

CZECH REPUBLIC

Environmental Liability

National toolkit on the practical application of
the ELD and its national equivalents

Justice and Environment 2017

a Udolní 33, 602 00, Brno, CZ
t 36 1 3228462
fb /justiceandenvironment

e info@justiceandenvironment.org
w www.justiceandenvironment.org
tw JustEnviNet

Czech Republic

Environmental Liability

National toolkit on the practical application of the ELD and its national equivalents

1. Short summary of points

This short toolkit explains main points of Environmental Liability Directive and describes the tools public can use when undertaking steps against environmental damage of its imminent threat. Firstly it explains who can be liable under the ELD regime and what environmental damage is, then it describes obligations of liable operators. The second part explains in detail about requests for action against environmental damage which can be submitted by the public or environmental NGOs and the procedure following its submission. Throughout the text, references are made to Czech legislation concerning environmental damage. At the end are listed some useful references.

2. Introduction

The Environmental Liability Directive (ELD) is an EU directive dealing with operators' liability for the state of the environment based on the principle "polluter pays". The aim of ELD is preventing and remedying environmental damage caused by certain production activities. Aligning to the principles of precaution, prevention and rectifying environmental damage primarily at source, ELD created the legal frame for identifying environmental damage caused by industry and production activities and the mechanism of sanctioning the polluters. ELD therefore regulates liability of operators of certain activities for damages caused by their activities on the environment.

3. Who is liable?

There are two types of liable operators. These types complement each other and may also overlap.

Operator liable for state of environment pursuant to ELD is any natural or legal, private or public person who operates or controls the occupation activity (...), which means any activity carried out in the course of an economic activity, a business or an undertaking, irrespectively of its private or public, profit or non-profit character. Usually it concerns industrial and agricultural activities requiring permits under IPPC Directive, waste management operations, release of pollutants into water or air and dangerous chemicals or GMOs related activities. The activities are stated in Annex III of ELD. ELD then sets obligations relating to environmental damage prevention and holds any such operator liable for environmental damage even if the operator followed all the rules and regulations properly.

Another type liability applies to any professional activity (even outside Annex III) but only if the operator was at fault or negligent and if they caused damage to protected species and natural habitats protected under Natura 2000. If therefore an operator breaks a legal obligation and consequently causes damage on Natura 2000 protected site or species, he is also liable under ELD regardless of his type of professional activity.

Exception of the liability regime is when vis major steps in – such as extreme weather conditions or armed conflicts. Other exemptions may be decided by Member States.

4. What is environmental damage?

Environmental damage pursuant to ELD is of three types:

1. damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats and species
2. water damage, which is any damage that significantly adversely affects the ecological, chemical or quantitative status or the ecological potential, and the environmental status of the marine waters concerned
3. land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms.

A great advantage of ELD is that it is applicable not only on damages that have already been done, but also on imminent threat of environmental damage.

However, ELD cannot be used in cases where environmental damage like air pollution caused by traffic or burning fossil fuels in household heaters.

5. Operators' obligations under ELD

Operator liability for environmental damage consists of two basic obligations – damage prevention and remediation of existing damages.

1. Obligation of prevention means that if there exists an imminent risk of environmental damage, the operator is obliged to immediately implement necessary preventive measures and in some cases also to inform competent authorities of such situation.
2. Obligation of remedying existing damage comprises of the obligation of informing competent authorities about environmental damage existence and implement all practicable steps to immediately control, contain, remove or otherwise manage the contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or the environment and take necessary remedial measures set by the competent authority.

When thinking about the nature of remedial measures, the priority is always to restore the damaged environment into its original state if possible. If such remedy is not possible or does not exist, other remedial measures are implemented, like improving another comparable site.

As far as obligation of prevention and remedy goes, ELD regulates also financial liability of the operators; they bear all the costs of undertaken preventive and remedial measures whether it is the operator who implemented them or the competent authority.

6. Czech legislation

ELD was transposed into Czech national law by act no. 167/2008 Sb., on prevention of environmental damage and its remedy (PED). It is based on the constitutional principle of the right on healthy environment enacted in Art. 35 of Charter of Fundamental Rights and Freedoms. PED considers environmental damage in broader sense than ELD but on the other hand does not regulate public access to justice. Obligations under the PED are without prejudice to criminal liability for environmental damage.

7. How to report environmental damage?

If anyone suspects there might be environmental damage, they have the right to file a request or action. Request for action pursuant to the Directive is a motion to the competent authority providing information on existing environmental damage or its imminent threat, and a request for implementing preventive or remedial measures. Based on the request for action the competent authority initiates investigation of reported event or threat and setting adequate measures and steps to sanctioning the polluter, if needed. In Czech national law, the equivalent of the request of action is transposed in provision of § 8 of the PED act and is of two types:

1. Incentive for the authority to initiate the proceeding (prov. § 8(1) of the PED) which can be submitted by anyone – natural or legal person who has information on possible existence of environmental damage or on the treat of it.
2. Request of action (§ 8(1,2) of the PED) which can be submitted by natural or legal person affected or likely affected by environmental damage. Environmental NGOs belong to this group.

Those who filed an incentive or a request can ask the competent authority pursuant to Art. 12 of ELD to implement adequate measures.

A request and any observation relating to instances of environmental damage or its imminent treat can be submitted by any natural and legal persons who are affected or likely affected by environmental damage or who have an interest on decision-making relating to environmental damage or alleging the impairment of a right where national administrative procedural law requires this as a precondition. This means that members of general public are able to initiate environmental damage investigation. ELD presumes that environmental NGOs are automatically affected by environmental damage.

