Mechanism for contribution between liable operators

The transposing legislation does not include a mechanism for contribution between liable operators.

11. Limitation period

The limitation period is 30 years from the occurrence of the emission, event or incident resulting in environmental damage.

12. Defences

► Defences to liability or costs?

The defences are defences to costs. The transposing legislation specifically states that if the mandatory defence of compliance with a compulsory order or instruction by a public authority applies, the public authority shall reimburse the costs to the operator.

The transposing legislation further sets out detailed procedures for proceedings that may be brought by an operator who is seeking a decision on whether it must bear costs including deadlines for commencing such proceedings.

► If defences to liability; suspension (or not) of remediation notice during appeal

Neither a remediation notice nor other actions that a state supervisory authority requires an operator to carry out are suspended during an appeal.

► Permit defence

Slovakia adopted the permit defence.

► State-of-the-art defence

Slovakia adopted the state-of-the-art defence.

13. Scope of environmental damage

► Percentage of national land area covered by Birds and Habitats Directives (Natura 2000)

29.58%

► Extension of biodiversity to nationally protected biodiversity

Slovakia did not extend the ELD regime to species and natural habitats protected under national legislation.
Biodiversity damage in the exclusive economic zone

Slovakia is a land-locked country.

Water or water body

Water damage in Slovakia is damage to “waters”, not “water bodies”, under the Water Framework Directive (2000/60/EC).

The legislation transposing the ELD defines “water damage” as “damage to water which significantly adversely affects the ecological, chemical and/or quantitative status of water [Section 4 of Act No. 364/2004 Coll. as amended] and/or its ecological potential, with the exception of adverse effects specified in a special rule [Section 16(5) of Act No. 364/2004 Coll.]”.

Section 4 of Act No. 364/2004 Coll. provides for determining the quantity and the quality of surface water (the state of surface water); section 16 sets out particularities of determining environmental objectives. However, due to an amendment to Act No. 364/2004 Coll. there is a mistake in the definition of water damage under Act No. 359/2007 Coll.; footnote no. 22 refers to section 16(5) of Act No. 364/2004 Coll. regarding allowed adverse effects of water damage. These effects are, however, set out in section 16(6) of Act No. 364/2004 Coll.

Nevertheless, legislation transposing the ELD (Act No. 359/2007 Coll.) applies to all waters under section 3 of Act No. 364/2004 Coll., i.e. surface water and groundwater.

The term “water” is defined as “all waters covered pursuant to a special rule [Section 3 of Act No 364/2004 Coll.]”. As mentioned above, section 3 of Act No. 364/2004 Coll. provides for categories of water and states that waters are divided into surface water and groundwater. The reference to "special rule" means that the legislator refers to another special law, rule, act or regulation, which contains the specific definition or rule.

14. Thresholds

In establishing the baseline for damage to water and protected species and natural habitats, the transposing legislation states that it should be “based on the best available information. It is based simultaneously on documentation drafted, stored or disseminated pursuant to special rules, … from results of monitoring, research work, expert opinions and professional literature.” The special rules refer to provisions of various Acts including those on geological work, the prevention of the occurrence of serious industrial accidents, the gathering, storage and dissemination of information on the environment, and the Act concerning environmental impact assessments.

Water damage

The transposing legislation refers to “special rules” in respect of the seriousness of the adverse effects to water. The special rules include the Act laying down quality objectives for surface waters and pollution indicator limit values for waste waters and special waters, and the Act laying down details for surveying of the occurrence and assessment of the status of surface waters and groundwater, their monitoring and records on waters and the water balance.
Biodiversity damage

The transposing legislation refers to the conservation status of a protected species and natural habitat “as the case may be, [as] the territory of the Slovak Republic or its natural range” rather than as “the European territory of the Member States to which the Treaty applies or the territory of a Member State or the natural range of that habitat” (ELD, art 2(4)(a), 2(4)(b)).

The transposing legislation appears to have a more stringent threshold than that in the ELD because damage is measured in respect of a smaller area. The threshold is thus more likely to be exceeded in Slovakia.

National biodiversity damage

Slovakia has not extended the ELD regime to nationally protected species and natural habitats.

Land damage

The transposing legislation defines “land” as “arable land, forest land, built-up area and precincts and other areas”, referring to national legislation on them (e.g., section 3 of Act No. 326/2005 Coll. on Forests).

The reference to “other areas” indicates that listing the types of land does not delimit the word “land” in the ELD but simply provides examples of types of land covered by the transposing legislation.

15. Standard of remediation

Land

The transposing legislation sets out more detailed provisions for the remediation of land damage than those in the ELD. The legislation provides that the operator must analyse the risk of the damage, to which Act No. 126/2006 Coll. on Public Healthcare, as amended, applies. The risk analysis includes consideration of the type of soil, concentrations of harmful substances, preparations, organisms or micro-organisms, risk posed by them, and their possible dispersion.

Remedial measures to be applied are materially the same as those in the ELD (annex II, section 2). The transposing legislation specifically states that if the use of land changes when the environmental damage is assessed, the change must be reflected in remedial measures that are carried out.

Biodiversity

Primary remediation

The standard for the primary remediation of biodiversity damage is the same as in the ELD.

Complementary and compensatory remediation

The standard for the complementary and compensatory remediation of biodiversity damage is the same as in the ELD.
Water

Primary remediation

The standard for the primary remediation of water damage is the same as in the ELD.

Complementary and compensatory remediation

The standard for the complementary and compensatory remediation of water damage is the same as in the ELD.

16. Format of determination of environmental damage

The transposing legislation does not set out a specific format for a determination of environmental damage.

17. Powers and duties of competent authority

Inspections, investigations, studies and analyses

An employee of a State administration body that carries out supervision of the ELD regime is authorised to carry out inspections, investigations, studies and analyses. Such an employee is authorised, in particular, to take photographs, videos and sound recordings to document evidence.

An operator must:

- allow the State administrative body employee to carry out the above actions;
- provide full and true information concerning the prevention and remedying of environmental damage; and
- not obstruct the State supervisory body in carrying out such actions in any manner that could inhibit or limit it.

Information orders

The competent authority may require an operator to provide necessary information concerning an imminent threat of, or actual, environmental damage and suspected imminent threats.

The competent authority may also require an operator to provide supplementary information on environmental damage.

Power or duty to require an operator to carry out preventive measures

The operator may request consultation with the district office or the Environment Inspectorate if there is doubt as to whether an imminent threat of, or actual, environmental damage has occurred. There is a time limit of 60 days from the date the request is submitted to the competent authority to submit its written opinion on the consultation.

The competent authority may require an operator to carry out preventive measures and may give instructions on necessary preventive measures.
The competent authority may bring proceedings against an operator to require it to carry out preventive measures. Matters to be decided in the proceedings include whether there is an imminent threat of environmental damage, the identity of the operator who caused it and, for non-Annex III activities, the fault of the operator.

► **Power or duty to require an operator to carry out remedial actions**

The competent authority has the power to require an operator to carry out remedial actions (referred to as mitigating actions in the transposing legislation) and remedial measures.

The competent authority may bring proceedings against an operator to require it to carry out remedial measures. Matters to be decided in the proceedings include whether there is environmental damage, the identity of the operator who caused it and, for non-Annex III activities, the fault of the operator.

► **Power or duty of competent authority to carry out preventive measures**

The competent authority has the power to carry out preventive measures if the operator:

- does not carry out preventive measures or follow the competent authority’s instructions for carrying them out;
- has not been identified or does not have a legal successor; or
- is not liable to bear the cost of such measures.

