

Slovakia

Environmental Liability

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

Introduction

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 ("ELD") establishes a common liability framework in the EU for the prevention and remediation of certain type of damages caused to animals, plants, natural habitats, water resources and land.

Purpose of ELD is to "induce operators to adopt measures and develop practices to minimise the risks of environmental damage" . ELD also puts into practice "polluter-pays" principle which requires operator, whose activity has caused an imminent threat or actual environmental damage, to be financially liable for such damage. Together with polluter pays principle, precautionary and preventive principles are basic principles within the ELD liability regime.

"Environmental liability" under the ELD has though few in common with standard civil liability rules. For instance, the ELD does not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage occurring .

ELD requires competent Member State authorities to ensure the effective implementation and enforcement of the ELD. At the same time ELD offers tools for the public and NGOs to file a request for action before competent authorities in case when environmental damage has occurred or there is an imminent threat of such damage.

1. Slovak legislation

Slovakia has transposed this European directive into its national legal order in 2007 via the Act No. 359/2007 Coll. on prevention and remediation of environmental damages.

The Act No. 359/2007 Coll. on prevention and remediation of environmental damage regulates:

- rights and obligations of the operators at prevention and remediation of environmental damages which includes covering related financial costs,
- obligations of state administration bodies
- accountability for non-compliance with legal obligations of operators

In order to understand the mechanism set under the Act on prevention and remediation of environmental damage we need to define its basic concepts.

2. Imminent Environmental Threat

Imminent environmental threat refers to a situation where it is strongly probable that in near future an environmental damage will occur.

3. Environmental damage

According to the national legislation damage is understood as significant adverse or chemical effect on water, land and protected species and habitats of European importance.

Pursuant to the Act on prevention and remediation of environmental damage there are three types of damages:

- a. damage on protected species and habitats which has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats and species with exception of previously identified adverse effects which were consequence of authorised operator's actions
- b. damage on water which has significant adverse effects on ecological, chemical and quantitative status or ecological potential of waters with exception of adverse effects stipulated in specific act
- c. damage on land which refers to any contamination of the land that creates a significant risk on human health being adversely affected as result of direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms.

Protected species and habitats under national legislation refer to:

- protected species having importance on European level which are protected under specific legislation (NATURA 2000)
- species having importance on European level and migratory birds for whose protection are established protected areas as stipulated in the specific act and their protected habitats.
- breeding sites or resting places of the protected species having importance on European level
- Protected habitats having importance on European level

Environmental damage does not include the damage caused to property or to health. Either cases of air pollution do not fit into the liability regime set in the national legislation given that air is rather considered as medium through which environmental damage is happening to other environmental components (species, habitats, water, and land).

4. Liable operators

According to the Act no. 359/2007 Coll. and its Sec. 2 par.1 letter e) Operator is " Natural or legal person- entrepreneur who operates or controls occupational activity or person who has decisive economic competences over technical exploitation of such activity, including the permit or license holder for such activity, person registered for such activity or person performing such activity on the basis of a notification."

Slovak legislation introduces 'strict liability' regime in relation to environmental damage or a risk thereof. In such regime causal link between the operator's activity and the occurrence of environmental damage must be established.

Directive and also national legislation differentiate two types of liable operators which may be complementary or even overlap.

First there is a category of operators who operate or control occupation activities considered risky as such. These are for instance industrial or agricultural activities, waste management operations, transport of dangerous goods or activities related to GMO manipulation. All these activities are listed in the Sec. 1 par.2 of the Act.

When damage or imminent threat were caused by an activity listed in the Section 1 par.2 of the Act there is no need to establish a fault of the operator to consider him accountable.

The second type of liability regime applies to operators who perform any type of occupation activity other than listed in Section 1 par. 2 which may cause damage on protected species and natural habitats protected under Natura 2000. However, this requires the establishment of operator's fault or negligence.

5. Operators' obligations

Under ELD and national legislation, operators have obligation to prevent damage and to remediate existing damage.

In respect to prevention of damages so if there exists an imminent risk of environmental damage, the operator is obliged to immediately adopt necessary preventive measures. In case these measures would not be sufficient to prevent such damage operators have to also inform competent authorities about all details of the case.

In case the damage has already occurred the operator shall, without delay, inform the competent authority of all relevant aspects of the situation and take all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services. Moreover operator has to propose and implement remedial measures approved by the competent authority.

