



Gouvernement wallon

Cabinet du Ministre de l'Environnement,
de l'Aménagement du territoire
et de la Mobilité

REPRESENTATION PERMANENTE DE LA BELGIQUE
PRES L'UNION EUROPEENNE
Monsieur Jean DE RUYT
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Vos réf. :
Nos réf. : PHH/Env/CAF/KAM/2013/10266
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Objet : Rapport de mise en œuvre de la Directive 2004/35/CE sur la responsabilité
environnementale.

Namur, le

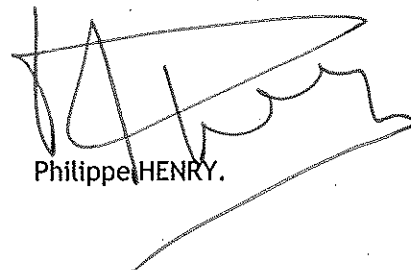
23 SEP. 2013

Monsieur l'Ambassadeur,

Je vous prie de bien vouloir trouver, ci-joint, un courrier relatif au dossier dont les références sont reprises sous rubrique.

Je vous remercie de bien vouloir le transmettre dans les meilleurs délais à la Commission européenne.

Je vous en souhaite bonne réception et vous prie de croire, Monsieur l'Ambassadeur, à l'assurance de ma parfaite considération.



Philippe HENRY.



MS REPORT UNDER ARTICLE 18(1) IN CONJUNCTION WITH ANNEX VI ELD

WALLOON REGION OF BELGIUM

1. Cases of environmental damage.

No cases of confirmed environmental damage under the ELD have occurred in Wallonia since the entry into force of the directive's transposing legislation.

An absence of occurrence of "ELD" environmental damage in Wallonia does not mean that no cases of damage to the environment have occurred but rather that those cases have not fallen within the scope of the ELD. Below-ELD-threshold damage caused to protected species and habitats are sanctioned according to the provisions of the Habitats and Birds Directives.

It is also important to keep in mind that Wallonia has independent soil pollution legislation with lower intervention thresholds than the ELD and higher remediation obligations for any soil damage occurring after 30 April 2007.

2. Occurrences of environmental liability.

One case of environmental damage is currently being investigated in Flanders and authorities in Wallonia are cooperating in a bid to identify the liable operator. No such operator has currently been identified in either Region and the case remains open.

3. Requests for action.

Two specific ELD requests for actions have been recorded:

The first one was related to the construction of a building which implied the destruction of part of the vegetation present. After investigation by the competent authority, it was concluded that none of the species or habitats present on site were protected -or endangered- and that the activity was properly authorised. The claimant was informed of the authority's decision.

The second request emanated from a small business suffering financial losses due to road works and requesting compensation. This did not relate to the ELD. The inquiry was redirected to the proper channels.

4. Information on actions to promote the application of the Directive.

Stakeholders were involved in the transposition process and have since participated in stakeholder meetings. Training sessions for competent authorities have also been held and are always available on request. Training sessions have also been held for operators' environmental staff. Feedback on these has been positive with the only complaint that the ELD regime is a complex one to apprehend.

5. Other information regarding the perceived strengths and weaknesses of the ELD (general or specific), including an indication of what has been perceived as the largest beneficial change/significant problem brought by the Directive.

The directive has two beneficial effects:

Firstly, after a risk analysis, most operators will progressively modify both their industrial process and their internal procedures in order to avoid incidents. Secondly, when prevention has failed, the directive provides for remediation to a standard that did not always exist previously by introducing a preference for resource-to-resource equivalency.

The greatest problem encountered in its application has been illustrated by the red sludge incident in Hungary in October 2010: there are no mechanisms in place to remedy damage on a scale such that neither an operator nor an insurance company can shoulder the scope of remediation necessary.

6. Assessment of the functionality and effectiveness of the ELD - reasons for problems and difficulties in the application of the Directive.

Functionality-wise, the most frequently encountered difficulty at this stage is the evaluation necessary to determine whether an instance of environmental damage has reached ELD thresholds. This renders the system uncertain for operators who do not immediately know if they fall within the scope of the regime (and therefore if they can look at possible exemptions) and for the competent authorities who have to wait for this assessment before determining which regime is applicable. After a certain number of cases, we do expect this level of uncertainty to decrease with the experience gathered.