Letter from: Cosima Hufler, Attaché, Permanent Representation of Austria to the EU
To: Mr Codescu, DG ENV
Reference: BRUSSEL-ÖV/BMLFUW/0237/2013
Dated: Brussels, 2 April 2013

Subject: Reporting requirement pursuant to Article 18(1) of the Environmental Liability Directive 2004/35/EC

The Permanent Representation is pleased to forward the following information on behalf of the relevant Austrian authority, the Federal Ministry of Agriculture, Forestry, the Environment and Water Management, in compliance with the reporting requirement pursuant to Article 18 of the Environmental Liability Directive 2004/35/EC:


Accordingly, the Federal Ministry of Agriculture, Forestry, the Environment and Water Management has asked the provinces to reply, with input from the relevant district administrative authorities, to a number of specific questions based on a Guidance Paper drawn up by the European Commission together with experts from the Member States.

The reports show that, up to and including 31 January 2013, there were no instances of environmental damage or of an immediate threat of such damage in Austria in respect of which preventive or remedial measures were taken in accordance with the national acts implementing the Environmental Liability Directive.

Environmental complaints were submitted by qualified entities within the meaning of point 3 in Annex VI to the Environmental Liability Directive in two provinces. The legal remedy procedure provided for in Article 12 of the Environmental Liability Directive (request for action) was transposed in Austria in both the Federal Environmental Liability Act and the environmental liability acts of the provinces by means of the 'environmental complaint' ('Umweltbeschwerde') procedure. In doing so, use was made of the facility in Article 12(5) of the Environmental Liability Directive, and there is thus no right to make an environmental complaint in the event of an imminent threat of environmental damage.

In the province of Lower Austria, there are currently two sets of proceedings pending relating to alleged environmental damage within the meaning of Article 2(1) of the Environmental Liability Directive. In both cases, environmental complaints were lodged by approved environmental organisations, but no decision by an authority within the meaning of Article 12(4) of the Environmental Liability Directive has yet been taken. It is therefore not yet possible to say whether or not these complaints have been successful.

The first instance of an environmental complaint in Lower Austria concerns alleged environmental damage to protected species and natural habitats as referred to in Article 2(1)(a) of the Environmental Liability Directive. Since two related environmental complaints made in 2011 could not be further considered for technical reasons, a third environmental complaint was submitted to the relevant district administrative authority on 25 May 2011. Following a decision taken by the Independent Administrative Senate for Lower Austria on 28 August 2012 in an appellate capacity, the proceedings are again currently pending before the district administrative authority. The operator concerned is

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3 Federal and provincial environmental liability laws.
engaged in another occupational activity which is not listed in Annex III to the Environmental Liability Directive.

The second instance of an environmental complaint in Lower Austria concerns alleged environmental damage within the meaning of Article 2(1)(b) of the Environmental Liability Directive (water damage). This environmental complaint was not submitted to the relevant district administrative authority until December 2012; the proceedings have not yet been completed and it is therefore not yet possible to say whether or not this complaint has been successful. The operator concerned is engaged in an activity as referred to in Annex III(7) to the Environmental Liability Directive.

In the province of Styria, two environmental complaints were lodged; one was lodged by a natural person who alleged to have had his/her rights infringed by environmental damage within the meaning of Article 2(1)(b) of the Environmental Liability Directive (water damage). This complaint was rejected by the relevant authority for technical reasons during the first set of proceedings and has subsequently been dismissed after consideration by the appeal authority due to the lack of any environmental damage. No decision has yet been taken by the last Administrative Court to which the case was referred, so it is not yet possible to say whether or not the complaint has been successful. The operator concerned (a company) is engaged in an activity listed in Annex III(6) to the Environmental Liability Directive.

The second environmental complaint in Styria was lodged by the province's environmental lawyer and concerned the claim of damage to protected species and natural habitats as referred to in Article 2(1)(a) of the Environmental Liability Directive. This complaint was dismissed by the relevant authority due to the lack of any environmental damage and was therefore unsuccessful. The environmental lawyer did not challenge the authority’s decision to dismiss the complaint before the Administrative Court. The operator concerned is engaged in an activity as referred to in Annex III(6) to the Environmental Liability Directive.