► **Power or duty of competent authority to carry out remedial measures**

The competent authority has the power to carry out remedial actions (mitigation measures) and remedial measures if the operator:

- does not carry out remedial actions or remedial measures or follow the competent authority’s instructions for carrying them out;
- has not been identified or does not have a legal successor; or
- is not liable to bear the cost of such measures.

► **Form of preventive order**

The transposing legislation does not provide a specific form for a preventive order.

► **Form of remediation order**

The transposing legislation does not provide a specific form for a remediation order.

If proceedings have been brought concerning the approval of remedial measures and the competent authority is deciding whether to approve such measures, it shall inform all known parties to the proceedings and affected bodies and shall order “oral hearing connected with local discovery”. Simultaneously, the authority shall inform such persons that they must make any comments / observations by the time of the oral hearing.

The transposing legislation sets out detailed procedures for such proceedings.

► **Appeal against preventive or remediation order**

An operator may submit an application to the competent authority that it is not liable due to the mandatory defences (act of a third party or compliance with a public authority’s order, ELD, art 8(3)) or the permit or state-of-the-art defences (ELD, art 8(4)).
Sanctions for delay in complying with preventive or remediation order

There is no specific sanction for delay in complying with a preventive or remediation order. The sanctions outlined in section 23 below apply.

Formal consultees on contents of preventive and remediation orders

The transposing legislation does not provide for formal consultees on the contents of preventive and remediation orders.

Recovery of implementation and enforcement costs

The definition of “costs” in the legislation transposing the ELD is the same as that in the ELD.

The transposing legislation specifically provides that if an operator is insolvent, the payment of costs to the competent authority for preventive or remedial measures is a claim of a secured creditor and recoverable under Act No. 7/2005 Coll. on bankruptcy and restructuring, as amended.

The transposing legislation specifically provides that a public administration body which required an operator to comply with its order (ELD, art 8(3)) must compensate the operator for costs expended by the operator.

Deadline for competent authority to seek recovery of costs

The deadline for a competent authority to seek recovery of its costs is five years from the date at which preventive or remedial measures were taken or, the date on which the operator or responsible third party was identified.

18. Duties of responsible operators

Preventive measures

An operator has a duty to carry out preventive measures. If the threat of environmental damage is imminent, the operator must carry out such measures without delay.

Remedial actions (emergency actions)

An operator has a duty to carry out remedial actions (emergency actions) immediately if needed. As indicated above, the transposing legislation refers to such actions as “mitigating measures”.

Remedial measures

An operator has a duty to carry out remedial measures. First, the operator must prepare a proposal for such measures “without delay” and submit an application for its approval to the competent authority.

Duty to notify / provide information when imminent threat of environmental damage occurs

An operator must inform the competent authority without delay about all necessary data and circumstances concerning an imminent threat of environmental damage if preventive measures do not dispel the threat or the operator believes that they will not dispel the threat. The duty to notify the competent authority does not obviate the need to comply with notification provisions in other legislation such as the Environment Act.
An operator must also notify the competent authority immediately if environmental damage occurs. As with an imminent threat of environmental damage, the duty to notify the competent authority of environmental damage does not obviate the need to comply with notification provisions in other legislation such as the Environment Act.

- **Entity to which notification should be provided**

The entity to be notified of an imminent threat of, and actual, environmental damage is the district office and the Slovak Environmental Inspectorate.

### 19. Access to third-party land to comply with the ELD

Preventive and remedial measures may be carried out on third-party property. Article 128(1) of the Civil Code, as amended (which provides that the owner must tolerate such use and related restrictions on the use of the land in an emergency or urgent public interest), applies to the carrying out of such measures.

After preventive measures have been completed, the persons who carried them out must return the property to its original state or, if not possible, to the state according to its previous use.

If preventive or remedial measures damage the property, compensation is payable to the landowner according to sections 415 to 450 of the Civil Code, as amended (setting out provisions concerning responsibility for damage and compensation).

### 20. Interested parties

Slovakia has not extended the right to interested parties to provide comments / observations to an imminent threat of environmental damage (which is optional under the ELD; ELD, art 12(5)).

- **Qualification criteria for “sufficient interest”**

A citizens association or other organisation is an interested party if they meet criteria under Slovak law for such associations or organisations and the objective of their articles of association, foundation deed or charter is environmental protection, or if the articles have been amended has been environmental protection for at least one year. Such an NGO must simultaneously provide notice in writing of its interest in participating in the proceedings by no later than seven days after the competent authority has notified the organisation that environmental damage has occurred.

- **Method of notifying interested parties of planned remedial measures**

The transposing legislation does not specify the method of notifying interested parties of planned remedial measures.

- **Information to be provided to competent authority**

The transposing legislation provides that the notification about environmental damage from an interested party (including a person whose rights or legally protected interests are directly affected by environmental damage and an environmental NGO, as stated above in this section) shall be in writing and shall include, in particular:
the name of the operator whose activity caused environmental damage, if known to the interested party;

- the place at which the environmental damage occurred;

- a description of “established facts”;

- evidence supporting the comments / observations; and

- the name and residence of the interested person if that person is a natural person, or the name and address of the interested person and the name of the person(s) its statutory body if that person is a legal person.

The competent authority may request the interested person to provide further information and answer any questions.

► Challenges to competent authority’s decision

The transposing legislation does not set out the procedures for challenging a competent authority’s decision, act or failure to act in a court or other independent and impartial public body (ELD, art 13(1)).

Sections 244 to 250zg of Act No. 99/1963 Coll. on Civil Procedure, as amended (including adjudication about complaints against the decisions and procedures of administrative authorities, and deadlines for filing claims), apply to such procedures.

► Duty on competent authority to respond to person making comments

The competent authority must respond to the person submitting a notification if the competent authority decides that environmental damage did, or did not, occur and must provide reasons for its decision.

► Inclusion of interested party in any proceedings by the competent authority against an operator

An interested party has the right to participate in proceedings by the competent authority against an operator.

Other parties that have the right to participate are:

- the owner, manager or lessee of land affected by environmental damage or on which preventive or remedial measures are to be carried out;

- a municipality whose territory is affected by environmental damage or on which preventive or remedial measures are to be carried out;

- “a natural or legal person whose rights or legally protected interests or liabilities may be directly affected by environmental damage”; and

- an environmental NGO (in certain proceedings only).

21. Public access to information regarding environmental damage and related measures

Slovakia has established an internet site for information concerning the ELD regime (see section 3, Guidance and other documentation, above). As with other Member States, Directive (2003/4/EC) on access to environmental information also applies.
22. Charges on land / financial security after environmental damage

The transposing legislation does not provide for charges on land / financial security after environmental damage. It does, however, provide for mandatory financial security (see section 26 below).

23. Offences and sanctions

If a State supervisory body considers that an operator has breached its duties under the transposing legislation, the body is authorised, “pursuant to the seriousness of established facts”, to order the operator to carry out the following:

- to maintain the original state until the matter is clarified or documentation has been obtained of that state; and
- to implement measures to eliminate “shortcomings” immediately or by a specified deadline, including the prohibition or limitation on carrying out activities in breach of the transposing legislation and decisions issued pursuant to it.

An appeal by an operator does not suspend the requirement to carry out the above actions.

