

A.L. 126 ta' l-2008**ATT DWAR IL-HARSIEN TA' L-AMBJENT
(KAP. 435)****ATT DWAR L-IPPJANAR TA' L-IŻVILUPP
(KAP. 356)****Regolamenti ta' l-2008 dwar il-Prevenzjoni u r-Rimedju
ghal Danni Ambjentali**

BIS-SAHHA tas-setghat moghtija lilu skond l-artikoli 9 u 11 ta' l-Att dwar il-Harsien ta' l-Ambjent, hawnhekk iżjed 'il quddiem imsejjah "l-Att" u bl-artikolu 60 ta' l-Att dwar l-Ippjanar ta' l-Iżvilupp, il-Prim Ministru ghamel dawn ir-regolamenti li ġejjin:-

1. It-titolu ta' dawn ir-regolamenti huwa Regolamenti ta' l-2008 ^{Titolu.} dwar il-Prevenzjoni u r-Rimedju ghal Danni Ambjentali.

2. L-ghan ta' dawn ir-regolamenti huwa li jistabbilixxu qafas ta' ^{Ghanijiet.} responsabbiltà ambjentali bbażata fuq il-prinċipju ta' "min iniġġes ihallas", ghall-prevenzjoni u r-rimedju tad-danni ambjentali u sabiex jiġu implimentati il-provvedimenti tad-Direttiva 2004/35/EK tal-Parlament Ewropew u tal-Kunsill tal-21 ta' April 2004.

3. (1) Ghall-finijiet ta' dawn ir-regolamenti, u sakemm ir-rabta ^{Tifsir.} tal-kliem ma tkunx tehtieg xort'ohra:

"attività tax-xoghol" tfisser kull attività maghmula bhala parti minn attività ekonomika, kummerċjali jew ta' impriża, minghajr ma jinghata każ jekk l-attività hijiex pubblika jew privata, taghmel qligh jew li ma taghmilx qligh;

"l-awtorità kompetenti" tfisser l-Awtorità ta' Malta dwar l-Ambjent u l-Ippjanar, u tali entità ohra jew persuna kif il-Ministru responsabbli ghall-ambjent jista' b'ordni fil-Gazzetta jistabbilixxi entitajiet jew persuni differenti jistghu jiġu nominati bhala l-awtorità kompetenti ghal disposizzjonijiet differenti u ghal finijiet differenti ta' dawn ir-regolamenti;

"dannu" tfisser bidla negattiva kwantifikabbli fir-rizorsi naturali jew indeboliment kwantifikabbli ta' servizz tar-rizorsi naturali li jista' jsehh direttament jew indirettament;

“dannu ambjentali” tfisser:

(a) dannu lill-ispeċi protetti u lill-habitat naturali, li hu kull dannu li għandu effett negattiv sinifikattiv fuq il-kisba u l-konservazzjoni ta’ l-*istatus* favorevoli ta’ harsien ta’ dawn l-ispeċi jew habitat. L-importanza ta’ dawn l-effetti għandha tkun kalkolata fi stima tal-kondizzjonijiet tal-baži, u wara li jkunu kkunsidrati l-kriterji stabbiliti fi Skeda I;

Dannu lill-ispeċi protetti u lill-habitat naturali ma jfissirx effetti negattivi li għew identifikati minn qabel li huma r-riżultat ta’ azzjoni ta’ operatur li kien awtorizzat b’mod ċar mill-awtoritajiet rilevanti skond id-dispożizzjonijiet li jimplimentaw l-Artikolu 6(3) u (4) jew l-Artikolu 16 tad-Direttiva 92/43/KEE jew l-Artikolu 9 tad-Direttiva 79/409/KEE jew, fil-każ ta’ habitat naturali jew speċi li mhumiex koperti mil-liġi tal-Komunità, skond id-dispożizzjonijiet ekwivalenti fil-liġi nazzjonali dwar il-harsien tan-natura.

