

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

Article 2

Definitions

For the purpose of this Directive the following definitions shall apply:

1. 'environmental damage' means:
 - (a) 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 or species. The significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in Annex I;

Damage to protected species and natural habitats does not include previously identified adverse effects which result from an act by an operator which was expressly authorised by the relevant authorities in accordance with provisions implementing Article 6(3) and (4) or Article 16 of Directive 92/43/EEC or Article 9 of Directive 79/409/EEC or, in the case of habitats and species not covered by Community law, in accordance with equivalent provisions of national law on nature conservation.
 - (b) [^{F1}'water damage', which is any damage that significantly adversely affects:
 - (i) the ecological, chemical or quantitative status or the ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies; or
 - (ii) the environmental status of the marine waters concerned, as defined in Directive 2008/56/EC, in so far as particular aspects of the environmental status of the marine environment are not already addressed through Directive 2000/60/EC;]
 - (c) 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;
2. 'damage' means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly;
3. 'protected species and natural habitats' means:
 - (a) the species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annexes II and IV to Directive 92/43/EEC;
 - (b) the habitats of species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annex II to Directive 92/43/EEC, and the natural habitats listed in Annex I to Directive 92/43/EEC and the

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breeding sites or resting places of the species listed in Annex IV to Directive 92/43/EEC; and

- (c) where a Member State so determines, any habitat or species, not listed in those Annexes which the Member State designates for equivalent purposes as those laid down in these two Directives;

4. 'conservation status' means:

- (a) in respect of a natural habitat, the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within, as the case may be, the European territory of the Member States to which the Treaty applies or the territory of a Member State or the natural range of that habitat;

The conservation status of a natural habitat will be taken as 'favourable' when:

- its natural range and areas it covers within that range are stable or increasing,
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the conservation status of its typical species is favourable, as defined in (b);

- (b) in respect of a species, the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within, as the case may be, the European territory of the Member States to which the Treaty applies or the territory of a Member State or the natural range of that species;

The conservation status of a species will be taken as 'favourable' when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats,
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

5. 'waters' mean all waters covered by Directive 2000/60/EC;

6. 'operator' means any natural or legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity;

7. 'occupational activity' 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;

8. 'emission' means the release in the environment, as a result of human activities, of substances, preparations, organisms or micro-organisms;

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9. 'imminent threat of damage' means a sufficient likelihood that environmental damage will occur in the near future;
10. 'preventive measures' means any measures taken in response to an event, act or omission that has created an imminent threat of environmental damage, with a view to preventing or minimising that damage;
11. 'remedial measures' means any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Annex II;
12. 'natural resource' means protected species and natural habitats, water and land;
13. 'services' and 'natural resources services' mean the functions performed by a natural resource for the benefit of another natural resource or the public;
14. 'baseline condition' means the condition at the time of the damage of the natural resources and services that would have existed had the environmental damage not occurred, estimated on the basis of the best information available;
15. 'recovery', including 'natural recovery', means, in the case of water, protected species and natural habitats the return of damaged natural resources and/or impaired services to baseline condition and in the case of land damage, the elimination of any significant risk of adversely affecting human health;
16. 'costs' means costs which are justified by the need to ensure the proper and effective implementation of this Directive including the costs of assessing environmental damage, an imminent threat of such damage, alternatives for action as well as the administrative, legal, and enforcement costs, the costs of data collection and other general costs, monitoring and supervision costs.

Textual Amendments

- F1** Substituted by [Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC \(Text with EEA relevance\)](#).