

To :	Mr Karl Falkenberg Director-General DG ENV
From :	Mr Matti Maasikas Permanent Representative of the Republic of Estonia to the European Union
Dated :	15 April 2013 No 1-8/582-1
Re :	Report pursuant to Directive 2004/35/EU of the European Parliament and of the Council

Dear Mr Falkenberg

We hereby forward you those data referred to in Article 18(1) of Directive 2004/35/EU 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, pp. 56-75) which relate to the Republic of Estonia.

Yours sincerely,

(signed)

Encs.:

- 1) Information concerning those data referred to in Article 18(1) of Directive 2004/35/EU 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, pp. 56-75) which relate to the Republic of Estonia;
- 2) Additional information with regard to Directive 2004/35/EU 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, pp. 56-75) in the Republic of Estonia.

Cc.: Ion Codescu, Head of Unit A.1, Directorate A

Annex I

Information concerning those data referred to in Article 18(1) of Directive 2004/35/EU 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, pp. 56-75) which relate to the Republic of Estonia

OPTIONAL PART

Type of environmental damage	Date of occurrence / discovery of the damage	Initiation of proceedings	EMTAK code	Appeal proceedings	Results of remedial measures (remedial measures to be implemented)	Date of closure of the proceedings	Short description of the event	Annex III to the Directive	Expenditure on preventive/remedial measures (including VAT)
Environmental damage to the soil (and the threat of damage to groundwater)	13 December 2010	22 December 2010	46712 Wholesale of automotive fuel		<ol style="list-style-type: none"> 1. excavation and treatment of polluted soil ; 2. taking of soil and water samples; 3. pumping out and treatment of polluted water taken from the bottom of an excavation (hereinafter "pit") made with the aim of eradicating pollution; 4. wider and deeper excavation of the pit with the purpose of removing as much polluted soil as possible, while at the same time taking possible rock falls into consideration; 5. filling in of the pit with infill soil at the earliest opportunity. After ensuring the provisional stability of the soil, to fill in the remaining part of the pit with topsoil (total volume of around 105 tonnes); 6. following the spring thaw in the 	16 June 2011	<p>Due to a slippery road, a fuel truck with a trailer drove into a ditch. When raising onto the wheels of the trailer tank around 6000-8000 litres of specially marked diesel fuel flowed out of one of the sections of the tank. Fuel residues were collected up from the polluted surface, but some of the fuel leached into the snow and soil. The area of polluted soil was approximately 150 sq.m. 40 m east of the site of the accident was a ditch, which after 1.7 km flowed into the Pirita river.</p>	Annex III 7(a) dangerous substances as defined in Article 2(2) of Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous substances;	EUR 20895.87 + fuel spilled. 100% of the expenditure was paid by the person causing the damage.

					first quarter of 2011 (taking weather conditions into account), to check the quality of the standing ditch water east of the polluted area in terms of its petroleum product content by taking water samples.				
Environmental damage to protected species and habitats; the habitat of the salmon (<i>Salmo salar</i>) and the thick-shelled river mussel (<i>Unio crassus</i>) in the Loobu River conservation area and the threat of environmental damage to the species of salmon (<i>Salmo salar</i>)	29 July 2011	14 October 2011	42911 Construction of water projects	<p>1. To restore, by building a spawning site, a 490 m long stretch suitable for salmon spawning grounds and habitat, which was altered while performing construction and water abstraction works; 2. Spawning is restored on the basis of the expert opinion of the Estonian Marine Institute at the University of Tartu.</p> <p>3. To restore spawning an expert with a background in ichthyology needs to be involved; this expert's task is to see to it that the spawning site is constructed properly and that habitat of the protected species is not damaged during the works;</p> <p>4. Upon completion of the works, to submit a concise written summary describing the completed works to the Environmental Board, together with confirmation from experts that the works were carried out properly.</p>	27 February 2013	The company was issued with a water abstraction permit. The water extraction permit was issued for widening the water body and altering the physical properties of the water and the biological properties of the water body in order to build a fish passage over the dam, and to decontaminate and dam up the reservoir sediments. During an on-the-spot check on 29 July 2011 it was revealed that the water extraction did not comply with the permit requirements. During the works performed in the vicinity of the reservoir, the river below the dam was significantly harmed (the stony gravel bottomed rapids had been replaced with extensive beds of sand, machines had moved around in the river, the riverbed had been extensively altered using heavy equipment, during the construction works a large quantity of sediment was carried downstream). The construction activities had damaged the habitat of the salmonids and the thick-shelled river mussel.		Annex III (6) - Water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive 2000/60/EC.	The expenditure on expert assessments was initially paid for by the Environmental Board (the competent authority) to the amount of EUR 1330. The expenditure was requested from the person causing the damage at the time of determining damages. The total expenditure incurred by the person causing the damage on preventive and remedial measures (along with the expert assessments) was EUR 2950.

