

## **Report to the European Commission**

### **in accordance with Article 18(1) of Directive 2004/35/EC**

#### **Chapter 1: Context**

Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage ('the Environmental Damage Directive') provides for national reporting to the Commission on the experience gained in the application of the Directive. The national report includes the information and data set out in Annex VI. On that basis, the Commission must submit a report to the European Parliament and the Council by 30 April 2014, possibly accompanied by appropriate proposals for amendment.

Article 18(1) of Directive 2004/35/EC lays down the information to be included in the national report, namely:

- a list of instances of environmental damage and instances of liability under the Directive, with the following information and data for each instance:
  1. Type of environmental damage, date of occurrence and/or discovery of the damage and date on which proceedings were initiated under the Directive.
  2. Activity classification code of the liable legal person(s)<sup>(1)</sup>.
  3. Whether there has been resort to judicial review proceedings either by liable parties or qualified entities. (The type of claimants and the outcome of proceedings must be specified.)
  4. Outcome of the remediation process.
  5. 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 the Directive, for example:
  1. Costs incurred with remediation and prevention measures, as defined in the Directive:
    - paid for directly by liable parties, when this information is available;
    - recovered ex post facto from liable parties;
    - unrecovered from liable parties. (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 the 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 the Directive.

The following report has been drawn up in accordance with 'the non-binding guidance for MS reports under Article 18(1) in conjunction with Annex VI'<sup>1</sup>.

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<sup>1</sup> Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, OJ L 143, 30.4.2004, p. 56, as amended by OJ L 102, 11.4.2006, p. 15 and OJ L 140, 5.6.2009, p. 114.

**Chapter 2: Report on cases of application by the federal government in accordance with Article 18(1) of Directive 2004/35/EC**

The points which must be covered in the report in accordance with Directive 2004/35/EC are set out in the order laid down in Article 18(1) of that Directive.

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

Concerning the marine environment

No cases of environmental damage have occurred which fall under Directive 2004/35/EC.

But there have been a number of cases of environmental damage which fall under the federal Law transposing Directive 2004/35/EC as regards the protection of the marine environment (i.e. within the Belgian sea areas). The Law in question is the Law of 20 January 1999 on the protection of the marine environment and the organisation of marine spatial planning in the sea areas under Belgian jurisdiction.

None of those cases had a significant impact on protected species and natural habitats or waters as described in Directive 2004/35/EC. Nor did those cases fall under the activities described in Annex III to Directive 2004/35/EC.

The cases described below therefore fall under a broad application of the principles of Directive 2004/35/EC.

The cases concerned:

- the loss of an anchor (whether or not with a chain) by several vessels;
- the sinking of two vessels;
- the crash of a light aircraft.

In each case involving the loss of an anchor, a registered letter was sent within three days to the vessel owner instructing them to remove the anchor from the seabed in order to prevent possible accidents involving fishing vessels and to limit the environmental damage which an anchor on the seabed entails in itself. In most cases that letter was followed by further correspondence and telephone contact.

In the cases involving the sinking of two vessels and the crash of a light aircraft, the same procedure was initiated as in the above paragraph.

Concerning civil security

Only partial transposition of Directive 2004/35/EC was necessary in order to bring the civil security services' activities within its scope. This entailed amending the Law of 31 December 1963 on civil protection. The services in question act only in emergencies and take the necessary measures to prevent (further) environmental damage. Remedial measures therefore fall outside the scope of the civil security services.

Within that framework the civil security, fire brigade and civil protection services have to intervene regularly in order to clean up pollution resulting from an accident or disaster or an error by an

operator or owner. In most of these cases the environmental damage is relatively minor and very localised.

The measures taken by the fire brigade, including tasks relating to environmental pollution and the recovery of the costs resulting from it, fall under the jurisdiction of the local authorities. The federal government (Federal Government Service for Home Affairs) is responsible for the civil protection service's tasks.

Outlined below are the circumstances of the 4 most major operations involving the civil protection service in connection with environmental damage since the transposition of Directive 2004/35/EC in 2007:

Circumstances	Polluter/causer of damage	Date of intervention	Amount	Pollution from	Accident involving	Payment	Date of payment
Oil pollution by vessel at Ostend	not yet defined	19/12/2007	€ 156 245.84	Water	Ship	No	-
Crashed aircraft at Zaventem	Kalitta AIR	5/08/2008	€ 14 605.62	Soil	Aircraft	Yes	12/06/2009
Train crash at Godinne	Infrabel	9/05/2012	€ 162 305.66	Soil	Train	Yes	24/10/2012
Train crash at Wetteren	not yet defined	4/05/2013	total not yet known	Soil	Train	No	-

Belgium wishes to provide clarification regarding the civil protection aspects of these cases, the Civil Protection Service having been called upon to intervene.

