
Slovak Republic

Ministry of the Environment of the Slovak Republic, Bratislava, April 2013
1. **Legislative framework**


The Act establishes an obligation on operators to prevent and remedy environmental damage. It introduces 'strict liability', i.e. in the event of environmental damage or a risk thereof, a causal link between the operator's activity and the occurrence of environmental damage must be established rather than unlawful conduct by an operator.

In relation to the environmental liability of operators, the Act is a new tool for taking a proactive approach to minimising environmental risks and their impact.

It regulates the rights and obligations of operators in relation to the prevention and remedying of environmental damage, including bearing the associated costs, the tasks of state administrative bodies and liability for the infringement of obligations under the Act.

The central state administrative body as regards the prevention and remedying of environmental damage is the Ministry of the Environment of the Slovak Republic (MoE), which among other things carries out state monitoring, operates an information system, recovers costs arising for the state in connection with preventive and remedial measures, takes action in cross-border cases, coordinates tasks with central state administrative bodies and international cooperation and reports to the European Commission.

District environmental authorities at the regional seat, district environmental authorities and the Slovak Environmental Inspectorate also carry out state administration in the prevention and remedying of environmental damage.

Section 13 of the Act, which entered into force on 1 July 2012, lays down mandatory financial coverage for liability for environmental damage.

The operator carrying out occupational activity as laid down in Section 1(2) is required to ensure financial coverage of its liabilities for environmental damage, including forecast costs for remedial activity and for remediating environmental damage that could be caused by its occupational activity, for the entire duration of that activity (Section 13(1)).

The amount of financial coverage must correspond to the amount of forecast costs for remedial activity, including an analysis of the risks and costs of remediating the environmental damage (Section 13(2)).

The operator is required to demonstrate to the competent authority, within not more than 100 days of the authorisation of the occupational activity, how it will cover its liability for environmental damage, including the forecast costs for remedial activity and the measures for remediating environmental damage, and to immediately inform it in writing of any changes (Section 13(3)).

At the beginning of 2013, an amendment to Act No 359/2007 specified satisfactory methods for the financial coverage of liability for environmental damage and added an obligation to demonstrate the operator's financial coverage for occupational activity already authorised.
Within the meaning of Section 18(1)(b), the district environmental authority receives and registers a copy of the contract providing financial coverage for liability (insurance contract, bank guarantee, proof of the opening of an account and the amount linked exclusively to remedial measures pursuant to this Act), with the exception of the cases laid down in Section 19(b).

Pursuant to Section 19(b), the Slovak Environmental Inspectorate receives and registers a copy of contracts providing statutory financial coverage for liability from operators subject to the integrated permit procedure (insurance contract against liability for environmental damage, bank guarantee, proof of the opening of an account earmarked for remedial measures pursuant to this Act, or a combination thereof).

Within the meaning of Section 21, state supervision:

- determines the operator's compliance with legal obligations or those obligations laid down by decisions of the state administration (Section 21(1)). Monitoring by the state supervisory body is focused on the operator's statutory obligations in the prevention and remediying of environmental damage.

Monitoring is carried out in accordance with the basic rules of inspection in the state administration, except where otherwise laid down (Section 21(2)).

Where an operator breaches an obligation, the state supervisory body is authorised to issue an order in writing (Section 21(3)):

a) to maintain the original situation until the situation is clarified or documented during an inspection;

b) to implement measures to rectify shortcomings, including the prohibition or restriction of activities in breach of the Act or of decisions issued on the basis thereof, immediately or within a certain time; an appeal by the operator against the decision to impose a measure does not have suspensory effect.

State supervision is authorised (Section 21(4)) to:

a) carry out the necessary enquiries

b) take samples.

c) use technical means to document incidents and situations.

2. Reporting by Member States on the implementation of Directive 2004/35/EC

Reporting to the European Commission by Member States on the implementation of Directive 2004/35/EC is covered in Article 18(1) thereof in conjunction with Annex VI thereto. The aim of the report is to provide the European Commission with information on cases and experience acquired in implementing the Directive at Member State level.

The report pursuant to Annex VI to the Directive should contain a list of specific cases of environmental damage that have occurred since the Directive and the Act entered into force, with the following information on each specific case:

1. the type of environmental damage, the date of occurrence and/or discovery of the damage and the date on which proceedings were initiated under this Directive;

2. the activity classification code of the responsible legal person (NACE);
3. whether judicial review proceedings have been resorted to either by liable parties or qualified entities;
4. the outcome of the remediation process;
5. the date of closure of proceedings.