The competent authority shall impose a fine of up to EUR 6,638.78 on an operator for the following offences:

- failure to inform the competent authority of all necessary information and circumstances concerning an imminent threat of environmental damage;
- failure to provide information requested by the competent authority;
- failure to provide supplementary information requested by the competent authority;
- failure to provide compliance with requirements concerning mandatory financial security, including “forecast costs” of remedying environmental damage and any changes that could affect such a forecast; and
- obstruction of a State supervision body in carrying out its investigations and other duties.

The competent authority shall impose a fine of up to EUR 33,193.91 on an operator for the following offences:

- failure immediately to adopt and carry out preventive measures when there is an imminent threat of environmental damage;
- failure to adopt and carry out preventive measures when required to do so by a competent authority;
- failure to follow the instructions of the competent authority in adopting and carrying out such preventive measures;
- failure to notify the competent authority or Ministry of the likely occurrence of cross-border environmental damage;
failure to adopt and carry out emergency remedial actions (mitigating measures);

failure to prepare a proposal for remedial measures;

failure to adopt and carry out remedial measures;

failure to secure financial security for its activities, including "forecast costs" for remedying environmental damage;

obstruction of an employee of the State administrative body in respect of taking photographs, videos and sound recordings to document evidence pursuant to the transposing legislation;

failure to maintain the original state of a situation until the matter is clarified or documentation has been obtained of that state; and

failure to cease obstructing the State supervisory body in carrying out its investigations and other actions.

The competent authority shall impose a fine of up to EUR 33,193.91 on a legal or natural person – entrepreneur who adopted and carried out preventive or remedial measures on the property of a person who did not cause an imminent threat of environmental damage if they fail to return the property to its original state or to a state that corresponds with its previous use.

There is a limitations period of one year from the date that the competent authority became aware of a breach of liability for the authority to bring proceedings, with a long stop of 10 years from that date.

In imposing fines, the competent authority should take account of the seriousness and duration of the unlawful action, the extent of danger to human health and the environment and the level of damage.

In addition to making a decision to impose a fine, the competent authority may simultaneously order the person to carry out measures to eliminate the consequences of the unlawful action. If the person who is ordered to do so fails to carry them out by the specified deadline, the competent authority may impose an additional fine, with a limitations period of one year from the deadline for having carried them out.

If an operator repeatedly commits the offence for which the fine was imposed, within one year of the coming into force of the decision imposing the fine or fails to carry out the remedial measure, the competent authority shall impose a further fine of up to twice the above amounts (that is, up to EUR 13,277.56 or EUR 66,387.82, as applicable).

Fines are due within 30 days of the date on which the decision imposing it enters into force, unless the decision specifies a longer period.

Revenue from the above fines is income of the Environment Fund (EF), established by Act No. 587/2004 Coll., as amended. Monies from the fund are used for measures to support the environment, including the remediation of environmental burdens.

Directors and officers liability for breaching legislation

The transposing legislation does not specifically impose liability on directors and officers for its breach.
24. Registers or data bases of incidents

Slovakia has established a register of ELD incidents, available on the internet; see http://enviroportal.sk/environmentalne-temy/vybrane-environmentalne-problemy/environmentalne-skody/informacny-system-es (in Slovak)

The register has four categories, which are for the following:

- notifications, comments / observations by interested parties;
- imminent threats of, and actual, environmental damage incidents;
- basic information for operators to assess whether their activities have caused an imminent threat of, or actual, environmental damage; and
- legal proceedings under the ELD regime, including the results of such proceedings.

25. Cross border damage in another Member State

If an operator’s activities cause environmental damage that affects another Member State, the operator must, in addition to carrying out preventive measures and informing the competent authority, also notify the Ministry of Environment and provide the Ministry with all necessary information.

If there is an imminent threat of, or actual, environmental damage that affects another Member State, of which an operator in Slovakia has notified the competent authority, the Ministry must inform the affected Member State without delay and agree the next steps to be carried out.

If an imminent threat of, or actual, environmental damage that originates in the territory of another Member State affects Slovakia, the competent authority which is aware of the damage must inform the Ministry of the Environment and provide available information, including the following:

- the place and time that the environmental damage occurred or was discovered;
- the activity or event that caused the damage, if known;
- the nature and probable extent of the damage;
- preventive measures, emergency remedial actions (mitigating measures) and remedial measures that have been carried out; and
- other specific circumstances that affect the place where the damage occurred and its surroundings.

If other legislation that provides for notification applies, the other legislation must also be complied with.

If the Ministry of Environment learns that environmental damage has occurred from a notification under other legislation, notification by the State of origin of the damage, or...
“in another trustworthy manner”, the Ministry shall immediately report the damage to the European Commission.

26. Financial security

The transposing legislation establishes mandatory financial security.

The transposing legislation provides that an operator must have financial security for the costs of remedying environmental damage that could be caused by its activities. It further provides that the amount of financial security must correspond to the amount of costs likely to be required to remediate and remove environmental damage, based on a risk assessment.

The mandatory financial security system in Slovakia came into effect on 1 July 2012. The system applies to Annex III operators, which must provide evidence of financial security to the relevant competent authority (okresný úrad or Slovenská inšpekcia životného prostredia) within 100 days of the issuance of an environmental permit. The amount of financial security is based on estimated remedial costs. The operator should carry out a risk assessment to determine the financial security. Financial security mechanisms include insurance, bank guarantees and assigned escrow accounts.

The operator must notify competent authority of any changes in estimated remedial costs immediately. There is a fine of up to EUR 33,193.91 for the breach of transposing legislation concerning financial security, with a fine of up to EUR 6,638.78 for not providing the competent authority with evidence of financial security even if such financial security and its changes has been obtained.

27. Establishment of a fund

Slovakia has not established a fund under the ELD regime.

28. Reports

The Ministry of the Environment submitted the report directed by the ELD, to the European Commission, like other Member States, of the implementation of the ELD. Annex 2 of the transposing legislation sets out the information included in the report.

29. Information to be made public

The forms for notifying an imminent threat of, and actual, environmental damage are available on the website; see http://geo.enviroportal.sk/pnes/oznamenie_en.aspx and http://geo.enviroportal.sk/pnes/default_en.aspx (in English)

30. Provisions concerning genetically modified organisms

The transposing legislation does not include any provisions concerning genetically modified organisms other than Annex III legislation.
31. Key features and differences in legislation transposing the ELD and existing legislation

The ELD regime differs substantially from environmental liability legislation that existed in Slovakia when the ELD was transposed. That national legislation is fragmented and, except for Act No. 409/2011 Coll. on Certain Measures in Relation to Environmental Burdens, the liability provisions are limited in scope.

The Environment Act imposes liability for “ecological harm”, which is defined as “loss or weakening of the natural functions of ecosystems caused by damage of its individual elements or by infringement of their internal bonds and processes as a result of human activity”. The Environment Act may, thus, be used to impose liability for all types of environmental media plus damage to fauna and flora although, as indicated in section 1 above, it is rarely used. Specific legislation imposes liability for remediating water pollution, contaminated land, and damage to protected species and natural habitats.

The liability provisions of the water pollution legislation are limited as are the liability provisions in the existing national legislation concerning the protection of species and natural habitats.

Slovakia introduced a regime to remediate contaminated land after it had transposed the ELD. Whereas the land remediation provisions in the legislation transposing the ELD are quite detailed, they are much less detailed than those in Act No. 409/2011 Coll. Further, the threshold for liability under the two Acts is different.