(b) dannu fl-ilma, li hu kull dannu li jolqot b’mod negattiv u sinifikattiv l-*istatus* ekoloġiku, kimiku u, jew kwantitattiv u, jew il-potenzjal ekoloġiku, kif imfisser fid-Direttiva 2000/60/KE, ta’ l-ilma konċernati, bl-eċċezzjoni ta’ l-effetti negattivi meta jkun jghodd l-Artikolu 4(7) ta’ dik id-Direttiva;

(ċ) dannu fl-art, li hu kull kontaminazzjoni ta’ l-art li tohloq periklu sinifikattiv lis-saħha tal-bniedem tkun milquta b’mod negattiv bħala riżultat ta’ l-introduzzjoni diretta jew indiretta, fi, fuq jew taht l-art, ta’ sustanzi, preparazzjonijiet, organiżmi jew micro-organiżmi;

“emissjoni” tfisser ir-rilaxx fl-ambjent, bħala riżultat ta’ l-attivitajiet tal-bnedmin, ta’ sustanzi, preparazzjonijiet, organiżmi jew mikro-organiżmi;

“ilma” tfisser kull ilma msemija fid-Direttiva 2000/60/KE;

“kondizzjoni tal-baži” tfisser il-kondizzjoni fil-waqt tad-danni lir-riżorsi naturali u s-servizzi li kienu kieku jeżistu d-danni ambjentali, ikkalkolat fuq l-aħjar informazzjoni disponibbli;

“mizuri ta’ prevenzjoni” tfisser kull mizura li tittiehed kontra avveniment, att jew ommissjoni li tohloq periklu imminenti ta’

danni ambjentali, bl-iskop ta' prevenzjoni jew tnaqqis ta' dak id-dannu;

“mizuri ta' rimedju” tfisser kull azzjoni, jew tagħqid ta' azzjonijiet, li tinkludi mizuri ta' mitigazzjoni jew dawk temporanji bl-iskop ta' ristorazzjoni, riabilitazzjoni jew tibdil tar-rizorsi naturali milquta u, jew is-servizzi mfixkla, jew il-provvediment ta' alternattiva ekwivalenti għal dawk ir-rizorsi jew servizzi kif stabbilit fi Skeda I;

“operatur” tfisser kull persuna fiżika jew ġuridika, privata jew pubblika li topera jew tikkontrolla l-attività tax-xogħol jew, meta dan ikun regolat bil-liġi nazzjonali, il-persuna li jkollha poter ekonomiku decisiv fuq il-funzjonament tekniku ta' l-imsemmija attività u dak il-poter ikun ġie lilha delegat, li tinkludi d-detentur ta' permess jew awtorizzazzjoni għall-imsemmija attività jew il-persuna li tirreġistra jew tinnotifika l-imsemmija attività;

“periklu imminenti ta' danni” tfisser probabbiltà suffiċjenti li ser ikunu kkawżati danni ambjentali fil-futur qrib;

“rimedju”, li jinkludi “rimedju naturali” tfisser, fil-każ ta' l-ilma, speċi protetti u habitat naturali, ir-ritorn ta' dawk ir-rizorsi naturali milquta u, jew is-servizzi mfixkla għall-kondizzjoni tal-baży u fil-każ ta' danni lil l-art, l-eliminazzjoni ta' kull riskju sinifikattiv ta' effett negattiv għas-saħħa tal-bniedem;

“rizorsi naturali” tfisser l-ispeċi protetti u habitat naturali, l-ilma u l-art;

“servizzi” u “servizzi tar-rizorsi naturali” ifissru l-funzjonijiet mwettqa mir-rizorsi naturali għall-benefiċċju ta' rizorsi naturali ohra jew għall-pubbliku;

“speċi protetti u l-habitat naturali” tfisser:

(a) l-ispeċi msemija fl-Artikolu 4(2) tad-Direttiva 79/409/KEE jew dawk fil-lista ta' l-Anness I magħha jew dawk fil-lista ta' l-Anness II u IV mad-Direttiva 92/43/KEE;

(b) il-habitat naturali ta' l-ispeċi msemija fl-Artikolu 4(2) tad-Direttiva 79/409/KEE jew dawk fil-lista ta' l-Anness I magħha jew dawk fil-lista ta' l-Anness II mad-Direttiva 92/43/KEE, u l-ambjenti naturali fil-lista ta' l-Anness I mad-Direttiva 92/43/KEE u siti tat-trobbija jew il-postijiet fejn jistrieħu ta' l-ispeċi fil-lista ma' l-Anness IV tad-Direttiva 92/43/KEE; u

