

## ANNEX I

### CRITERIA REFERRED TO IN ARTICLE 2(1)(A)

The significance of any damage that has adverse effects on reaching or maintaining the favourable conservation status of habitats or species has to be assessed by reference to the conservation status at the time of the damage, the services provided by the amenities they produce and their capacity for natural regeneration. Significant adverse changes to the baseline condition should be determined by means of measurable data such as:

- the number of individuals, their density or the area covered,
- the role of the particular individuals or of the damaged area in relation to the species or to the habitat conservation, the rarity of the species or habitat (assessed at local, regional and higher level including at Community level),
- the species' capacity for propagation (according to the dynamics specific to that species or to that population), its viability or the habitat's capacity for natural regeneration (according to the dynamics specific to its characteristic species or to their populations),
- the species' or habitat's capacity, after damage has occurred, to recover within a short time, without any intervention other than increased protection measures, to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

Damage with a proven effect on human health must be classified as significant damage.

The following does not have to be classified as significant damage:

- negative variations that are smaller than natural fluctuations regarded as normal for the species or habitat in question,
- negative variations due to natural causes or resulting from intervention relating to the normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators,
- damage to species or habitats for which it is established that they will recover, within a short time and without intervention, either to the baseline condition or to a condition which leads, solely by virtue of the dynamics of the species or habitat, to a condition deemed equivalent or superior to the baseline condition.

## ANNEX II

### REMEDYING OF ENVIRONMENTAL DAMAGE

This Annex sets out a common framework to be followed in order to choose the most appropriate measures to ensure the remedying of environmental damage.

#### 1. Remediation of damage to water or protected species or natural habitats

Remedying of environmental damage, in relation to water or protected species or natural habitats, is achieved through the restoration of the environment to its baseline condition by way of primary, complementary and compensatory remediation, where:

- (a) 'Primary' remediation is any remedial measure which returns the damaged natural resources and/or impaired services to, or towards, baseline condition;

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- (b) ‘Complementary’ remediation is any remedial measure taken in relation to natural resources and/or services to compensate for the fact that primary remediation does not result in fully restoring the damaged natural resources and/or services;
- (c) ‘Compensatory’ remediation is any action taken to compensate for interim losses of natural resources and/or services that occur from the date of damage occurring until primary remediation has achieved its full effect;
- (d) ‘interim losses’ means losses which result from the fact that the damaged natural resources and/or services are not able to perform their ecological functions or provide services to other natural resources or to the public until the primary or complementary measures have taken effect. It does not consist of financial compensation to members of the public.

Where primary remediation does not result in the restoration of the environment to its baseline condition, then complementary remediation will be undertaken. In addition, compensatory remediation will be undertaken to compensate for the interim losses.

Remedying of environmental damage, in terms of damage to water or protected species or natural habitats, also implies that any significant risk of human health being adversely affected be removed.

#### 1.1. Remediation objectives

##### Purpose of primary remediation

- 1.1.1. The purpose of primary remediation is to restore the damaged natural resources and/or services to, or towards, baseline condition.

##### Purpose of complementary remediation

- 1.1.2. Where the damaged natural resources and/or services do not return to their baseline condition, then complementary remediation will be undertaken. The purpose of complementary remediation is to provide a similar level of natural resources and/or services, including, as appropriate, at an alternative site, as would have been provided if the damaged site had been returned to its baseline condition. Where possible and appropriate the alternative site should be geographically linked to the damaged site, taking into account the interests of the affected population.

##### Purpose of compensatory remediation

- 1.1.3. Compensatory remediation shall be undertaken to compensate for the interim loss of natural resources and services pending recovery. This compensation consists of additional improvements to protected natural habitats and species or water at either the damaged site or at an alternative site. It does not consist of financial compensation to members of the public.

#### 1.2. Identification of remedial measures

##### Identification of primary remedial measures

- 1.2.1. Options comprised of actions to directly restore the natural resources and services towards baseline condition on an accelerated time frame, or through natural recovery, shall be considered.

##### Identification of complementary and compensatory remedial measures

- 1.2.2. When determining the scale of complementary and compensatory remedial measures, the use of resource-to-resource or service-to-service equivalence approaches shall be considered first. Under these approaches, actions that provide natural resources and/or services of the same type, quality and quantity as those damaged shall be considered first. Where this is not possible, then alternative natural resources and/or services shall be provided. For example, a reduction in quality could be offset by an increase in the quantity of remedial measures.
- 1.2.3. If it is not possible to use the first choice resource-to-resource or service-to-service equivalence approaches, then alternative valuation techniques shall be used. The competent authority may prescribe the method, for example monetary valuation, to determine the extent of the necessary complementary and compensatory remedial measures. If valuation of the lost resources and/or services is practicable, but valuation of the replacement natural resources and/or services cannot be performed within a reasonable time-frame or at a reasonable cost, then the competent authority may choose remedial measures whose cost is equivalent to the estimated monetary value of the lost natural resources and/or services.