As a result of the new legislation, the following is the current legal situation (as of November 2013) concerning land contamination:

- from 1 September 2007, land contamination can be determined as “environmental damage” under the ELD regime (Act No. 359/2007 Coll.); and
- from 1 January 2012, land contamination can be newly remediated as an “environmental burden” under Act No. 409/2011 Coll. (Act No. 409/2011 Coll. superseded Act No. 569/2007 Coll., which had come into force on 1 January 2008 and which had applied to “environmental burdens” up until 1 January 2012.)

The determination as to which legislation applies to land contamination depends strictly on a determination of whether the land contamination falls within the scope of "environmental damage" or "environmental burden". In this respect, the definition of "environmental damage" is narrower than the definition of "environmental burden". That is, "environmental damage” is a sub-set of “environmental burden”. It would appear, however, that implementing and enforcing the two regimes could lead to problems in determining the appropriate regime to implement or enforce.

Slovakia introduced mandatory financial security under the ELD.

The transposing legislation specifically provides that if an operator is insolvent, the payment of costs to the competent authority for preventive or remedial measures is a claim of a secured creditor and recoverable under Act No. 7/2005 Coll. on bankruptcy and restructuring, as amended.
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1. **Existing national environmental legislation**

Slovenia already had environmental legislation that imposed liability for remedying harm to land, water, flora and fauna when it transposed the ELD. The Environmental Protection Act (Ur.l. RS št. 39/2006) (*Zakon o varstvu okolja, ZVO-1-UPB1 (ZVO-1)*),\(^44\) which is Slovenia’s framework environmental legislation, requires persons who cause an “environmental burden”, to remediate it. An environmental burden encompasses damage to land, water, flora and fauna; it is not environmental media specific.

Slovenia transposed the ELD by enacting an Act that amended the Environmental Protection Act, ZVO-1B (Official Gazette of the Republic of Slovenia No. 70/2008), mainly by adding a new sub-chapter Va. that contains new articles 110.a to 110.i. In addition, Slovenia enacted two regulations.

2. **Existing regimes for preventing and remediating environmental damage**

The existing national environmental law for remediating, and to a more limited extent preventing, harm to land, water, flora and fauna in Slovenia is set out in the Environmental Protection Act, which superseded the Environmental Protection Act 1993 (Ur.l. št. 32/1993), which had been in force from 2 July 1993.\(^45\)

Articles 9 and 10 of the Environmental Protection Act, as amended, provide that a person who is responsible for causing “an environmental burden” is liable for preventing and reducing the burden and for eliminating its consequences.

An “environmental burden”, is defined as “any activity affecting the environment or any consequence of such activity which, exclusively or simultaneously, has caused or has been causing environmental pollution, environmental risk or the use of a natural asset”. A “natural asset” is defined as “any component of nature and may be a public natural asset, a natural resource or a valuable natural feature”. Public assets are natural resources that are economically or commercially exploited. Valuable natural features are features defined in nature conservation regulations.

The requirement to remediate an environmental burden continues during liquidation or bankruptcy proceedings. Article 29(1) provides that the State becomes the owner of the environmental burden; the bankruptcy estate cannot sell the property in which the burden is located. Article 29(4) provides that the estimated costs of remediating an environmental burden have priority over claims by creditors of the bankruptcy estate. That is, the costs of remediating the environmental burden must be paid from the assets of the bankruptcy estate before the estate may pay creditors of the estate.

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\(^44\) The Act was adopted by Ur.l. št. 41/2004. The Act and amendments to it are available at [http://zakonodaja.gov.si/ripsi/r05/predpis_ZAKO1545.html](http://zakonodaja.gov.si/ripsi/r05/predpis_ZAKO1545.html) (in Slovenian).

Article 10 of the Environmental Protection Act also provides that financial guarantees may be imposed on persons responsible for environmental burdens. Such guarantees, the mechanisms for which include bank guarantees and mortgages on property, include liability for “environmental damage that might be caused by his/her activity”.

If an environmental burden is an “excessive environmental burden”, article 11(1) of the Environmental Protection Act directs the State to eliminate its consequences, and to cover the costs of the measures to eliminate it, if:

- the identity of the person who caused environmental damage is not known or is not possible to determine;
- there is no legal basis to impose liability for carrying out the measures on the person who caused the damage; or
- the consequences of the damage cannot otherwise be eliminated.

An “excessive environmental burden” is defined as “any burden exceeding emission limit values, environmental quality standards, and rules of conduct or permitted use of any natural asset”.

The Environmental Protection Act also includes provisions for the remediation of contamination from historic pollution.

If a site is polluted or otherwise suffers environmental degradation, article 24 of the Environmental Protection Act provides that the Government, in co-operation with the relevant municipality, may issue a regulation to establish a programme for its remediation. The programme sets out, among other things, the extent and nature of the degraded environment, responsibilities of the State and municipality, remedial measures, obligations of persons responsible for the environmental burden, deadlines for carrying out remedial measures, and monitoring. Article 34a directs the Ministry to make the draft programme available to the public. If the State has subsidiary liability for remediating damage from an excessive environmental burden, article 26 directs the Ministry to make the draft programme for its remediation available to the public.

As a practical matter, it is difficult to determine liability for historic pollution in areas that have suffered environmental degradation due, in particular, to such persons not being liable for pollution that occurred in accordance with a permit, and the large number of potentially liable persons.

► **Water pollution**

See above. The existing environmental legislation applies to all environmental media including water.

► **Land contamination**

See above. The existing environmental legislation applies to all environmental media including land.

► **Restoring biodiversity damage**

See above. As noted, the Environmental Protection Act applies to all environmental media and flora and fauna, including flora and fauna that are not protected by national nature conservation legislation.

Other nature conservation legislation includes:

the Forestry Act (Ur.l. št. 30/1993), in force from 25 June 1993;

the Waters Act (Ur.l. št. 67/2002), in force from 10 August 2002;

the Agricultural Land Act (Ur.l. 59/1996), in force from 26 October 1996;

Wild Game and Hunting Act (Ur.l. št. 16/2004, in force since 20 May 2004);

Freshwater Fishery Act (Ur.l. 61/2006, in force from 28 June 2006);

Marine Fisheries Act (Ur.l. 115/2006, in force since 1 January 2007);

Cave Protection Act (Ur.l. št. 2/2004, in force since 30 January 2004): and

Triglav National Park Act (Ur.l. št. 52/2010, in force since 15 July 2010).

The above Acts are designed to prevent and cure breaches of the legislation and harm by unlawful activities, as well as imposing administrative penalties.

► Other liability systems for remediating environmental damage

Other liability systems for preventing and remediating environmental damage in Slovenia include provisions of the Environmental Protection Act related to waste, and civil (not administrative) liability under the Code of Obligations and the Law of Property.

➢ Waste removal legislation

Section 157.a of the Environmental Protection Act provides that if waste, other than municipal waste, is unlawfully deposited on land owned by the State or a municipality, “the national inspectorate responsible for the environment shall order the provider of the public service or other person authorised to manage specific types of waste to remove them”. An appeal against the decision does not suspend it. The owner of the land is responsible for the costs of removing the waste unless another person occupies the land, in which case the occupier is responsible.

If municipal waste has been unlawfully deposited on land owned by the State or a municipality, “the municipal inspectorate service shall order the provider of the public service of municipal waste management to remove this waste”. The public service removes the waste in accordance with waste management regulations. An appeal against the decision does not suspend the requirement to remove the waste.