Member States may include in their reports any other information and data they deem useful to allow a proper assessment of the functioning of this Directive, for example:

1. Costs incurred through remediation and prevention measures, as defined in this Directive:
   – paid for directly by liable parties, where this information is available;
   – recovered ex post facto from liable parties;
   – not recovered ex post facto from liable parties (the reasons for non-recovery should be specified).
2. Results of the actions to promote and the implementation of the financial security instruments used in accordance with this Directive.
3. 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.

3.1. Mandatory section of the report

In Slovakia, no case of environmental damage or direct threat thereof has been recorded since 2007. In the light of this, Slovakia has provided no specific information on this matter and has not completed this section of the report.

3.2. Non-mandatory section of the report

In 2007, when Act No 359/2007 entered into force, there was little knowledge and experience of this issue among interested parties in Slovakia (the state administration, industry, consultancy firms, the financial and insurance sector). Even when the Act was being drawn up, it appeared to be very closely related to other specific legislation, and a mechanism would need to be found to link them. In the 2010 Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions under Article 14(2) of Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage (COM (2010) 581), the Commission stated that one of the problems with the implementation of the environmental liability Directive was a lack of awareness.

The MoE, in cooperation with the Slovak Environment Agency (SAŽP), has raised awareness among interested parties by means of training, conferences, documents, guidelines, information sheets, brochures and websites, with the aim of bringing the issue to people's attention.

Implementing the Directive and Act in Slovakia required the drawing up of documents (methodologies, manuals, forms) such as:
• an 'operator's handbook' on the Act and procedures relating to the prevention and remedying of environmental damage within the meaning of the Act (2008), containing the legal aspects of the environmental liability of operators, procedures for determining the underlying situation, procedures in the event of environmental damage, procedures for drawing up preventive and remedial measures, possibilities for financial coverage for environmental liability. The annexes contain sample applications and forms.
• 'Prevention and remedying of environmental damage': brochure for the public and operators.
In order to increase awareness among interested bodies and operators, information sheets have been drawn up, together with a preliminary database of operators falling within the scope of Act No 359/2007.

The Slovak Environment Agency's Centre for the Assessment of Environmental Quality in the Regions has drawn up a methodology for differentiating Slovak territory in accordance with the potential risk of severe environmental damage. It guides the operator in initially determining the underlying situation regarding natural resources and provides basic graphic information on the spatial distribution of the highest-quality natural resources in Slovakia.

For assessing contaminated sites, the geology and natural resources section of the Ministry of the Environment, together with the SAŽP, has drawn up methodological guideline No 1/2012-7 for drawing up an analysis of the risk from polluted land, intended for principal investigators, the purpose of which is to assess the risk from a polluted mineral environment and polluted soil, air and groundwater.


At ministry level, a working group has been set up with the aim of improving communication and cooperation between departmental and interdepartmental bodies and specialist organisations and associations, with representatives from various sections of the MoE (water protection, nature and landscape protection, environmental risk assessment and management), the Slovak Environmental Inspectorate, the SAŽP, the State Nature and Landscape Conservancy and the Slovak Insurance Association.

The state administration received training in 2007, 2010 and 2012 at seminars focused on issues relating to Directive 2004/35/EC and Act No 359/2007 and on the connection between NATURA 2000 and environmental damage.

Once a year, the issue of environmental damage has been presented by various interest groups from the industrial, environmental consultancy and specialist public sectors by means of conferences and workshops.

In connection with the introduction of mandatory financial security, guidelines were drawn up in 2012 for establishing a uniform procedure for implementing certain provisions of Act No 359/2007 on the prevention and remedying of environmental damage and amending certain acts, and at the same time training and consultation were provided for competent bodies, operators, consultancies, legal chambers and insurance companies.

Specific seminars for operators, insurers and the state administration focusing on financial coverage were organised in 2012 prior to the entry into force of mandatory financial security.

In accordance with Section 20 of Act No 359/2007, an Information system for the prevention and remedying of environmental damage has been developed (http://www.enviroportal.sk/environmentalne-temy/vybrane-environmentalne-problemy/environmentalne-skody/informacny-system-es).

