

REPORT

Subject of the Report:

Member State report (hereinafter referred to as 'Report') under Article 18(1) of Directive 2004/35/EC of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (hereinafter referred to as 'Directive').

The content requirements for the Report are listed in Annex VI to the Directive (hereinafter referred to as 'Annex')

The Report is addressed to:

The Commission of the European Union

The Report was drawn up by:

The Government of Hungary (within the system of liabilities of the Hungarian Government: the Ministry of Rural Development, under Article 42(2) of Act LIII of 1995 on the General Rules of Environmental Protection)

Content of the Report:

- I. Introduction
- II. Identification of the cases covered by the Report
- III. List of instances of environmental damage (proceedings)
- IV. The financial security instruments used in accordance with the Directive, including actions for the promotion and implementation of insurance
- V. Additional administrative costs incurred annually by the public administration in setting up and operating the administrative structures needed to implement and enforce the Directive
- VI. Conclusion
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DETAILED CONTENT OF THE REPORT

I.

Introduction

(1)

The Member States of the European Union have chosen different solutions for the transposition of the Directive. Hungary ensured the compliance of its laws with the Directive *by amending laws in force and by drawing up two new government decrees*. The main reason for this choice was that *the majority of regulations in effect at the time already covered, and in some cases exceeded the provisions of the Directive in terms of 'strictness' (scope), and thus these regulations 'only' had to be supplemented*.

(2)

Laws transposing the provisions of the Directive:

The provisions of the Directive were transposed into Hungarian law by way of the amendment of four acts and two government decrees, and the enactment of two (new) government decrees.

Amended acts:

- Act LIII of 1995 on the general rules of environmental protection
- Act LIII of 1996 on nature conservation
- Act LVII of 1995 on water management
- Act XLIII of 2000 on waste management (replaced by Act CLXXXV of 2012 on waste as of 1 January 2013)

Amended government decrees:

- Government Decree No 92/2007 (IV.26.) amending Government Decree No 219/2004 (VII. 21.) on the protection of underground waters
- Government Decree No 93/2007 (IV.26.) amending Government Decree No 220/2004 (VII. 21.) on the rules of protecting the quality of surface waters

New government decrees:

- Government Decree No 90/2007 (IV.26.) on the rules for preventing and remedying damage to the environment
- Government Decree No 91/2007 (IV.26.) on establishing the extent of damage caused to the natural environment and on the rules of remedying the damage

II.

Identification of the cases covered by the Report

(1)

As regards scope of applicability the most important issue was to clarify which environmental cases (proceedings) were covered by the scope of the Directive and which were not. When identifying the cases covered by the Directive we disregarded Article (3)(1)(a) of the Directive, i.e. the activities listed in Annex III (limiting the scope of damaging activities). The reason for this was that, availing itself of the freedom granted for Member States in transposing the Directive, Hungary did not transpose Annex III, as that would have limited the scope of applicability of the liability system set forth by the Directive, whereas the intention of the legislator was the opposite.

As regards the term ‘environmental damage’ we therefore took the definitions of Article 2 of the Directive, and of effective national laws being in accordance therewith, as our basis; consequently, where the Report uses the terms ‘environmental damage’, ‘case of environmental damage’ or ‘environmental remediation proceedings’ (etc.), they have to be interpreted accordingly.

(2)

It also follows from the previous point that in Hungary (and other Member States proceeding similarly) the number of cases covered by the Directive is probably proportionately higher than in countries opting for the limitation (in relation to the size of the countries). (We would hereby like to draw the attention of the European Commission to this fact.)

(3)

As for applicability in time we took account of instances of environmental damage and conduct causing threats to the environment that had occurred after the transposition of the Directive (30 April 2007). Accordingly, the Report covers instances of damage and cases that are regarded as such by effective national laws transposing the Directive in terms of their date of occurrence (the relevant date is therefore the date set forth in the effective law, not the actual date when the damage was caused).

The definition under the abovementioned laws in force can be found in Article 110(4) of Act LIII of 1995 on the general rules of environmental protection: ‘The provisions of this Act set forth by Act XXIX of 2007 amending various environmental protection acts in respect of environmental liability shall apply to environmental damage and conduct causing threats to the environment insofar as they occurred after 30 April 2007.’