If waste is unlawfully deposited on private land, the municipal inspectorate (in respect of municipal waste) or the national inspectorate (in respect of other waste) shall issue a decision ordering the owner or occupier to remove it. An appeal against the decision does not suspend the requirement to remove the waste.

➢ Civil liability

Article 131 of the Code of Obligations, (Ur.l. št. 83/2001), in force from 1 January 2002, as amended, is the main civil liability provision. It provides that a person who causes harm to another person is liable for compensating that person for bodily injury or...
property damage. The provision imposes fault-based liability unless the activities that cause the damage result in a major risk of damage to the environment, in which case it imposes strict liability.

Article 133 of the Code of Obligations provides that any person may request a court to order another person to remove a source of danger that causes a threat of major damage, or to cease carrying out such activities. The person suffering the harm may also claim compensation. If the harm is caused by an activity for which an environmental permit has been issued, compensation is authorised only for any harm that exceeds the limit values of that permit. That is, a permit defence applies to claims for compensation.

Article 133 establishes a rebuttable presumption. The person who is alleged to have caused the harm must rebut the presumption that it caused the harm by proving that it did not do so.

Article 186 provides for joint and several liability. Article 188 provides a right of contribution by the person who paid more than its share of the damage. In such a case, the court determines each person’s share, taking their culpability and the gravity of the consequences of the damage into account. “If it is impossible to determine the debtors’ shares each shall have an equal share, unless justice demands a different decision in the given case”.

Article 134 of the Code of Obligations provides that a person may request a court or other relevant authority to order a person to cease carrying out activities that infringe the person’s personal rights.

Articles 75 and 99 of the Law of Property Code (Ur.l. 87/2002), in force from 1 January 2003, establish liability for causing a nuisance. As with article 133 of the Code of Obligations, if a permit has been issued for the activities causing the harm, a nuisance must exceed harm under the limit values of the permit.

The compensation rules of the Code of Obligations apply to a request for compensation by a person who has suffered a nuisance.

Interface between the existing national liability regimes and the ELD regime

The following are key differences between the existing national environmental liability legislation and the ELD regime:

- although a person cannot claim compensation under existing legislation for harm that does not exceed the limit values in an environmental permit, there is no permit defence in the legislation transposing the ELD;
- the existing legislation applies to land, water, fauna and flora; it is thus broader than the ELD in that it includes fauna and flora that are not protected by nature conservation law;
- the existing legislation does not include complementary or compensatory remediation;
- the thresholds for environmental damage in the existing legislation are lower than the thresholds in the ELD regime;
- there are no exceptions to liability for preventing or remediating an environmental burden under existing legislation; and
the preventive measures in existing law focus on the prevention of further environmental harm, not environmental harm itself.

3. Integration of the ELD into existing national legislation

► Transposing legislation

Slovenia transposed the ELD by the following Act, which amended the Environmental Protection Act:

- Act amending the Environment Protection Act (ZVO-1B), Ur.l. št. 70/2008, 7 July 2008.

In addition, Slovenia enacted the following two regulations:

- Rules on detailed criteria for determining environmental damage, Ur.l. RS, št. 46/2009; and
- Decree on the types of measures for remedying environmental damage, Ur.l. RS, nr. 55/2009.

► Amendments to existing national legislation

The transposing legislation amended the Environmental Protection Act (see directly above, this section).

► Authorisation in legislation for other governmental entities to issue rules and regulations

The transposing legislation directed the Minister for Environment (now the Minister for Agriculture and the Environment) (Minister) to issue more detailed criteria to establish the significance of adverse effects concerning damage to species and natural habitats protected by the Birds and Habitats Directives.

The Minister had not appeared to have issued these criteria when this summary was finalised (December 2013).

The Ministry of Agriculture and the Environment is directed to issue a special resolution for the recovery of costs. The Ministry has not issued the special resolution when this summary was finalised.

The transposing legislation also directed the Government to prescribe:

- the types of remedial measures, based on Annex II of the ELD (the common framework for remedying environmental damage), that form the basis to select the most appropriate measures to remedy environmental damage;
  - the Minister issued the Rules on detailed criteria for determining environmental damage;
  - the Government issued the Decree on the types of measures for remedying environmental damage;
- the costs of identifying an imminent threat of, and actual, environmental damage, carrying out administrative procedures and collecting information, and monitoring and supervising the implementation of preventive and remedial measures.
The Minister had not issued a regulation to prescribe the above measures when this summary was finalised (December 2013).

**Relationship to other legislation**

The Administrative Disputes Act (UR.I. RS št. 150/2006) (*Zakon o upravnem sporu, ZUS-1*), applies to the procedure for a challenge / appeal of the competent authority’s decision by an interested party.

**Guidance and other documentation**

Slovenia has not issued guidance on the ELD regime.

**4. Effective date of national legislation**

26 July 2008

**5. Competent authority(ies)**

The competent authority is the Ministry of Agriculture and the Environment of the Republic of Slovenia (Ministry). The Ministry acts through the Slovenian Environment Agency, which is part of the Ministry.


**6. Operators and other liable persons**

The transposing legislation uses the term “causer of pollution”, which is broader, and thus more stringent, than the term “operator” in the ELD (ELD, art 2(6)).

The transposing legislation does not define the term “occupational activities” (ELD, art 2(7)), the meaning of which is understood in Slovenian law due to its definition in company law and public services law. In this respect, the Protection of Competition Act (Ur.I. 18/1993) defines the term “economic activity” as an activity carried out by a public, private, profit or non-profit company.

**Secondary liability (e.g., parent company)**

The transposing legislation does not mention secondary liability.

**Death or dissolution of responsible operator**

The transposing legislation does not mention the death or dissolution of a responsible operator.

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46 The Ministry was established by the Government Act of 3 February 2012, which merged the Ministry of Agriculture, Forestry and Food and the part of the Ministry of the Environment and Spatial Planning that concerns the environment.
Person other than an operator who may be liable

The transposing legislation does not refer to any person other than an operator who may be liable. As indicated above, however, an operator under Slovenian law is a “causer of pollution”, which term has a very broad meaning.

7. Annex III legislation

Rebuttable presumption that operator’s activity caused environmental damage

The transposing legislation does not establish a rebuttable presumption that an operator’s activity caused environmental damage.

Additional occupational activities subject to strict liability

No occupational activities other than those specified in Annex III of the ELD are subject to strict liability.

Spreading of sewage sludge for agricultural purposes

Slovenia exempted the spreading of sewage sludge for agricultural purposes from Annex III activities.

8. Standard of liability for non-Annex III activities

The standard of liability for non-Annex III activities is fault-based liability, that is, activities caused “deliberately or out of negligence”.

9. Exceptions

Application to imminent threat of environmental damage as well as environmental damage

The exceptions apply to an imminent threat of environmental damage as well as environmental damage.

Differences with exceptions in the ELD

The transposing legislation provides an exception for an imminent threat of, or actual, environmental damage from “activities the main purpose of which is ... protection from natural disasters”.

This exception differs from the exception in the ELD, which excludes “activities ... the sole purpose of which is to protect from natural disasters” (ELD, art 4(6)).

The exception in the transposing legislation is broader than the exception in the ELD and, thus, less stringent.

Diffuse pollution exception

The exception for diffuse pollution is a copy out of the exception in the ELD.
10. Joint and several or proportionate liability

Article 186 of the Code of Obligations (see section 2 above) applies; the scope of liability for the legislation transposing the ELD is, therefore, joint and several liability.

