



# Directive 2004/35/EC Environmental Liability Directive

Commission Européenne - DG Env

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## **DIRECTIVE 2004/35/EC of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage**

- **Objective: establishing a liability framework based on the ‘polluter-pays’ principle.**
- **Key concepts:**
  - **Environmental damage:**
    - Damage to protected species and natural habitats
    - Water damage
    - Land damage
  - **Operator: ‘controlling’ test.**
    - Annex III activities
    - Other occupational activities.
  - **Preventive measures/imminent threat.**
  - **Remedial measures.**
  - **Baseline condition.**
  - **Costs.**



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## Scope:

- **Environmental damage & imminent threat caused by Annex III activities (such as chemical installations and waste management activities) ('first liability tier').**
- **Damage to protected species and natural habitats & imminent threat caused by non-Annex III occupational activities if operator at fault or negligent ('second liability tier').**
- **Without prejudice to stricter Community legislation.**
- **No right to private parties.**
- **Exceptions:**
  - **Armed conflicts, civil war, insurrection, hostilities;**
  - **Exceptional, inevitable and irresistible natural phenomenon;**
  - **Nuclear activities;**
  - **Pollution with diffuse sources;**
  - **National defence, international security, civil protection;**
  - **When certain international liability treaties apply.**



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## Prevention:

- Operator to take preventive measures in case of imminent threat.
- Operator to inform the competent authority (CA) in certain cases, and at least when imminent threat continues.
- CA to ensure that the operator complies with ELD. It may issue a variety of orders to the operator.
- CA may take measures itself.

## Remedial action:

- 'All practicable steps' (containment/mitigation)
  - Remedial measures.
  - Operator to take all practicable steps immediately.
  - Operator to take remedial measures subject to approval by CA.
  - CA to ensure that the operator complies with ELD. It may issue a variety of orders to the operator.
  - CA may take measures itself.
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## Determination of remedial action:

- Operator to make proposals to CA on basis of Annex II.
- CA to approve remedial measures taking into account comments from interested parties.
- Prioritisation by CA possible in case of multiplicity of instances of environmental damage.

## Prevention and remedial action costs:

- Costs to be borne by liable operator.
- Exceptions:
  - Third party intervention despite safety measures.
  - Compulsory order by public authority.
  - Optional exceptions:
    - Permit defence.
    - Development risk defence.

## Multiple-party causation:

- Whether liability is proportional or joint and several to be determined by Member States.
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## Time-related aspects:

- **CA to initiate cost recovery proceedings within 5 years**
  - From the date of completion of preventive/ remedial measures, or
  - From the date on which liable party has been identified,
  - Whichever is the later.
- **Overall time-limit of 30 years.**
- **No retrospective effect.**

## Competent authority (CA):

- **One or several CA(s) to be designated by Member States.**
- **Tasks to be fulfilled under the ELD (compliance monitoring and enforcement).**
- **Powers in respect of:**
  - potentially liable operator (supply of information & assessment),
  - third parties (landowner).
- **Procedural safeguards (reasoned decision mentioning remedies & time-limits).**



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## Request for action to be taken by CA:

- **Observations & request for action may be submitted to CA by natural or legal persons**
  - Affected or likely to be affected, or
  - Having a sufficient interest/alleging the impairment of a right.
- **Environmental NGOs meeting requirements under national law deemed to satisfy condition.**
- **CA to investigate if *prima facie* case and act accordingly (respecting right of defence).**
- **Applicant to be informed.**
- **Procedure may be waived in respect of imminent threat.**
- **Decision of CA may be subject to review procedures.**



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- **Financial security:**
    - Member States to encourage the development of financial security instruments and markets.
    - Commission to report in 2010.
  
  - **Transboundary damage: cooperation between Member States (including exchange of information).**
  
  - **Relationship with national law:**
    - National stricter measures allowed.
    - Double recovery to be addressed, if needed.
  
  - **Report by the Commission by 30/04/2014 (on the basis of information give by Member States).**
  
  - **Transposition date: 30/04/2007.**
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## Annexes:

- **Annex I: when is damage to protected species and natural habitats significant?**
- **Annex II: common framework to ensure the remedying of environmental damage.**
- **Annex III: activities covered by first tier of liability (e.g.: IPPC installations; chemical facilities; waste management activities; release of certain polluting substances into air and water).**
- **Annexes IV & V: international instruments prevailing over the ELD.**
- **Annex V: information to be supplied by Member States Provisions on public participation in environmental decision-making are to be found in a number of other environmental directives :**