(4)

One issue regarding interpretation was that the Hungarian version of point 4 of Annex VI to the Directive, which lists the content requirements for the Report, includes ‘*felszámolási folyamat*’ (remediation process). Here ‘*felszámolás*’ (which could also be translated into

Hungarian as ‘winding-up’) obviously means remediation of damage and not the winding-up of a company. As for the term ‘*eljárás*’ (‘proceeding’) in point 5 we used the logical plural form used in foreign-language (English, German) versions (‘proceedings’). *Consequently, a specific instance of damage is referred to as one case even if several different cases arose from it. Thus the different proceedings arising from the same damage were shown in one box belonging to that particular case.*

(5)

The Directive stipulates that so-called NACE codes must be used for the activity classification codes of liable legal persons. The Hungarian equivalent is the TEÁOR '08 system. Under Annex VI of the Directive we entered these codes (i.e. the descriptions set forth in effective Hungarian laws) into the table for the activities of liable legal persons. (Obviously the classification is independent from whether the damage was caused in connection with the activity or not.)

Background information: NACE is the standard for the statistical classification of economic activities in the EU (*Nomenclature générale des activités économiques dans les Communautés Européennes*). The more recent Regulation (EC) No 1893/2006 establishing the statistical classification of economic activities NACE Revision 2 entered into force on 19 January 2007. The new regulation amended Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains. The regulation requires all Member States to apply the new classification of activities in statistical data collections and registers as of 1 January 2008.

The Hungarian equivalent of NACE Rev. 2 is the TEÁOR '08 system. NACE codes are identical to the Hungarian TEÁOR system in terms of structure.

Following the update procedure of EUROSTAT, the Hungarian Central Statistical Office updates the content of TEÁOR '08 annually.

III.

List of instances of environmental damage (proceedings)

The list of instances of environmental damage and liabilities covered by the Directive can be found on the electronic data carrier (CD) constituting the annex to the Report, in tabular form broken down by inspectorates for environment, nature and water (hereinafter referred to as ‘inspectorates’). (A map showing the regional competence of the inspectorates is also part of the Annex to the Report.)

The data on the cases of environmental damage covered by the Report were provided by the ten inspectorates under the guidance of the National Inspectorate For Environment, Nature and Water and, naturally, the Ministry of Rural Development.

The table shows the following *information and data* set forth in Annex VI to the Directive for each case (box), in the following order (this part of the Report basically follows the content criteria set forth in Annex VI to the Decree):

(1)

Description and location of the environmental damage (settlement, district, road, lot number, etc.). With the help of this information the nature and location of the damage can be clearly identified.

(2)

Type of environmental damage: which environmental compartment suffered injury.

(3)

Legal identification of damage: which legal provision it is covered by, i.e. the reason for falling under the scope of the Directive.

(4)

Date of occurrence: in many cases only the year of the occurrence of the damage can be accurately identified.

(5)

Date of discovery of the damage: here the exact month, and in some cases the exact date can also be identified.

(6)

Initial date(s) of the procedure(s) launched under the Directive on the basis of the discovery of the environmental damage: As we mentioned, the different procedures in connection with the same case (i.e. the same instance of damage) were indicated in one box belonging to that particular case. Here the exact days are also provided.

(7)

Liable legal entities or private individuals (natural persons). (If such information is available.)

(8)

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

(9)

Parties in litigation in the course of the judicial proceedings referred to in the previous point.

(10)

(Final) outcome of judicial proceedings referred to in the previous point.

(11)

Outcome of the remediation process in connection with the environmental damage.

(12)

Final date of the remediation process in connection with the environmental damage.

(13)

Costs incurred with remediation (or further prevention) measures, paid for directly by liable parties. (Such information is very rarely available.)

(14)

For costs charged (imposed) by the acting authority on the liable person(s): recovered costs (paid for, or collected by the authority).

(15)

For costs charged (imposed) by the acting authority on the liable person(s): non-recovered costs (unpaid, or not collected by the authority).

(16)

For costs charged (imposed) by the acting authority on the liable person(s): reason for non-recovery of non-recovered costs (unpaid, or not collected by the authority).

(17)

Where the environmental damage can be linked to an activity otherwise performed by the liable person under a permit: basic data of the authorised activity have been provided.

(18)

Activity classification code of the liable legal person(s). As we have indicated, the Directive stipulates that NACE codes must be used for the activity classification codes of liable legal persons. The Hungarian equivalent is the TEÁOR '08 system. The table therefore contains the description set forth in the effective Hungarian laws. (Obviously the classification is independent from whether the damage was caused in connection with the activity or not.)

(19)

The box 'Other information' (optional) contains any information provided by the proceeding authority in the context of data reporting to facilitate the identification, understanding, etc. of the specific damage or proceedings.

IV.

The financial security instruments used in accordance with the Directive, including actions for the promotion and implementation of insurance

(Under point 2 of the second part of the Annex to the Directive; otherwise the provisions on financial security instruments are included in Article 14 of the Directive.)

(1)

In effective Hungarian law, the legal basis of the financial security instruments used in accordance with the Directive, including actions for the promotion and implementation of insurance, is Article 101 of Act LIII of 1995 on the general rules of environmental protection:

Paragraph (1):

‘In the manner specified in this Act and regulated in other provisions of law, the user of the environment shall bear penal, civil and administrative law liability for the impact that their activity has on the environment.’