6. Financial liability of operators

The operator liable under Act no. 359/2007 Coll. must bear the cost of the necessary preventive or remedial measures. He will do so either directly or indirectly:

It may be done directly, so the operator pays for the measures he takes himself or he entrusts a specialised undertaking to take them on his behalf.

It may happen also indirectly when competent authority acted, itself or through a specialised undertaking, in the place of the liable operator, that authority shall recover the costs it has incurred from the operator.

7. Participation of the public in the proceedings according to the Act no. 359/2007 Coll.

In case of an environmental damage or its imminent threat ELD and the Act on prevention and remediation of environmental damage enable certain persons to request competent authorities to act and adopt appropriate measures.

Owner, administrator or tenant of the property which is or is likely to be affected by the environmental damage, natural or legal persons affected or likely to be affected by environmental damage, or having a sufficient interest, or whose rights have been impaired, NGOs have right to inform the competent authority about facts suggesting that an environmental damage has occurred or may occur.

Civil association or other organization which objective according to the statutes, foundation charter, memorandum of association or foundation document or their amendments in force for at least one year is the environmental protection can file such notification on the occurrence of environmental damage or its threat as well.

8. How to file the notification?

Notification is to be filed in written form and shall mainly contain:

- Name of the operator whose activity caused the environmental damage
- Localisation of the environmental damage
- Description of the facts
- Evidence of described facts contained in the notification
- Name, surname and permanent residence of applicant, if he/she is natural person.
- Name and seat of the applicant and name and surname of applicants, who are statutory representatives of the applicant which is legal entity

Competent authorities for receiving notifications on occurrence or on threat of an environmental damage are the Departments of Protection of Environment within the District offices. In case when the environmental damage or a threat of such damage was caused by occupational activity which falls under specific regulation of Act no. 39/2013 Coll. on integrated prevention and control of contamination of the environment competence passes to Slovak Inspection of the Environment. After receiving notification competent authority may if necessary require more information from the applicant and equally ask for statements from other competent authorities. At the same time the authority will request the operator to present its observations on the notification, presented information and all statements. If the examination of the notification will conclude there was not any environmental damage caused, competent authority shall terminate the case and register the notification. At the same time the authority shall notify the applicant and inform him/her about the reasons of such conclusion. In contrary case the authority shall precede according to Section 5 par. 3 and Sections 6- 10 of the Act and inform the applicant in written and reasoned form.

Proceedings according to the Act no. 359/2007 Coll. follow the rules of the Code of Administrative Procedure. So applicants who file notification will acquire legal standing in the administrative procedure. In this sense civil association or other environmental organization which file a notification shall also notify its interest to be party to proceeding within seven days from day it received notification from competent authority confirming the threat or occurrence of the environmental damage.

9. Information system on prevention and remediation of environmental damages

In terms of the Act no. 359/2007 Coll. Slovak Agency for the Environment established and has administered the Information system on prevention and remediation of environmental damages (hereinafter "Information system"). This website is supposed to gather and diffuse information related to environmental damages, mainly the date and place of their occurrence, extent of the damage, responsible operator, adopted measures and financial costs and eventually judicial proceedings lead in this respect.

This information system also allows specific persons but also broader public to file a motion or notification on environmental damage or its imminent threat.

a) MOTION via information portal

Information system allows different types of users to submit information on portal. Public has possibility to file a motion by filling an online formulary. Public is allowed to do so only in case it concerns very serious contamination or damage on the environment, precisely on water, land or species and habitats protected under NATURA 2000. It has to be a damage which was caused by an operator at the performance of a specific occupational activity listed under the Act or a damage on NATURA 2000 caused by any other activity not listed in the Act which moreover requires the establishment of the fault or negligence of the operator.

b) NOTIFICATION via information portal

Notification on environmental damage or its imminent threat as stipulated under Act no. 359/2007 Coll. may be submitted by authorized persons also in online form through the information portal. As we already mentioned above notifications may be submitted also by environmental NGOs.

Cases

Up to now there were submitted only two notifications via information system related to two cases of environmental damage on water and on the land. Both cases were registered in 2014 and were submitted to Information system by the operators.

First case concerned leakage of diesel fuel from truck where groundwater got contaminated. In second case there was a leakage of sewage sludge which contaminated surface water. In both cases acted and was consulted the Slovak Inspection of Environment which decided what measures to adopt. Contamination was cleaned up and costs beard in both cases by operators.

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