Mechanism for contribution between liable operators

Article 188 of the Code of Obligations (see section 2 above) applies to provide that the operator who pays more than its share of the damage has a right of contribution against other liable operators.

11. Limitation period

The limitation period for beginning proceedings against a person who caused environmental damage is 30 years after the date on which the damage was caused or the operator was identified.

12. Defences

Defences to liability or costs?

The mandatory defences (act of a third party and compliance with “a compulsory order or instruction emanating from a public authority” (ELD, art 8(3(a)-(b))) appear to be defences to costs but this is not entirely clear.

The transposing legislation states that a person who causes environmental damage may not appeal a decision to carry out preventive measures. The transposing legislation does not, however, include such a provision in respect of emergency remedial actions or remedial measures.

Further, other provisions of the Environmental Protection Act state that the Administrative Court should make a decision within three months. This provision is absent from the legislation transposing the ELD.

In addition, the transposing legislation provides that a person who caused environmental damage may seek recovery of its costs from the “body or holder of public authority” that issued the order.

In referring to the second mandatory defence, the transposing legislation uses the term “state or municipal body or holder of public authority”. This term appears to be at least as stringent as the term “public authority” in the ELD.

If defences to liability; suspension (or not) of remediation notice during appeal

The transposing legislation does not state that a notice to carry out remedial measures is suspended during an appeal by an operator.

Permit defence

Slovenia did not adopt the permit defence.

State-of-the-art defence

Slovenia did not adopt the state-of-the-art defence.
13. **Scope of environmental damage**

- **Percentage of national land area covered by Birds and Habitats Directives (Natura 2000)**
  
  35.52%

- **Extension of biodiversity to nationally protected biodiversity**
  
  Slovenia has extended liability under the ELD to nationally-protected biodiversity.

- **Biodiversity damage in the exclusive economic zone**
  
  Slovenia has claimed an ecological protection zone that extends beyond its territorial sea. Liability under the ELD extends to this zone.

- **Water or water body**
  
  It is not clear from the transposing legislation whether “water damage” under the ELD regime is damage to “waters” or “water bodies” under the Water Framework Directive. The definition of water damage in the amendments to the Environmental Protection Act largely track the definition in the ELD (ELD, art 2(1)(b)).

14. **Thresholds**

- **Water damage**
  
  The threshold for water damage in the transposing legislation is the same as the threshold in the ELD.

- **Biodiversity damage**
  
  The threshold for biodiversity damage in the transposing legislation is the same as the threshold in the ELD.

- **National biodiversity damage**
  
  The threshold for national biodiversity damage in the transposing legislation is the same as the threshold for damage to species and natural habitats protected by the Birds and Habitats Directives.

- **Land damage**
  
  The transposing legislation defines land damage as “all pollution with emissions in, on or under the soil that can endanger human health and exceed the prescribed soil quality standards referred to in Article 23 of this Act”.

  Article 23 states that the Government will issue “environmental quality standards, alert and critical values [that is, target and intervention values], pollution reduction levels and related measures taking into account potential effects of the total and of integral environmental burdens”, including “the criteria for sensitivity, vulnerability or the level of burden on the environment”.

  The Government has issued various environmental quality standards; see, e.g., Decree on groundwater quality standards (Ur.l. 100/2005, in force from 25 November 2005). The definition of land damage differs from the ELD in that the transposing legislation:
uses the term “emissions” instead of the term “substances, preparations, organisms or micro-organisms” in the ELD (ELD, art 2(1)(c)); however, the term “emissions” is from article 3 of the Environmental Protection Act, which includes “substances, preparations, organisms or micro-organisms” in the definition of “emission”;

refers to soil quality standards, whereas the definition in the ELD does not do so (there are no soil quality standards under EU law); and

uses the term “endanger human health” instead of a “significant risk of human health being adversely affected” (this difference is equivalent to the ELD).

15. Standard of remediation

► Land

The standard of remediation for land damage is the same as that in the ELD. In addition, the transposing legislation states, that the “probability of the existence of previous pollution in the area of environmental damage that represents a human health risk or might impact other aspects of environmental protection [should be examined] in order for the remediation of the area owing to such previous pollution to be carried out at the same time as the measures to remedy the environmental damage caused to land”.

► Biodiversity

➢ Primary remediation

The standard of primary remediation for biodiversity damage is the same as that in the ELD.

The transposing legislation is more detailed than the ELD.

The transposing regulations include, among other things, a matrix for identifying damage to protected species and natural habitats, and more detailed primary remediation measures than those in the ELD.

➢ Complementary and compensatory remediation

The standard of complementary and compensatory remediation for biodiversity damage is the same as that in the ELD.

The transposing legislation is more detailed than that in the ELD. The transposing regulations include, among other things, a graphic presentation of primary and compensatory remediation measures, and simplified theoretical examples to assist in quantifying the loss of natural resources and their functions.

► Water

➢ Primary remediation

The standard of primary remediation for water damage is the same as the ELD.
Complementary and compensatory remediation

The standard of complementary and compensatory remediation for water damage is the same as that in the ELD.

The transposing legislation is more detailed than that in the ELD. It includes, among other things, a graphic presentation of primary and compensatory remediation, and simplified theoretical examples to assist in quantifying the loss of special components of the environment and their functions.

16. Format of determination of environmental damage

The transposing legislation does not specify a format for a determination of environmental damage.

17. Powers and duties of competent authority

- Inspections, investigations, studies and analyses

The transposing legislation does not mention the power of the competent authority to order inspections, investigations, studies and analyses.

The General Administrative Procedure Act sets out provisions concerning the above procedures. The Inspection Act (Ur.l. 56/2002), in force from 13 July 2002, provides for inspections.

- Information orders

The competent authority may order an operator to provide information about a threat of environmental damage, or environmental damage.

- Power or duty to require an operator to carry out preventive measures

The competent authority has the power, but not the duty, to order an operator to carry out preventive measures. The competent authority may do so by issuing a decision that includes detailed instructions for such measures.

- Power or duty to require an operator to carry out remedial actions

A competent authority has a duty to require an operator to carry out remedial measures. The competent authority may do so by issuing a decision that includes detailed instructions for carrying them out.

The transposing legislation does not, however, contain a description or definition of emergency remedial actions. That is, the ELD describes such measures as “all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services” (ELD, art 6(1)(a)). This description is not in the legislation transposing the ELD into Slovenian law.

The transposing legislation refers only to the definition of “remedial measures” under the (ELD, art 2(11)), which it tracks. It thus provides that remedial measures are “actions or a combination of actions including mitigating or interim measures to restore, rehabilitate or replace a damaged special part of the environment or its impaired functions, or to
provide an equivalent alternative to this part or those functions”. The actions must be in accordance with Annex II of the ELD (which sets out the common framework for remediating environmental damage).

The absence of a requirement to carry out emergency remedial actions is contrary to the ELD.

► Power or duty of competent authority to carry out preventive measures

The transposing legislation does not direct the competent authority to carry out preventive measures.

► Power or duty of competent authority to carry out remedial measures

The transposing legislation specifically states that the competent authority has a duty to carry out remedial measures if:

- the identity of the person who caused environmental damage is not known or is not possible to determine;
- there is no legal basis to impose liability for carrying out the measures on the person who caused the damage; or
- the environmental damage was the consequence of a natural phenomenon (defined by the Environmental Protection Act as “any physiochemical processes, radiation, geological phenomena, climate, hydrographical and biological conditions, and any other natural phenomena causing changes in the environment”).

