Environmental Liability Directive

Article 18(1) Report

Ireland
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1. **Background**

In accordance with Article 18(1) of the EU Environmental Liability Directive (ELD), Member States are required to report to the EU Commission on the experience gained in the application of the Directive. The Directive was transposed in Ireland by way of the European Communities (Environmental Liability) Regulations 2008. In fulfilment of the Article 18(1) requirement, this report sets out Ireland’s experience of implementing the Directive.

The report has been prepared in accordance with guidance which was developed by the EU Commission together with the ELD government experts.

2. **Mandatory Report Details**

To date, there have been no confirmed cases in Ireland under the Environmental Liability Directive. Four cases are on-going and continue to be assessed by the Environmental Protection Agency (EPA). Six other potential cases have been screened as possible ELD cases, but following this assessment, it was decided that they did not fall within the scope of the Directive. Those cases have instead been dealt with under other appropriate national legislation.

The following tables set out details of the cases referred to above. Details of individual cases are also provided below.

<table>
<thead>
<tr>
<th>Table 1: Cases of Confirmed Environmental Damage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Reference Number</td>
</tr>
<tr>
<td>No confirmed cases under the Environmental Liability Directive</td>
</tr>
</tbody>
</table>

\(^1\) NACE code according to Council Regulation (EEC) No 3037/90
<table>
<thead>
<tr>
<th>Case Reference Number</th>
<th>Basis on which screened</th>
<th>Date of occurrence of the damage</th>
<th>Date of the discovery of the damage</th>
<th>Date on which proceedings were initiated under this Directive</th>
<th>Activity classification code of the liable legal person(s)</th>
<th>Has there been resort to judicial review proceedings</th>
</tr>
</thead>
<tbody>
<tr>
<td>110001-01</td>
<td>Damage to protected species and natural habitats</td>
<td>No Specific Dates</td>
<td>20/05/2011</td>
<td>20/05/2011 (Screening Commenced)</td>
<td>Turf Cutting</td>
<td>No</td>
</tr>
<tr>
<td>130002-01</td>
<td>Damage to protected species and natural habitats</td>
<td>Sep/Oct 2012</td>
<td>20/02/2013</td>
<td>20/02/2013 (Screening Commenced)</td>
<td>F42.1 Road construction</td>
<td>No</td>
</tr>
<tr>
<td>130004-01</td>
<td>Damage to protected species and natural habitats</td>
<td>February 2013</td>
<td>02/05/2013</td>
<td>02/05/2013 (Screening Commenced)</td>
<td>F42.1 Road construction</td>
<td>No</td>
</tr>
<tr>
<td>130005-01</td>
<td>Imminent Threat – Water Damage</td>
<td>Article 8 Direction issued on 20/05/2013</td>
<td>02/05/2013</td>
<td>02/05/2013 (Screening Commenced)</td>
<td>E38 - Waste collection, treatment and disposal activities; materials recovery</td>
<td>No</td>
</tr>
</tbody>
</table>

2 NACE code according to Council Regulation (EEC) No 3037/90
3 The European Communities (Environmental Liability) Regulations 2008
<table>
<thead>
<tr>
<th>Case Reference Number</th>
<th>Basis on which screened</th>
<th>Date of occurrence of the damage</th>
<th>Date of the discovery of the damage</th>
<th>Date on which proceedings were initiated under this Directive</th>
<th>Activity code of the liable legal person(s)</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>090001-01</td>
<td>Possible Water Damage</td>
<td>2008-2009</td>
<td>2008-2009</td>
<td>Assessed in 2009</td>
<td>E37.0.0 - Sewerage</td>
<td>Article 4(5)^4 exemption applied</td>
</tr>
<tr>
<td>120003-01</td>
<td>Possible Damage to protected species and natural habitats</td>
<td>Mid 2011</td>
<td>15/10/2012</td>
<td>15/10/2012 (Screening Commenced)</td>
<td>A1.5.0 - Mixed Farming</td>
<td>Enforcement pursued under other legislation.</td>
</tr>
<tr>
<td>130001-01</td>
<td>Possible Damage to protected species and natural habitats</td>
<td>Sep/Oct 2012</td>
<td>21/01/2013</td>
<td>21/01/2013 (Screening Commenced)</td>
<td>F42 – Civil Engineering</td>
<td>Enforcement pursued under other legislation.</td>
</tr>
<tr>
<td>130002-01</td>
<td>Possible Damage to protected species and natural habitats</td>
<td>Mid 2012</td>
<td>28/02/2013</td>
<td>28/02/2013 (Screening Commenced)</td>
<td>A1.5.0 – Mixed Farming</td>
<td>Enforcement pursued under other legislation.</td>
</tr>
</tbody>
</table>