The SAŽP was responsible for the establishment and operation of the information system. Initial information on environmental damage was made publicly available in the first stage of development of the information system as early as 2007. As a static website, it contained general information, related legislation, the necessary forms and supporting documents.
The aim of the information system is to collect data and provide information on the prevention and remedying of environmental damage, make it continuously and effectively available to users and create conditions for complying with Slovakia's information obligations at national and Community level.

The information system was designed to provide information on:

a) environmental damage or an immediate threat thereof, and the type, site, date and scope thereof;

b) operators responsible for environmental damage or an imminent threat thereof;

c) preventive or remedial measures adopted and carried out;

d) costs incurred in preventive and remedial measures;

e) legal proceedings and the results thereof, and on interested parties making use of proceedings;

f) the environmental situation and references to sites where information on ascertaining the underlying situation can be obtained.

Four registers and sites have been established where the underlying situation with regard to natural resources can be ascertained:

1. a register of notifications, containing information on notifications, suggestions and facts relating to the origin of the environmental damage under consideration, together with the relevant evidence;

2. an environmental damage register, containing information on environmental damage to protected species and habitats of Community importance in water and on land, and on an imminent threat of environmental damage in the absence of specific action;

3. an operators' register, containing basic information on operators if their activity has led to environmental damage or an imminent threat of environmental damage;

4. a register of legal proceedings, containing information on interested entities resorting to legal proceedings and on the results of those proceedings.

Those using the information system are officials of the central administrative bodies, licensing authorities (district environmental authorities, the Slovak Environmental Inspectorate), the relevant administrative bodies (land registries, forestry authorities, regional public health authorities), operators, insurance companies, specialists and the general public.

Financial coverage for environmental damage liability – experience with implementation

Both Directive 2004/35/EC and Act No 359/2007 introduce, under the 'polluter pays' principle, an obligation for operators to use their own financial resources to prevent environmental damage or an imminent threat thereof and to remedy such damage.

Slovakia opted to introduce the mandatory financial security framework for operators, deferred for five years after the entry into force of the Act itself. Operators carrying out the occupational activities laid down in Section 1(2) have been obliged to ensure financial coverage for environmental damage liability since 1 July 2012.

They have made use of various forms of financial coverage, such as insurance, bank guarantees or an assigned escrow account (blocking). Banking firms have offered products such as bank guarantees and blocking. The insurance sector (approximately eight companies) has created a number of products to insure against environmental damage liability. Some have set a ceiling for coverage (EUR 5 million).
We estimate that in Slovakia approx. 3,500-4,000 operators fall within the scope of Act No 359/2007. Data collected to date shows that approx. 66% of operators have mandatory financial coverage.

Maximum financial security ranges up to EUR 25 million; security ranging between EUR 1 and 5 million has also been applied. The average amount of financial security for operators in Slovakia has ranged between EUR 50,000-100,000. The minimum has ranged between EUR 5,000-10,000.

Large company operators recognised as having the potential to cause large-scale environmental damage are also insured under the SEVESO II legislation, and their financial coverage for environmental damage liability is also higher than average.

Operators with a number of establishments (10 or more) have more frequently used insurance, followed by blocking, and fewer have used bank guarantees.

Where small and medium-sized enterprises are concerned, and particularly very small entities involved in risk activities, there are gaps in the implementation of the Act. These entities are not in a position to carry out an environmental audit, risk assessment or cost estimate for remedial activity. Few of them are capable of providing for external consultancy from their financial resources, which is reflected in the amount of their financial security. It is expected that for these operators the amount of financial security will probably be insufficient. The facts set out also affect the average amount of financial security in Slovakia.

At present, it cannot be clearly stated whether financial coverage for individual operators will be sufficient, as the Act did not set out the amount of financial security (ceiling), and no environmental damage has so far been recorded.

As part of inspection activity, compliance with the provisions of Act No 359/2007 will be reviewed and, based on the inspections carried out, remedial measures will be adopted.

Implementation of the environmental liability Directive in practice is very challenging, given the range of issues covered and its interconnectedness with a large quantity of specific legislation in the sector concerning the protection of nature, the countryside, water and soil. Implementation would certainly be supported by introducing thresholds (criteria) for determining the seriousness of environmental damage at European Union level.