Paragraph (2):

‘Users of the environment

- shall refrain from any conduct that may cause threats or damage to the environment and stop their conduct causing threats to the environment or their damaging the environment;
- shall immediately notify the environmental protection authority if threats or damage to the environment occur, and shall provide the information specified by the environmental protection authority and by specific other legislation;
- shall, when damage occurs to the environment, take every possible measure to mitigate and eliminate the damage and to prevent further damage to the environment, and, in particular, they shall immediately take control of, stop and remove or in some other appropriate manner handle the materials or other damaging factors causing environmental damage with the aim of limiting or preventing the occurrence of further damage to the environment and of adverse effects on human health or the further impairment of the services provided by environmental compartments;
- shall restore the baseline condition or establish a condition coming close to the baseline condition as specified by specific other legislation, and restore the service provided by the environmental compartment or ensure an alternative service with an identical value once damage to the environment occurs;
- shall take responsibility for the impairment they caused to the environment and bear the costs of prevention and restoration.’

Paragraph (5):

‘In respect of their activities specified in a specific other Government Decree, users of the environment shall provide an environmental protection security and, in order to ensure the financing of the remediation of any unforeseen damage to the environment caused by their activities, they may – under the conditions specified in specific other legislation – be obliged to sign an environmental protection insurance contract. In accordance with the provisions included in a specific other Government Decree, users of the environment may establish a special environmental protection reserve for any environmental protection liabilities that could or will arise.’

(2)

Negotiations are being held and legislation is being prepared so that the above-mentioned legal regulation can be applied and enforced as widely as possible. A source of major difficulty is that, for risk-taking and profit calculation reasons, the financial (banking and insurance) sector refrains from introducing such new types of solution.

(3)

Another problem is that due to the EU rules on neutrality in market competition in force the possibilities for establishing financial (banking and insurance) methods and institutional instruments are very limited.

(4)

Despite the above the Hungarian ministry of environmental protection endeavours to draw up such solutions and include them in legislation.

One example of this is Act CLXXXV of 2012 on Waste, which entered into force on 1 January 2013 and contains appropriate provisions in this context.

On reserves serving as security:

‘Article 70(1) The companies set forth in the relevant government decree and public service providers operating a waste treatment plant shall establish a reserve serving as security in proportion to the quantity of waste to be treated.

(2) With the exception set forth in the relevant government decree, the reserve shall be established during operation, against results before taxation, and set aside in consideration of foreseeable risk or loss, on a time or performance-proportionate basis in a way that the reserve can cover the future costs of the recultivation and aftercare of the plant and of waste treatment when the waste treatment plant is closed or the activity performed in the plant abandoned.

(3) The company or public service provider referred to in paragraph (1) shall estimate the future costs of the recultivation and aftercare of the waste treatment plant and of waste management at the end of the business year, and shall submit the estimation to the authority for environmental protection by 31 May of the year following the business year. The estimation and all relevant documents shall demonstrate that the amount of the reserve

established was determined and set aside in proportion to the future costs of the recultivation and aftercare of the waste treatment plant and of waste management.’

On environmental insurance:

‘Article 71 In order to ensure funding enabling the remediation of any unforeseeable environmental damage that may be caused by their activities, an environmental protection insurance contract shall be concluded by the companies set forth in the relevant government decree

(a) during the activities of which waste in quantities set forth in the government decree on the obligations of recording and supplying data related to waste is generated,
(b) which take over, transport, store and treat waste from the owner of the waste, and
(c) which import, export or transit waste into, from or through the territory of Hungary for purposes set forth in Regulation (EC) No 1013/2006 of the European Parliament and of the Council.’

The government decree aimed at the enforcement of the above-mentioned statutory provisions is under preparation.

V.

Additional administrative costs incurred annually by the public administration in setting up and operating the administrative structures needed to implement and enforce the Directive

(Under point 3 of the second part of the Annex to the Directive.)

It was not necessary to set up and operate separate administrative structures to implement and enforce the Directive. Consequently, no additional administrative costs were incurred by the public administration.

VI.

Conclusion

This Report is the first comprehensive summary since the entry into force of the Directive and the Hungarian laws transposing it.

At the same time as sending the report to the European Commission an analysis was commenced on the basis of relevant information in order to identify further actions.

VII.

Annex (electronic data carrier in the form of a CD)

(1)

List of types of environmental damage and liabilities covered by the Directive in a tabular form, broken down by data supplying inspectorates for environment, nature and water, including the information and data set forth in Annex VI to the Directive.

(2)

Map showing the regional competence of inspectorates for environment, nature and water