The complementary and compensatory remedial measures should be so designed that they provide for additional natural resources and/or services to reflect time preferences and the time profile of the remedial measures. For example, the longer the period of time before the baseline condition is reached, the greater the amount of compensatory remedial measures that will be undertaken (other things being equal).

### 1.3. Choice of the remedial options

- 1.3.1. The reasonable remedial options should be evaluated, using best available technologies, based on the following criteria:
- The effect of each option on public health and safety,
  - The cost of implementing the option,
  - The likelihood of success of each option,
  - The extent to which each option will prevent future damage, and avoid collateral damage as a result of implementing the option,
  - The extent to which each option benefits to each component of the natural resource and/or service,
  - The extent to which each option takes account of relevant social, economic and cultural concerns and other relevant factors specific to the locality,
  - The length of time it will take for the restoration of the environmental damage to be effective,
  - The extent to which each option achieves the restoration of site of the environmental damage,
  - The geographical linkage to the damaged site.
- 1.3.2. When evaluating the different identified remedial options, primary remedial measures that do not fully restore the damaged water or protected species or natural habitat to baseline or that restore it more slowly can be chosen. This decision can be taken only if the natural resources and/or services foregone at the primary site as a result of the decision are compensated for by increasing complementary or compensatory actions to provide a similar level of natural resources and/or services as were foregone. This will be the case, for example, when the equivalent natural resources and/or services could be provided elsewhere at a lower cost. These additional remedial measures shall be determined in accordance with the rules set out in section 1.2.2.

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- 1.3.3. Notwithstanding the rules set out in section 1.3.2. and in accordance with Article 7(3), the competent authority is entitled to decide that no further remedial measures should be taken if:
- (a) the remedial measures already taken secure that there is no longer any significant risk of adversely affecting human health, water or protected species and natural habitats, and
  - (b) the cost of the remedial measures that should be taken to reach baseline condition or similar level would be disproportionate to the environmental benefits to be obtained.
2. Remediation of land damage

The necessary measures shall be taken to ensure, as a minimum, that the relevant contaminants are removed, controlled, contained or diminished so that the contaminated land, taking account of its current use or approved future use at the time of the damage, no longer poses any significant risk of adversely affecting human health. The presence of such risks shall be assessed through risk-assessment procedures taking into account the characteristic and function of the soil, the type and concentration of the harmful substances, preparations, organisms or micro-organisms, their risk and the possibility of their dispersion. Use shall be ascertained on the basis of the land use regulations, or other relevant regulations, in force, if any, when the damage occurred.

If the use of the land is changed, all necessary measures shall be taken to prevent any adverse effects on human health.

If land use regulations, or other relevant regulations, are lacking, the nature of the relevant area where the damage occurred, taking into account its expected development, shall determine the use of the specific area.

A natural recovery option, that is to say an option in which no direct human intervention in the recovery process would be taken, shall be considered.

## ANNEX III

### ACTIVITIES REFERRED TO IN ARTICLE 3(1)

1. The operation of installations subject to permit in pursuance of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control<sup>(1)</sup>. That means all activities listed in Annex I of Directive 96/61/EC with the exception of installations or parts of installations used for research, development and testing of new products and processes.
2. Waste management operations, including the collection, transport, recovery and disposal of waste and hazardous waste, including the supervision of such operations and after-care of disposal sites, subject to permit or registration in pursuance of Council Directive 75/442/EEC of 15 July 1975 on waste<sup>(2)</sup> and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste<sup>(3)</sup>.

Those operations include, inter alia, the operation of landfill sites under Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste<sup>(4)</sup> and the operation of incineration plants under Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste<sup>(5)</sup>.

For the purpose of this Directive, Member States may decide that those operations shall not include the spreading of sewage sludge from urban waste water treatment plants, treated to an approved standard, for agricultural purposes.

3. All discharges into the inland surface water, which require prior authorisation in pursuance of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances, discharged into the aquatic environment of the Community<sup>(6)</sup>.
4. All discharges of substances into groundwater which require prior authorisation in pursuance of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances<sup>(7)</sup>.
5. The discharge or injection of pollutants into surface water or groundwater which require a permit, authorisation or registration in pursuance of Directive 2000/60/EC.
6. Water abstraction and impoundment of water subject to prior authorisation in pursuance of Directive 2000/60/EC.
7. Manufacture, use, storage, processing, filling, release into the environment and onsite transport of
  - (a) dangerous substances as defined in Article 2(2) of Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous substances<sup>(8)</sup>;
  - (b) dangerous preparations as defined in Article 2(2) of Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations<sup>(9)</sup>;
  - (c) plant protection products as defined in Article 2(1) of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market<sup>(10)</sup>;
  - (d) biocidal products as defined in Article 2(1)(a) of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market<sup>(11)</sup>.
8. Transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined either in Annex A to Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road<sup>(12)</sup> or in the Annex to Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail<sup>(13)</sup> or as defined in Council Directive 93/75/EEC of 13 September 1993 concerning minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods<sup>(14)</sup>.
9. The operation of installations subject to authorisation in pursuance of Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants<sup>(15)</sup> in relation to the release into air of any of the polluting substances covered by the aforementioned Directive.