Three of these cases were evaluated and managed in an appropriate manner by the Civil Protection Service. Because the Civil Protection Service took rapid and effective preventive action, these cases did not result in damage as referred to in Directive 2004/35/EC.

The fourth case occurred outside the reporting period and was therefore not included in the regional reports.

## 2. Activity classification code of the liable legal person(s).

### Concerning the marine environment

Not applicable, because the causers of the damage were not among those in the enclosure.

### Concerning civil security

In the cases of the train crash at Godinne and the aircraft which crashed at Zaventem, the professional activities of the liable parties can be classified as referred to in point 8 of Annex III to Directive 2004/35/EC.

Since for the other cases the legal proceedings relating to liability and damage compensation are still pending, the causer of the damage and their professional activity cannot yet be indicated.

### **3. Whether there has been resort to judicial review proceedings either by liable parties or qualified entities.**

**(The type of claimants and the outcome of proceedings must be specified.)**

#### Concerning the marine environment

No proceedings have been instituted by liable parties.

Two legal actions, initiated by the federal State, are currently ongoing with regard to the salvage costs for one vessel and one light aircraft. These were salvaged by order of the federal State following failure to comply with the competent government services' instructions and in the absence of payment by the causers of the damage.

#### Concerning civil security

In the cases of the train crash at Godinne and the aircraft which crashed at Zaventem, no legal action has been taken regarding compensation for the damage.

In the other cases, the legal proceedings in respect of liability and damage compensation are still pending:

- As regards the oil pollution at Ostend, summary proceedings were conducted at the commercial court in Bruges with regard to cleaning up the environmental pollution. Subsequently the same court issued a new judgment in summary proceedings with regard to limitation of the vessel owners' liability. In proceedings as to substance before the commercial court in Antwerp the limitation fund was annulled. The Antwerp Court of Appeal then reinstated the limitation fund and issued a judgment regarding vessel sequestration. The Court of Cassation upheld the judgment as regards vessel sequestration but quashed it as regards the limitation fund. The proceedings regarding the limitation fund must therefore be conducted again in full before the Ghent Court of Appeal. Pending a judgment by that Court, the actual proceedings as to substance before the Brussels Court of First Instance are currently suspended.
- In connection with the train crash at Wetteren, proceedings are pending in respect of appointing a court expert concerning the alleged damage to a vessel after transporting polluted fire-extinguishing water. Those proceedings are currently before the Antwerp Court of Appeal. The actual proceedings as to substance will then follow.

### **4. Outcome of the remediation process.**

#### Concerning the marine environment

In about half of the cases of lost anchors the polluter was indeed able to find and recover the anchor in question. In most of the other cases it was no longer possible to find the anchor (exact location not known or buried under sand).

The two vessels and the light aircraft were salvaged.

#### Concerning civil security

As stated earlier, remedial measures fall outside the scope of the civil protection services.

## **5. Date of closure of proceedings.**

### Concerning the marine environment

The proceedings were closed:

- when the anchors had been recovered; or
- when no further reasonable efforts could be made to locate the anchors; or
- when the vessel salvaging costs had been paid by the salvager's insurance company.

Two legal actions for recovery of the salvaging costs of one vessel and one light aircraft are still ongoing.

### Concerning civil security

These data have already been provided in the table inserted in answer to question 1.

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

- 1. Costs incurred with remediation and prevention measures, as defined in the Directive:**
- paid for directly by liable parties, when this information is available;
  - recovered ex post facto from liable parties;
  - unrecovered from liable parties. (Reasons for non-recovery should be specified.)

### Concerning the marine environment

The costs paid directly by the liable parties are not known.

The costs subsequently recovered from the liable parties (for salvaging one aircraft and two vessels) amount to between €10 000 and €50 000 in each case.

### Concerning civil security

The costs invoiced in these cases, whether or not paid, are shown in the table provided in answer to question 1.

**2. Results of the actions to promote and implement the financial security instruments used in accordance with the Directive.**

### Concerning the marine environment

At present no further action has yet been taken in this regard.

### Concerning civil security

Ditto

**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 the Directive.**

#### Concerning the marine environment

The extra administrative cost amounts to 1/10 FTE with regard to the zero scenario (no administrative-law system with respect to preventing, limiting and remedying environmental damage within the sea areas). With regard to the federal administrative-law system already in operation to implement Directive 2004/35/EC, there are no extra administrative costs.

#### Concerning civil security

With regard to the federal administrative-law system already in operation to implement Directive 2004/35/EC, there are no extra administrative costs.