In such a case, the Ministry prepares a remediation programme in conjunction with other competent ministries and the relevant municipality. There is an exception if another Act regulates removal of the consequences of the damage.

The remediation programme for the area affected by the environmental damage must include at least the following:

- an assessment of the situation and the scale of the consequences for people and the environment;
- a determination of the extent of the area in which action needs to be carried out;
- an indication of the required remedial action, on the basis of Annex II of the ELD (framework for carrying out remedial measures), and the deadlines for its implementation;
- the bodies, organisations and services responsible for implementing the proposed action;
- an estimate of the required funding and the method of covering such costs; and
- a plan to monitor the effects of the implemented actions.

The Government issues a decree for the adoption of the remediation programme.

► Form of preventive order

The transposing legislation does not specify a format for a decision to carry out preventive measures.
Form of remediation order

The transposing legislation includes detailed procedures for the preparation of proposals for remedial measures, including:

- a preliminary assessment of the possibilities for, and feasibility of, the remedial measures;
- quantification of the environmental damage;
- quantification of the benefits of remedial measures;
- a methodology for determining the extent of complementary and compensatory remedial measures; and
- a methodology for determining the scope of monitoring, and reporting on the implementation of, remedial measures.

The transposing legislation directs the Ministry to notify the administrative authority responsible for human health if the environmental damage affects human health, and to obtain an opinion on the effect of such damage.

Appeal against preventive or remediation order

There is no provision for an administrative appeal against an order (decision) to carry out preventive measures or remedial measures. The transposing legislation provides, instead, that “an administrative dispute shall be permitted”. That is, the person on whom the decision is served may bring an action for judicial review of the decision under the Administrative Disputes Act, No. 133/06 (Ur.l. 105/2006, in force from 1 January 2007), without exhausting administrative remedies.

Sanctions for delay in complying with preventive or remediation order

The transposing legislation does not provide any specific sanctions for a delay in complying with a decision on preventive or remedial measures.

Formal consultees on contents of preventive and remediation orders

The transposing legislation directs the Ministry:

- to “obtain the expert opinion of the Nature Protection Institute ... on significant adverse effects of the damaging event on reaching or maintaining the favourable conservation status of protected species or habitats types”; and
- to obtain an opinion from the administrative authority responsible for human health on the effect of environmental damage on human health, when the damage could affect it.

Recovery of implementation and enforcement costs

The definition of “costs” in the transposing legislation tracks the definition in the ELD (ELD, art 2(16)). The transposing legislation directs the Ministry to issue a special resolution for the recovery of costs.

The Ministry had not issued the special resolution when this summary was finalised (December 2013).

The transposing legislation specifically provides that a person who causes pollution is also responsible for its environmental effects in the event of bankruptcy or liquidation.
Deadline for competent authority to seek recovery of costs

The deadline for the competent authority to seek recovery of its costs is the same as the ELD, that is, five years after the measures have been carried out, or the date on which the person who caused the environmental damage was identified.

The Ministry issues a decision to seek recovery of its costs.

18. Duties of responsible operators

Preventive measures

An operator has a duty to carry out preventive measures.

It is unclear whether the term “without delay” in the transposing legislation qualifies the duty to take preventive measures as well as the duty to notify the competent authority of an imminent threat of environmental damage (ELD, art 5(1)).

Remedial actions (emergency actions)

As indicated in section 7 above, the transposing legislation does not include emergency remedial actions.

Remedial measures

An operator has a duty to carry out remedial measures.

Duty to notify / provide information when imminent threat of environmental damage occurs

An operator has a duty to inform the Ministry “without delay” if its activities cause an imminent threat of environmental damage. The transposing legislation does not condition the duty to notify on the operator’s preventive measures having failed to dispel the threat of damage.

The notification to the Ministry for an imminent threat of environmental damage should include “all important facts and, in particular ... the actual state of the environment and the measures implemented”.

The notification to the Ministry for environmental damage should include “all important facts”, including “information about the environmental damage that has occurred and a proposal for remedial measures for the Ministry’s approval”.

Entity to which notification should be provided

The notification of an imminent threat of, or actual, environmental damage is provided to the Ministry.

19. Access to third-party land to comply with the ELD

The owner or occupier of land on which environmental damage has occurred must allow access to the land to carry out remedial measures to remove the damage.

The transposing legislation does not mention compensation to the owner or occupier for allowing such access.
Article 131 of the Obligations Code, which provides that any person who causes damage to another person must reimburse that person, applies to provide such compensation. Various other laws require landowners to allow the use of their property in the public interest, subject to an entitlement to compensation for doing so.

20. Interested parties

Slovenia did not adopt the option in the ELD to provide interested parties with the right to notify imminent threats of environmental damage, as well as actual damage, to the competent authority (ELD, art 12(5)).

► Qualification criteria for “sufficient interest”

The transposing legislation provides that a non-governmental organisation (NGO) described in section 153 of the Environmental Protection Act has the right to notify the Ministry and, thus, meet the qualification criteria for “sufficient interest”.

Sections 152 and 153 of the Environmental Protection Act, as amended by the Act Amending the Environmental Protection Act (ZVO-1F) (Ur.l. 92/2003), which entered into force on 23 November 2013, provide as follows.

Section 153 states that the Minister may grant a person the status of an NGO if a society, institution or institute that is not established by the State, a municipality, or any other public entity or political party:

- an “operator” is defined as a “causer of pollution”, which reflects existing law and is more stringent than the ELD;
- “has a sufficient number of members in case of a society, or employees in case of an institute, or assets in case of an institution,
- has been established with the purpose of undertaking environmental protection activities,
- is independent of public authorities and political parties,
- has been active in the field of environmental protection for at least three years, and
- keeps its own accounts records audited in accordance with the law”.

Section 152 provides that the application for the status of an NGO must include:

- "the constituent instrument of the [applicant],
- proof of registration or entry in the Register of Companies,
- report on work performed in the last three years,
- work programme for the current year,
- audited report on financial management for the preceding year,
- decision by the competent body of the [applicant], and
- other proofs of fulfilling the conditions referred to [in item 6 above]”.

The Ministry keeps a register of NGOs.

As of November 2013, 16 environmental NGOs were registered.
Method of notifying interested parties of planned remedial measures

The transposing legislation does not specify a method for notifying an interested party of planned remedial measures.

Information to be provided to competent authority

The notification by the interested party “must contain information and data demonstrating the existence of environmental damage.

Challenges to competent authority’s decision

The transposing legislation does not specify the procedure for challenging the competent authority’s decision, act, or failure to act.

The Administrative Disputes Act applies. It provides that any person who is aggrieved by a decision of an administrative agency is entitled to a judicial review of that decision. The right to judicial review is subject to having exhausted administrative remedies.

Duty on competent authority to respond to person making comments

The transposing legislation does not specify that the competent authority has a duty to respond to a person who submitted a notification of environmental damage.

The Decree on Administrative Operations (Ur.l. 20/2005), in force from 4 March 2005, applies. Article 15 of the Decree provides that all authorities must respond to all “letters” within 15 days, with an exception for frivolous letters.

Inclusion of interested party in any proceedings by the competent authority against an operator

An interested party has a right to participate in “the procedure of ordering remedial measures”. An environmental NGO has the right to participate if it meets the criteria set out above in this section. The right to participate in proceedings is provided by the Administrative Disputes Act.

21. Public access to information regarding environmental damage and related measures

Article 13 of the Environmental Protection Act provides that environmental information is public. This information includes information about the ELD regime.