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Threat of damage to the soil	6 May 2010	18 May 2010	35301 Steam and air conditioning supply	-	Cleaning, dismantling and cutting up of old containers; installation of temporary plastic tanks; installation of an assembly on the wall of the fuel storage space; demolition of the foundations of the concrete floors and old containers; excavation and use of the polluted soil; taking of soil samples; replacement of excavated soil with sand	10 November 2010	Accident at a boiler-house, the spillage of around 3 tonnes of summer diesel fuel (hazardous chemical) into the soil	Annex II (7a) - dangerous substances as defined in Article 2(2) of Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous substances	No information available
Threat of environmental damage to species and habitat (springs and springfens within the habitat corridor of a special conservation area (7160) and swamps and deciduous swamp woods (9080*))	8 May 2012	14 September 2012	93111 Operation of sports facilities	Proceedings are pending	Restore the natural water regime of the deciduous swamp wood and swampfen special conservation area altered during the illegal construction works (to protect the protected species)	Proceedings are pending	A citizen submitted a query to the Environmental Board concerning works performed during the construction of a tourism and outdoor sports centre in the special conservation area. The question related to the drainage works performed in the south-west of the area proposed in the zoning ordinance, which may jeopardise upslope forest and swampfen along with the protected plant species that occur in them (<i>Dactylorhiza russowii</i> (the marsh helleborine), <i>Dactylorhiza fuchsii</i> (the common spotted orchid), <i>Saussurea alpina</i> ssp. <i>esthonica</i> (Estonian subspecies of the common saw-wort), <i>Ophrys insectifera</i> (the common fly-orchid), etc.)	-	

Appendix 2

Additional information with regard to Directive 2004/35/EU 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, pp. 56-75) in the Republic of Estonia

Transposition and implementation of the Environmental Liability Directive

In Estonia, Directive 2004/35/EU of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage ('the Environmental Liability Directive') was transposed by the Environmental Liability Act (which entered into force on 16 December 2007). To date, initial application practice has developed and cases have arisen of the detection of damage and/or the threat of damage to water, soil and protected species, natural habitats and protected areas.

As at 30 April 2013, the Environmental Board as competent authority had initiated 16 proceedings with regard to the detection of environmental damage or the threat thereof on the basis of the Environmental Liability Act (of these, four cases are still pending). Environmental damage (along with the threat of environmental damage) was identified in two of the aforementioned cases and an isolated and unique threat of environmental damage in two others. The activities related to the cases were for the most part listed in Annex III to the Environmental Liability Directive and covered the manufacture, use and storage of both water and hazardous substances, preparations and related substances, but there were also cases which were not covered by the list in Annex III and cases to which the derogations provided for in the Environmental Liability Directive applied. In Estonia the Environmental Board has established a functional procedural system for dealing with environmental damage in accordance with the Environmental Liability Act (the Board has approved a process map, on the basis of which risk assessments are carried out annually). Both external experts and, where the relevant competence exists within the Environmental Board, the Board's own experts are called on to assist in assessing and establishing the existence of damage. This area is developed in cooperation with the other relevant authorities (the Ministry of the Environment, the Environmental Inspectorate and the Health Board).

Information on environmental damage and the threat of damage is provided by means of a register of environmental liability cases, which is accessible to everyone on the Environmental Board's home-page. In order to provide information on environmental damage and the risk of damage in a compact form, this register of environmental liability cases is to be further developed and merged with the environmental information system currently in use. Such a solution would permit expert assessments submitted in the course of proceedings, monitoring data and other important information to also be stored compactly, allowing the existing information to be used within the context of subsequent cases or as part of national monitoring, activities, etc.

Likewise, up-to-date information on the notification of environmental damage (or the threat thereof) and the rights of the persons concerned can also be found on the Environmental Board's website.

To raise awareness among operators and the general public with regard to environmental liability, a series of information days have been organised for different target groups. Further

information days of this kind will be organised in the future, using (among other things) support material produced by the European Commission.

Difficulties in implementing the Environmental Liability Directive

Undefined legal terms such as 'substantial damage', as well as the definition of 'baseline situation' and 'natural recovery' have caused difficulties when implementing the Environmental Liability Act.

Administrative expenses

In Estonia, pursuant to the existing provisions of the Environmental Liability Act, the person who causes the damage is not required to pay the costs incurred by the expert when determining damages if, according to the expert, it turns out that no damage has been caused. Often it is not possible to ascertain damage or the absence thereof without monitoring, special equipment or expert opinion. Therefore implementation of the Environmental Liability Directive nationally also requires that budgetary resources be available for the competent authority to ascertain damage or the absence thereof.

Optional financial guarantee

In Estonia a system of optional financial guarantees is in operation; issues regarding economic measures are therefore not regulated in the Environmental Liability Act.

A prerequisite for imposing the obligation of liability is the existence of the relevant insurance product. For insurers to be able to offer environmental liability insurance services, relevant practice is needed which would permit the costs of damage prevention and remediation to be predicted with such accuracy that insurers are able to establish the details of their service on that basis. Current practice is still insufficient and does not allow for relevant insurance products to be developed.

Insurers, while offering a variety of insurance products, including liability insurance for the compensation of damage caused to the property of third parties, currently do not provide liability insurance to compensate for damage caused to the environment.

Conservation measures – permit protection and science/technology

Estonia, by virtue of the discretionary power provided for in the Directive, has decided, on the basis of the principle of legal certainty, to use national conservation measures relating to permits and the level of science/technology. These ensure exemption from the costs of the remedial measures if the damage is caused despite all established environmental requirements being met and in the event that the person who causes the damage certifies that at the time of the discharge or the event there had been no reasons based on existing scientific or technical knowledge to consider that there was likely to be any environmental damage, and that it took all steps to identify the potential impact of the activities. The person who causes the damage is not released from bearing the costs of measures to prevent the damage, the obligation to provide information and the obligation to co-operate.

In summary, we consider that, despite the small number of cases, the Environmental Liability Directive and the Estonian Environmental Liability Act can be regarded as effective, because one of the Directive's main objectives is, indeed, to prevent environmental damage. We consider that it is not appropriate to use only a large number of cases as a measure of the

functioning of the Directive; other special laws operating in the Member States and awareness-raising efforts should also be taken into account. Therefore, the better informed businesses are of the potential of their activities to give rise to environmental damage and the more they cooperate with the competent authority to avert them, the fewer the cases of environmental damage there will be.