

AVOSETTA QUESTIONNAIRE
ENVIRONMENTAL LIABILITY DIRECTIVE
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Finland - Ari Ekroos

I. Can you give some concise information about your national environmental liability system?

The Act on Environmental for Environmental Damage (EDA, 373/1994) includes special provisions for environmental damage. The Act is based on strict liability and it applies to all "operators" which operate on a certain area (i.e traffic is excluded, but the road itself is included). "An operator" may also be an individual, a farmer etc..

The EDA does not apply to losses, compensation for which is provided in another Act, however it applies to environmental damage where compensation is due by virtue of the Product Liability Act (694/90). The Adjoining Properties Act (26/20) and the Water Act (264/61) contain separate provisions on losses to be compensated under EDA. Unless otherwise provided for in EDA, the Damages Act (412/74) applies to compensation for environmental damage.

The Environmental Protection Act (EPA, 86/2000) has some special provisions on environmental damage. Chapter 11 of the EPA includes provisions on compensations. From the material point of view the provisions refer to EDA, but the chapter 11 also includes some procedural provisions. Chapter 12 of the EPA has administrative provisions of treatment of polluted soil and groundwater. The EPA also contains general provisions on rectification of a violation or negligence and enforcement (chapter 13). Other Acts also include this kind of administrative provisions (e.g. Nature Conservation Act, NCA, 1096/1996, section 57).

- Are there special provisions on civil liability for environmental damage?

Yes, see above.

- Are there other (administrative type of) special provisions and procedures concerning the prevention and remedying of environmental damage? Do they have a general nature or are they only applicable in one or another environmental field (e.g. soil pollution)?

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Yes, see above.

- Is your country party to the international conventions listed in the annexes IV and V of Directive 2004/35/EC?

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Yes. Finland is part most of the convention listen in the annexes IV and V of the Directive 2004/35/EC (and even Basel convention on environmental damage).

Other information

During the preparation of this new legislation, regional environmental centres (13 covering whole Finland) were asked to assign cases which would fall into scope of Environmental liability directive. They could not certainly assign any (couple of cases though very close). Finnish Environmental Institute has estimated the costs of environmental damages during years 2000-2005. The total number was 3.500.000 euros, 2.400.000 this were industry or transportation based remedial actions in order to reinstate a polluted environment to its original state and 1.000.000 euros damage compensations.

II. Implementation of Directive 2004/35/EC

2.1. General status of implementation:

- Has Directive 2004/35/EC already been fully implemented?

No, the Directive 2004/35/EC has not been yet implemented in Finland.

- If not, is it under way?

Yes, the proposal drafted by a specific Committee (on environmental liability directive implementation) published its proposal (Ympäristövahinkotoimikunnan mietintö 14.5.2007) on 14 May 2007. Opinions of the administration and interest groups (NGO's, industry and others) will be collected during summer 2007. The proposal to the Parliament will be given in autumn 2007 and it may be possible that the new legislation can come into force at the earliest 1 January 2008.

- Have deficiencies of the Directive been identified during national discussions?

No, not officially.

2.2. General approach of implementation:

- Has your country reduced the level of environmental protection as a consequence of the Directive?

No.

- Did your country opted for a comprehensive piece of legislation to transpose the Directive? A Separate Act or a new Chapter of a General Act?

The proposal of the committee includes separate special Act ("Act on remedying certain environmental damages and harms", laki eräiden ympäristölle aiheutuneiden vahinkojen ja haittojen korjaamisesta) and many changes to existing legislation (Nature Conservation Act, Environmental Protection Act, Water Act, GMO Act and Act on Transportation of Hazardous Goods). The new Act will include 9 sections; and there will be 7 new sections

and couple of modifications of existing sections of NCA; one new section to EPA and two changes of existing sections, one totally new section to WA and GMOA.

- Did your country opted for amending several pieces of legislation?

Yes.

- Did your country opted for a combination of these 2 approaches?

Yes.

- Did your country opted for a mere transposition of the minimum requirements of the Directive or introduced stricter provisions?

Related to nature damages, it can be estimated that proposal introduces stricter provisions (there were controversy on this in the drafting committee).

2.3. Options taken during the transposition process (please focus on innovations in your country legislation with respect to the text of the Directive)

2.3.1. Definitions

- How is the definition of environmental damage implemented?

No general new provision on this, though new section 69 a (definition nature damage) in to NCA, which is more or less according to directive (article 2).

- Did your country included in the notion ‘protected species and natural habitats’ habitats or species, not listed in the Annexes of the Birds and Habitat Directives? (art. 2.3 (c))

Yes. New sections 31 a (habitats) and 49 a (species) to NCA (refers to section 69 a).

- Is land damage protected just in case of significant risk of adverse effect on human health?

No, any kind of damage (environment and others).

- When is the conservation status of a natural habitat taken as favourable?

A tricky question. According to the drafting committee, there will be a new register on species and habitats and possible damage will be then compared to this register which will include areas outside Natura 2000 network area (about 10 habitats and around 10 species). According to proposal registration requires decision of Ministry of Environment before registration of certain area. The prohibition would come effective after registration.