22. Charges on land / financial security after environmental damage

When the competent authority issues a decision to carry out preventive or remedial measures, it simultaneously proposes the entry of a lien on the property of the person who caused an imminent threat of, or actual, environmental damage, and requests the recipient of the decision to provide a bank guarantee or other form of insurance payment in favour of the Ministry. The bank guarantee or other financial security is to be in the same amount as the estimated costs of carrying out the measures if the Ministry was to be required to implement them.
When the person who caused the damage successfully implements all preventive or remedial actions in compliance with the transposing legislation, the Ministry will propose that the lien be lifted, or will take other actions necessary to terminate the insurance.

23. Offences and sanctions

The sanction for the following offences by a legal person is a fine of between EUR 40,000 and EUR 75,000:

- failure to notify the Ministry of an imminent threat of environmental damage (article 162(1/13 – breach of article 110d(1));
- failure to take all necessary measures to prevent an imminent threat of environmental damage article 162(1/13 – breach of article 110d(1));
- failure to notify the Ministry of environmental damage (article 162(1/14 – breach of article 110e(1), and article 162b(1/1) – breach of article 27(1)); and
- failure to take all necessary measures (emergency remedial actions) to limit environmental damage (article 162(1/14 – breach of article 110e).

Article 162b(4) of the Environmental Protection Act provides a lower level of fines for natural persons (compared to legal persons) for environmental offences in article 162b(1/4., 5., 6) when the owner or occupier of property does not:

- allow works to be carried out on the property for the purpose of environmental monitoring, that is, taking samples, plants and installing measuring devices (according to article 100(1);
- allow public service providers access to heating appliances, smoke pipes or ventilation systems (breach of article 148(2); or
- provide information about relevant uses of the property to the Ministry (breach of article 148(4, 9).

Directors and officers liability for breaching legislation

The transposing legislation does not specifically impose liability on directors and officers for breaching the legislation.

Publication of penalties

The transposing legislation does not provide for the publication of penalties.

24. Registers or data bases of incidents

The transposing legislation does not provide for the establishment of a register or database of ELD incidents.

25. Cross border damage in another Member State

If environmental damage affects or could affect the territory of Slovenia and another Member State, the Ministry shall co-operate with the competent authority of the other
Member State by exchanging information and data necessary to prevent, limit, or remedy the damage.

If environmental damage that originates in Slovenia affects an area in another Member State, the Ministry must provide the information and data specified in the above paragraph to the competent authority of that Member State.

If environmental damage is identified in Slovenia that originated in another Member State, the Ministry shall notify the competent authority of that Member State and the European Commission of the damage and propose the adoption of preventive or remedial measures connected with it, and make recommendations for the adoption of preventive or remedial measures. The Ministry shall also request the person who caused the environmental damage to reimburse costs incurred by Slovenia in carrying out preventive or remedial measures.

These provisions track the provisions in the ELD (ELD, art 15).

26. Financial security

Slovenia considered the adoption of mandatory financial security but decided, in 2010, and again in 2012, not to adopt it at those times.

The Ministry ordered two studies on the use of financial security instruments for preventing and remediating environmental damage under the ELD regime.

The first study, which was based on experience with the IPPC regime (now the Industrial Emissions Directive regime) was completed in 2010. It included analyses of the availability of, demand for, and use of, financial security instruments in Slovenia.

The study concluded that it was not appropriate to introduce mandatory liability insurance at that time. Instead, the study concluded that:

- a strategy to promote the availability and use of financial security instruments should be designed and implemented;
- the insurance sector should be encouraged to develop insurance for ELD liabilities;
- the acquisition of EMAS and ISO Standard 14001 by operators should be promoted; and
- information about the ELD regime should be provided to operators.

The second study, which was completed in 2012, studied the feasibility of introducing mandatory insurance or a public fund. The second study considered that it was not appropriate to introduce mandatory environmental liability insurance in the circumstances at that time because the arguments against doing so were much greater than arguments for introducing it. The second study also considered establishing a fund for the ELD regime (see section 27 below).

The range of financial security instruments considered by Slovenia for any mandatory regime is unclear. The two studies appeared to focus only on mandatory insurance, not mandatory financial security in which insurance is only one instrument.
27. Establishment of a fund

The transposing legislation does not establish a fund for the ELD regime.

The second study carried out for the Ministry (see section 26 above) concluded that no other Member State had established a public fund for ELD liabilities so it was not possible to examine experience with such a fund.

The study recommended that the feasibility of using the Slovenian Environmental Fund (Nataša Cernila Zajc) should be examined. The fund, which is also known as the Eco Fund, was established pursuant to articles 143 to 146 of the Environmental Protection Act. Its main purpose is to promote development in the field of environmental protection. Among other things, it provides loans for environmental projects, and covers the cost of preventing and remediating environmental damage when the State is responsible for carrying out such measures; see http://www.ekosklad.si/ (in Slovenian)

28. Reports

The transposing legislation does not specify the preparation or publication of reports.

Articles 106 to 109 of the Environmental Protection Act direct the Ministry, in co-operation with other Ministries, to prepare a report on the environment in the Republic of Slovenia every four years. A report on the ELD regime may be included in this report but the legislation is unclear.

Section 18(1) of the ELD directed Slovenia (and all Member States) to submit a report of experience with the ELD to the European Commission by 30 April 2013. Slovenia has submitted this report.

29. Information to be made public

The transposing legislation does not specify any information to be made public.

30. Provisions concerning genetically modified organisms

The transposing legislation does not include any provisions concerning genetically modified organisms other than Annex III legislation.

31. Key features and differences in legislation transposing the ELD and existing legislation

Slovenia transposed the ELD by enacting an Act that amended its framework environmental legislation, the Environmental Protection Act. That Act already imposed liability for remediating an “environmental burden”. This obligation, which requires a person who causes an environmental burden to remedy it, continues to exist. The obligation has a lower threshold than the ELD. Unlike the ELD, it applies to land, water, flora and fauna without differentiating between them (and going beyond the ELD in
respect of flora and fauna not protected by nature conservation law). Further, again unlike the ELD, there are no exceptions to it.

The amendments to the Environmental Protection Act reflect, in part, existing environmental law. For example:

- an “operator” is defined as a “causer of pollution”, which reflects existing law and is more stringent than the ELD;
- the obligation of the State to pay the costs of remediating environmental damage reflect an existing provision in the Environmental Protection Act concerning the obligation of the State to eliminate an “excessive environmental burden” if the person who caused it cannot be identified, held liable, or the consequences of the burden cannot otherwise be eliminated; and
- a person who causes pollution under the ELD regime is also liable for its environmental effects in the event of bankruptcy or liquidation; this provision reflects an existing provision in the Environmental Protection Act that a “person responsible for an environmental burden” is responsible for it in the event of liquidation or bankruptcy.

The amendments to the Environmental Protection Act do not, however, reflect the existence of the permit defence in civil claims for compensation. Slovenia did not adopt the permit defence in the ELD regime.

Further, whereas there are requirements under the Environmental Protection Act to make draft programmes for remediating contamination from historic pollution available to the public (see section 2 above), there are no requirements under the legislation transposing the ELD to notify interested parties or the public of planned remedial measures under the ELD regime.

An additional provision in the transposing legislation provides for the potential that environmental damage under the ELD regime may occur to a site that is already polluted. In such a case, the transposing legislation states that remediation of both types of damage should be carried out at the same time.