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10. Any contained use, including transport, involving genetically modified micro-organisms as defined by Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms<sup>(16)</sup>.
11. Any deliberate release into the environment, transport and placing on the market of genetically modified organisms as defined by Directive 2001/18/EC of the European Parliament and of the Council<sup>(17)</sup>.
12. Transboundary shipment of waste within, into or out of the European Union, requiring an authorisation or prohibited in the meaning of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community<sup>(18)</sup>.
- [<sup>F1</sup>13. The management of extractive waste pursuant to Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries<sup>(19)</sup>.]

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**Textual Amendments**

- F1** Inserted by [Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC.](#)

- [<sup>F2</sup>14. The operation of storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide<sup>(20)</sup>.]

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**Textual Amendments**

- F2** Inserted by [Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation \(EC\) No 1013/2006 \(Text with EEA relevance\).](#)

ANNEX IV

INTERNATIONAL CONVENTIONS REFERRED TO IN ARTICLE 4(2)

- (a) the International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;
- (b) the International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
- (c) the International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;
- (d) the International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;

- (e) the Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels.

#### ANNEX V

##### INTERNATIONAL INSTRUMENTS REFERRED TO IN ARTICLE 4(4)

- (a) the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963;
- (b) the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage;
- (c) the Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;
- (d) the Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention;
- (e) the Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.

#### [<sup>F3</sup> ANNEX VI

##### INFORMATION AND DATA REFERRED TO IN ARTICLE 18(1)

###### Textual Amendments

- F3** Substituted by [Regulation \(EU\) 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations in the field of legislation related to the environment, and amending Regulations \(EC\) No 166/2006 and \(EU\) No 995/2010 of the European Parliament and of the Council, Directives 2002/49/EC, 2004/35/EC, 2007/2/EC, 2009/147/EC and 2010/63/EU of the European Parliament and of the Council, Council Regulations \(EC\) No 338/97 and \(EC\) No 2173/2005, and Council Directive 86/278/EEC \(Text with EEA relevance\).](#)

The information referred to in Article 18(1) shall cover cases of environmental damage under this Directive, with the following information and data for each instance:

1. Type of environmental damage, date of occurrence and/or discovery of the damage. The type of environmental damage shall be classified as damage to protected species and natural habitats, water and land as referred to in point 1 of Article 2.
2. Description of the activity in accordance with Annex III.

Member States shall include any other relevant information on the experience gained from the implementation of this Directive.]

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- (1) OJ L 257, 10.10.1996, p. 26. Directive as last amended by Regulation (EC) No 1882/2003.
- (2) OJ L 194, 25.7.1975, p. 39. Directive as last amended by Regulation (EC) No 1882/2003.
- (3) OJ L 377, 31.12.1991, p. 20. Directive as amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p. 28).
- (4) OJ L 182, 16.7.1999, p. 1 Directive as amended by Regulation (EC) No 1882/2003.
- (5) OJ L 332, 28.12.2000, p. 91.
- (6) OJ L 129, 18.5.1976, p. 23. Directive as last amended by Directive 2000/60/EC.
- (7) OJ L 20, 26.1.1980, p. 43. Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).
- (8) OJ L 196, 16.8.1967, p. 1. Directive as last amended by Regulation (EC) No 807/2003.
- (9) OJ L 200, 30.7.1999, p. 1. Directive as last amended by Regulation (EC) No 1882/2003.
- (10) OJ L 230, 19.8.1991, p. 1. Directive as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).
- (11) OJ L 123, 24.4.1998, p. 1. Directive as amended by Regulation (EC) No 1882/2003.
- (12) OJ L 319, 12.12.1994, p. 7. Directive as last amended by Commission Directive 2003/28/EC (OJ L 90, 8.4.2003, p. 45).
- (13) OJ L 235, 17.9.1996, p. 25. Directive as last amended by Commission Directive 2003/29/EC (OJ L 90, 8.4.2003, p. 47).
- (14) OJ L 247, 5.10.1993, p. 19. Directive as last amended by Directive 2002/84/EC of the European Parliament and of the Council (OJ L 324, 29.11.2002, p. 53).
- (15) OJ L 188, 16.7.1984, p. 20. Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).
- (16) OJ L 117, 8.5.1990, p. 1. Directive as last amended by Regulation (EC) No 1882/2003.
- (17) OJ L 106, 17.4.2001, p. 1. Directive as last amended by Regulation (EC) No 1830/2003 (OJ L 268, 18.10.2003, p. 24).
- (18) OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2557/2001 (OJ L 349, 31.12.2001, p. 1).
- (19) [<sup>F1</sup>OJ L 102, 11.4.2006, p. 15.]
- (20) [<sup>F2</sup>OJ L 140, 5.6.2009, p. 114.]

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#### **Textual Amendments**

- F1** Inserted by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC.
- F2** Inserted by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (Text with EEA relevance).