- What about the definition of “operator”? Are persons ‘to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of the permit or authorization for such an

activity or the person registering or notifying such an activity” included? (art. 2.6)

No new general provision (NPA section 3, general definition), though new definition to NCA (section 69 b). Also EDA has indirect operator definition. According to section 1 of EDA it covers environmental damage caused by all activities carried out in a certain area and resulting from: 1) pollution of the water, air or soil; 2) noise, vibration, radiation, light, heat or smell; or 3) other similar nuisance. The keeper of a road, railway, port, airport or other comparable traffic area shall also be considered to be carrying out activities.

2.3.2. Scope

- Did your country opt for a double system of liability (strict and fault based) or for a more stringent regime as allowed by art 3.2?

According to EDA, EPA, GMOA and WA strict liability. According to NCA fault based liability, nature damages, though NCA will not be applicable if damage is caused activity that requires permit according to EPA, WA or GMOA. In these cases also the EDA will be applicable.

2.3.3. Exceptions

- Which are the exceptions to the scope of the liability regime in your country? (art 4)

Exceptions will be according to Directive article 4 (a natural phenomenon of exceptional, inevitable and irresistible character, and an act of armed conflict, hostilities, civil war or insurrection) and incidents of chapter 10 of the Sea Act (674/1994), and activity under nuclear energy responsibility act (484/1992) (section 2 of new Act).

- What about the permit defence and the state of the art defence (art. 8.4)?

According to the drafting committee, this will not be used in Finland.

2.3.4. Preventive and remedial actions

- When are preventive (art 5) and remedial (art 6) actions taken by the operator?

Article 5: new notification system according to new section 69 b of NCA and general obligation according to modified section 5 of EPA.

Article 6: section 3 of EDA, new section 69 c of NCA (prevention and remedying of natural damage) and section 4 of EPA and other provisions of EPA: 62, 64, 75, 76, 78, 79, 83, 84, new 84 a, 85).

- Which is the role of the competent authority?

The role of decision maker (regional environmental centre).

- Is there any way for environmental organisations to participate in the negotiations between the polluter and the administration on the restoration?

Yes, if the restoration needs environmental permit.

- Are these discussions public?

Yes, though not “discussions”, but formal procedure according to EPA or NCA (new section 69 c) or WA (new section 3 c of chapter 21).

- Are there provisions to develop in further details the common framework concerning the remedying of environmental damage (Annex II)?

Special provisions in new Act, section 3.

2.3.5. Preventive and remedial costs

- Is there a system of security over property or other appropriate guarantees (art. 8.2)? Is it a preventive system or shall such measures only be taken after environmental damage has occurred? How the system works?

No special provisions.

- Is there a special provision to give effect to art. 8.3, *in fine* (appropriate measures to enable the operator to recover the costs incurred in cases the operator shall not be required to bear the cost of preventive or remedial actions)? Must the operator in such cases nevertheless take the remedial measures? Or are they taken by the authorities ?

New Act sections 5 (remediation costs) and 6 (limitations of remediation costs). More or less according to Directive. EDA also includes special provision on this (section 6, costs of prevention and reinstatement). According to it compensation shall also be paid by virtue of EDA for: 1) the costs of the measures needed to prevent environmental damage, as referred to in section 1, threatening the person undertaking the measures, or to reinstate a damaged environment; 2) the costs, incurred by authorities, of measures to prevent the threat or the effects of a nuisance referred to in section 1, or to reinstate a polluted environment to its original state, if the costs are reasonable relative to the nuisance or the threat thereof, and to the benefit gained by the measures; and 3) the costs of investigations that proved unavoidable in carrying out the preventive measures or reinstatement referred to above in 1 and 2.

2.3.5. Cost allocation

- Are there national provisions within the meaning of article 9?

Yes. New Act section 8 (according to directive).

2.3.6. Competent authority

- Which authority or authorities were designated for the purposes of article 11?

Regional environmental centres and in WA act issues environmental permit authorities.

- Which remedies are available when preventive or remedial measures are imposed? (art. 11.4)

According to EPA and NCA general provisions.

2.3.7. Request for action

- Which of the alternatives listed in art. 12.1. were chosen ?

Special new provision on this to NCA (section 69 e) and general provisions of EPA (specially section 92, right to start “control process”).

- Is article 12 only applied in cases of remediation of environmental damage or also in cases of imminent threat of damage? (art. 12.5)

Not resolved in proposal.

- What type of review procedure is available under national law? (art. 13)

Appeal, administrative courts (regional administrative -> supreme administrative court).

2.3.8. Financial security

- How was article 14 implemented?

No proposals on this.

2.3.9. National law

- Were additional activities included in the scope of the regime? Were additional responsible parties identified?(art. 16.1)

No.

- Are there special provisions to prevent a double recovery of costs in cases of concurrent action? (art. 16.2)

No special provision, general exists.

2.3.10. Temporal application

- How was article 17 implemented?

According to Directive, no retroactive effect, new Act section 8.

2.3.11. Transboundary environmental damage

- How the system works in case of environmental damage in a transboundary context?

Not very topical issue in Finland which is widely surrounded by sea, except in the north where there is a river at the boarder of Sweden and Finland. At the Russian boarder there is not much industrial activity and no industrial activity at all at Norwegian border.