^4 The European Communities (Environmental Liability) Regulations 2008
There have been no cases where remedial action has been carried out under the scope of the ELD and therefore question 4 regarding the outcome of the remediation process is not relevant. Remedial action has been carried out under other national legislation in cases (in table 3 above) which were initially screened as potential ELD cases but which were subsequently determined not to be ELD cases.

Also, as there have been no cases of confirmed environmental damage, question 5 regarding the date of closure of proceedings is not relevant.
3. Voluntary Report Details

**Costs incurred with remediation and prevention measures, as defined in this Directive.**

Costs incurred have been in relation to staff costs in the EPA and the Department of the Environment Community and Local Government. The Department of the Environment, Community and Local Government has overall responsibility for implementation of the ELD in Ireland. It is estimated that the Department’s ongoing combined resource required is one person per year. This requirement would be higher when legislative changes are required. The EPA is the competent authority in Ireland with regard to the ELD. It is estimated that the combined resource required by the EPA is one person per year to administer the Directive. Other ancillary costs have arisen, e.g. a river quality assessment for €2,000. Overall, the costs involved in administering the Directive have not been significant, primarily because of the low number of potential cases arising.

**Results of the actions to promote financial security instruments and the implementation of these.**

In transposing the Directive, Ireland opted not to make financial security mandatory. Risks to the environment are addressed through strict licensing and enforcement systems; existing legislation on IPPC and Waste includes financial provision requirements as part of license conditions.

Applicants for an IPPC licence, or the licensee in the case of a review, are required to provide the EPA with particulars supporting their ability to meet financial commitments or liabilities resulting from the activity, and to make and provide evidence of having made adequate financial provision for those financial commitments or liabilities. The Waste Management Act provides that the EPA may include as a condition of a waste licence, a requirement for the making and maintenance of such financial provision as may be required. The EPA agrees financial security arrangements with individual IPPC and waste licensees, and these can include insurance, parental company guarantees and bonds/bank guarantees.

In 2006 the EPA published Guidance on Environmental Liability Risk Assessment, Residuals Management Plans and Financial Provision. This guidance presents a systematic approach to the assessment and management of Environmental Liabilities. The guidance is currently being revised and draft revised guidance was recently published for public consultation.
An assessment of the additional administrative costs incurred annually by the public administration in setting up and operating the administrative structures needed to implement and enforce this Directive.

As outlined above the combined resource requirement in the Department of the Environment, Community and Local Government is estimated as one person per year, and the combined resource required by the EPA is one person per year.


Application of the exceptions in Article 4.2, 3 and 4 in conjunction with Annexes IV and V

There has been no cause for application of the exemptions in Article 4.2, 4.3 & 4.4.

Application of the Directive to environmental damage caused by genetically modified organisms (Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress)

There have been no cases of environmental damage or imminent threat of damage caused by genetically modified organisms.

Application of the Directive in relation to protected species and natural habitats

Of the ten cases screened by the EPA under the European Communities (Environmental Liability) Regulations 2008, eight related to possible damage to protected species and natural habitats. In general there has been no particular difficulty in applying the assessment criteria set out in Annex 1, however, there may be some scope for uncertainty in applying the criteria when determining whether damage has had significant adverse effects on reaching or maintaining favourable conservation status. Consequently there may be need for further clarification on this.