In line with the European Commission's Guidance Paper, the following information about activities in Austria is provided along with the report pursuant to Article 18(1) of the Environmental Liability Directive in order to increase the effectiveness of the Environmental Liability Directive:

The website of the Federal Ministry for Agriculture and Forestry, the Environment and Water Management contains information and links to Austria's implementing acts. The links include a reference to the Federal Government's legal information system, so the latest versions of the regulations can be downloaded. Some of the provinces, e.g. Upper Austria, http://www.land-oberoesterreich.gv.at/cps/rde/xchg/coe/hs.xsl/86814 DEU HTML.htm) also include information on their websites.

A link between the 'Environmental Liability' website of the Federal Ministry for Agriculture and Forestry, the Environment and Water Management and that of the European Commission is also planned.

The following information and awareness-raising activities concerning the Environmental Liability Directive have been carried out in Austria:

In spring 2012 the Federal Ministry for Agriculture and Forestry, the Environment and Water Management provided all the relevant authorities with practical information in seminars, including information on environmental liability; in particular, issues regarding separation from other legal issues were also dealt with. An existing practical guide to measures concerning surveillance in water-related matters was extended to include the subject of environmental liability.

The Austrian Association of Cities and Towns (Österreichischer Städtebund) also regularly includes the subject of environmental liability in its information and educational events in order to provide the authorities with the necessary information.

http://www.lebensministerium.at/umwelt/betriebl_umweltschutz_uvp/umwelthaftung/Umwelthaftung.html
During the course of this year, work is to start, with input from the provinces, on drawing up a Guidance Paper on 'Environmental Liability', with special focus on 'significance' and the types and methods of remediation.

At the initiative of the Federal Ministry for Agriculture and Forestry, the Environment and Water Management, an event was held in autumn 2009 by the Austrian Water and Waste Management Association, the biggest platform for water, waste water and waste management in Austria, on the subject of 'Liability under environmental legislation'; this is now a regular feature of the Association's annual programme. With more than 100 participants, the annual seminars are always very well attended and regularly include updates on the Environmental Liability Directive and relevant national news. Environmental liability is also covered in the training courses run by the Austrian Water and Waste Management Association on installations and environmental law for operators' staff.

In the last few years operators have been informed about the obligations arising from the Environmental Liability Directive and the Austrian transposing legislation and about changes in the legal situation by means of mailings and information events held by the stakeholder groups (Chamber of Commerce, the Chamber of Agriculture, etc.) in the individual provinces. A large number of private groups which run seminars also include the subject of environmental liability in their programmes.

The Austrian Association of Insurance Companies has drawn up specimen conditions for environmental remedial costs insurance in Austria (non-binding recommendation of the Austrian Association of Insurance Companies). Besides other instruments that provide cover, operators have the possibility of insuring against risks under the Environmental Liability Directive. It should be mentioned that there is also provision for cover of compensatory remediation, though this is limited to a percentage (to be specified) of the costs of primary and supplementary remediation.

Lastly, it should also be recalled that, at the meeting of the Council of the European Union (Environment) on 13 June 2003, Austria issued a protocol statement on the Environmental Liability Directive in which it stated that Austria regretted that it could not approve the Directive on environmental liability in its present form because damage due to emissions from nuclear power plants was excluded from the scope of the Directive and that Austria did not see why the nuclear sector of the energy industry should be excluded from liability under the Directive when other forms of energy production were included.

At the time, Ireland joined Austria in voting against the adoption of the Directive. In view of the concerns regarding the exclusion of nuclear risks, during the discussion on the Environmental Liability Directive reference was made to the review mechanism in Article 18 and ultimately a review by the Commission was specifically provided for in Article 18(3). This review is being carried out in accordance with Article 18(2) on the basis of the reports from the Member States on their experience.

Against this background, Austria asks the Commission to take account during the review under Article 18 of the fact that Austria is opposed to the exclusion of nuclear risks from the scope of the Environmental Liability Directive.

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