This regulation is reflected in Czech national law as well. It enables persons affected or likely affected by environmental damage to file a request pursuant to § 8(1,2) of the PED whereas an incentive may be filed by any person.

In order to file a request, it is sufficient to have knowledge of circumstances suggesting that environmental damage might have occurred or that there is an imminent threat of it; it is not necessary to prove being affected by environmental damage. The basic precondition is existence of environmental damage itself or of its imminent threat.

The request does not have to identify the polluter, however it is convenient to suggest the origin of environmental damage where there is a likelihood that the polluter is a concrete operator. The fact that polluter is not known is by no means an obstacle to filing a request or an incentive.

Competent authority for accepting observations (requests and incentives) about imminent threat of environmental damage or about existing environmental damage in the Czech Republic is the Czech Environmental Inspectorate (CEI) . ELD does not set particular timeframe for the competent authority to deal with the observation, but it does oblige the competent authority to as soon as possible inform the persons who submitted observations to the authority of the decision to accede or to refuse the request for action and shall oblige the reasons for it.

Pursuant to the Czech national legislation, the competent authority is obliged to inform the person who submitted the observation within 30 days since receiving the observation about whether the proceedings would be initiated or whether no reasons were found for starting the proceedings, but only if the submitter explicitly requests to be informed. The authority does not have the obligation to provide reasons for their actions at this stage.

The ELD does not set any formal requirements for the request – there is no obligatory form to fill nor it has to be submitted in writing (while it is likely the usual way to submit a written request). ELD only prescribes the request to contain relevant information and data supporting the observations submitted regarding the environmental damage. There is no cost to submitting neither incentive nor request and the submitter does not bear costs of the potential administrative procedure. If, however, the observation is supported by e.g. expert opinion or data, these costs are covered by the submitter.

8. What happens after submitting the request for action?

After receiving the request the authority first considers whether there are reasons to start proceeding ex officio. If not, it informs about its decision the submitter if he requested to be informed, within 30 days since receiving the request. That is the end of the process in this case.

If the authority decides there are reasons to start the proceedings, it is initiated by informing the concerned operator. At the end, operator may have to implement preventive or remedial measures and also be fined.

Pursuant to the environmental damage prevention act, the proceedings are led as regular administrative procedure including participants pursuant to the administrative procedure act, including environmental NGOs if they choose to enter the proceedings.

ELD in Art. 13(1) guarantees access to justice for those who submit request for action. In case that the competent authority does not initiate the proceedings even though it should have, the submitter can file request for measures against inaction with superior authority – in this case Ministry of the Environment. The ministry then can order CEI to start the proceedings or can take up the case itself and make a decision instead of CEI or extend the period for starting the proceedings. If the proceeding still is not initiated, the submitter may file an administrative action against inaction with the regional court.

If the competent authority does not impose any preventive or remedial measures, even though they should have been imposed, participants have the right to appeal against such decision and subsequently file an administrative action against the decision.

9. The Czech context of environmental damage cases

PED has been in force since August 2008. However, to date CEI has never once initiated any proceedings pursuant to ELD nor PED and never has it imposed preventive nor remedial measures on operators. In practice, the piece of legislation is not being used at all.

10. References

Competent authorities

Czech Environmental Inspectorate receives observations (requests and incentives) about imminent threat of environmental damage or about existing environmental damage, imposes preventive or remedial measures and decides about cost reimbursement and fines for operators.

<http://www.cizp.cz/Ekologicka-ujma/Informace-o-zahajeni-rizeni>

<http://www.cizp.cz/Ekologicka-ujma/Evidence-pripadu-ekologicke-ujmy>

Ministry of the Environment is the central authority for preventing and remedying environmental damage and the authority that reviews CEI's decisions.

<http://www.mzp.cz/>

References to relevant legislation

Directive 2004/35/CE 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.

Act no. 167/2008 Sb., on prevention of environmental damage and its remedy.

References NGOs which might provide help in environmental damage cases

Arnika <http://arnika.org/>

Frank Bold – Service for citizens (legal advisory centre) <http://frankbold.org/poradna>

Greenpeace <http://www.greenpeace.org/czech/cz/>

Hnutí Duha <http://www.hnutiduha.cz/>

Other useful references

Frank Bold legal advisory: Přecházení ekologické újmě a její náprava:

<http://frankbold.org/poradna/kategorie/ochrana-prirody-a-krajiny-lesa-a-pudy/rada/predchazeni-ekologicke-ujme-a-jeji-naprava>

Information of Ministry of Environment to environmental damage

http://www.mzp.cz/en/contaminated_sites; http://www.mzp.cz/cz/ekologicka_ujma

Ministry of Environment FAQ to Environmental Damage Act:

http://www.mzp.cz/cz/nejcastejsi_dotazy_ekologicka_ujma

Q&A ELD: http://europa.eu/rapid/press-release_MEMO-04-78_en.htm

Contact information:

name: Sandor Fulop

organization: J&E

address: Garay u. 29-31., Budapest, Hungary, 1076

tel: +36 1 3228462

e-mail: info@justiceandenvironment.org

web: www.justiceandenvironment.org

The Work Plan of J&E has received funding from the International Visegrad Fund through its Standard Grant funding scheme. The sole responsibility for the present document lies with the author and the International Visegrad Fund is not responsible for any use that may be made of the information contained therein.



The Work Plan of J&E has received funding from the European Union through its LIFE+ funding scheme. The sole responsibility for the present document lies with the author and the European Commission is not responsible for any use that may be made of the information contained therein