Instruments that may be eligible for incorporation into Annexes III, IV and V

Ireland has no recommendations regarding instruments that could be incorporated into Annexes III, IV and V.
Mandatory financial security v. voluntary financial security

In transposing the Directive, Ireland opted not to make financial security mandatory. Ireland would be opposed to the imposition of a general mandatory levy on industry to cover environmental damage. It is Ireland’s opinion that risks to the environment are better addressed through strict licensing and enforcement systems, and where appropriate private financial security mechanisms. IPPC and waste licences include financial provision requirements as a condition of the licence.

Application of the optional defences (permit defence, state of the art defence)

In transposing the Directive, Ireland opted not to implement the optional defences. Ireland does not, therefore, have experience of the application of these defences. The requirement for implementing the optional defences may be the subject of further review in Ireland.

Extension of the scope of biodiversity damage

In transposing this Directive, Ireland chose not to extend, for the purposes of the Directive, the definition of protected habitats and species, i.e., to species that are protected under other National legislation. Ireland does not, therefore, have experience of implementing such an extension.

Experience gathered regarding the implementation of financial security instruments in accordance with the Directive for Annex III operators (extent, sufficiency)

The EPA published guidance in 2006 on the assessment and management of Environmental Liabilities in order to comply with IPPC and Waste Licence conditions for Environmental Risk Assessment (ELRA), Residual Management Planning (RMP) and Financial Provision (FP). The provision of financial security against these liabilities is enforced in Ireland via conditions in Waste and IPPC licences.

Information on actions to promote the application of the Directive, as for example stakeholder workshops, information meetings, brochures/leaflets and on the tangible results, if any.

The EPA continues to raise the level of awareness among stakeholders. This has included presentations at stakeholder meetings and conferences, publications on the EPA website and interaction with other State Agencies, Local Government and Non-Governmental Organisations. In July 2011 the EPA published guidance on
ELD and this has been promoted through the Network for Ireland’s Environmental Compliance and Enforcement (NIECE).

*Application of a "severity threshold" in the respective Member State in determining the significant biodiversity/water/land damage*

The majority of cases assessed so far by the EPA have been damage to protected species and habitats. In the assessment of the damage it is important to have good baseline data. The importance of this is twofold in that the EPA recognises that where an ELD event has been confirmed reliance on good quality baseline data will aid the swifter application of the Regulations and can be robustly defended should a decision be challenged by the operator or by a Court.

*Relationship between the ELD-transposing legislation and previously existing legislation in this or neighbouring fields (e.g. civil liability for environmental damage, permitting regimes for the relevant activities)*

Cases screened as potential ELD cases are also typically followed up under existing National legislation, as the cases may not ultimately be substantiated as ELD cases, e.g. where the damage to the environment is not considered significant for the purpose of the ELD, or where an exemption such as diffuse pollution might apply. In cases that might not otherwise qualify as ELD cases, applying the existing national legislation can be effective in achieving the objectives of the ELD with regard to requiring the operator to remediate the environmental damage. The ELD mechanisms can be particularly effective where a potential or imminent threat has been identified. The EPA has used the imminent threat mechanisms in two cases (130005-01 & 120002-01).

*Other information regarding the perceived strengths and weaknesses of the ELD (general or specific), for example also including an indication as to what has been perceived as the largest beneficial change brought by the Directive what is the most significant problem.*

The strength of the ELD is that it provides additional mechanisms that may be used in particular cases of environmental damage, either in place of, or to supplement other EU and National legislation in order to achieve the objectives of preventing or remediating environmental damage, and to ensure that the polluter pays principle is applied. A potential weakness of the Directive is that it can be difficult to establish that particular instances of damage to the environment fall within the scope of the Directive. There also seems to be concern that implementation of the Directive is not harmonised across Member States.