(ċ) kull ambjent naturali jew speċi, li ma jinstabx fil-listi ta' dawk l-Annessi, li jissemma 2 mill-Awtorità għal l-istess skop bħal dak stabbilit f'dawn iż-żewġ Direttivi;

“spejjeż” tfisser spejjeż ġustifikati bil-bżonn li l-implimentazzjoni effettiva u kif suppost ta' dawn ir-regolamenti tiġi żgurata bħala li tinkludi wkoll l-ispejjeż ta' l-istima tad-danni ambjentali, periklu iminenti ta' l-imsemmija danni, alternattivi għal ċertu azzjonijiet kif ukoll spejjeż amministrattivi, legali u l-ispejjeż ta' l-infurzar, l-ispejjeż tal-kollezzjoni tad-*data* u spejjeż oħra ġenerali, l-ispejjeż tal-kontrolli u tas-sorveljanza;

“status ta' konservazzjoni” tfisser:

(a) f'dak li għandu x'jaqsam ma' habitat naturali, il-kumpless ta' influwenzi li jaġixxu fuq ambjent naturali u l-ispeċi tipiċi tiegħu li jistgħu jolqtu d-distribuzzjoni naturali tiegħu, l-istruttura u l-funzjonijiet fit-tul, kif ukoll is-sopravivenza ta' l-ispeċi tipiċi tiegħu fit-tul, skond il-każ, it-territorju Ewropew ta' l-Istati Membri fejn japplika t-Trattat jew it-territorju ta' Stat Membru jew l-estensjoni naturali ta' dak l-habitat;

L-*istatus* tal-konservazzjoni ta' habitat naturali għandu jkun ikkunsidrat bħala “favorevoli” meta:

(i) l-estensjoni naturali u ż-żona li jkopri f'dik l-estensjoni huma stabbli jew qeghdin jiżdedu,

(ii) l-istruttura speċifika u l-funzjonijiet neċessarji għall-konservazzjoni tiegħu fit-tul jeżistu u x'aktarx jibqgħu jeżistu fil-futur qrib, u

(iii) l-*istatus* tal-konservazzjoni ta' l-ispeċi tipiċi tiegħu huwa favorevoli, kif ġie mfisser f'paragrafu (b);

(b) f'dak li għandu x'jaqsam ma' speċi, il-kumpless ta' influwenzi fuq l-ispeċi msemmiya li jistgħu jolqtu d-distribuzzjoni u l-abbondanza tal-popolazzjoni tiegħu fit-tul ġewwa, skond il-każ, it-territorju Ewropew ta' l-Istati Membri li għalihom jghodd it-Trattat jew it-territorju ta' Stat Membru jew l-estensjoni naturali ta' dik l-ispeċi;

L-*istatus* ta' konservazzjoni għandu jitqies “favorevoli” meta:

(i) l-informazzjoni tad-dinamika tal-popolazzjoni dwar l-ispeċi msemmija turi li l-popolazzjoni qed tinżamm fit-tul bħala parti vijabbli mill-habitat naturali tagħha,

(ii) l-estensjoni naturali ta' l-ispeċi ma tkunx qiegħda tonqos u lanqas x'aktarx tonqos fil-futur qrib, u

(iii) hemm, u x'aktarx jibqa' jkun hemm, ambjent naturali kbir biżżejjed biex jikkonserva l-popolazzjoni fit-tul.

4. (1) Dawn ir-regolamenti għandhom jghoddu biss għal: Applikabilità.

(a) dannu ambjentali kaġunat minn attivitajiet tax-xogħol li jinstabu fil-lista ma' l-Iskeda III, kif ukoll kull periklu iminenti ta' l-imsemmi dannu minhabba fl-istess attivitajiet;

(b) dannu lill-ispeċi protetti u lill-habitat naturali kaġunati minn attivitajiet tax-xogħol li ma jkunux dawk fil-lista ta' l-Iskeda III, u għal kull periklu iminenti ta' l-imsemmi dannu li jsehh minhabba f'dawk l-attivitajiet, kull meta l-operatur ikollu tort jew kien negligenti.

(2) Dawn ir-regolamenti għandhom jghoddu minghajr preġudizzju għall-liġijiet aktar stretti tal-Komunità li jirregolaw l-operazzjoni ta' attivitajiet li għalihom jghoddu dawn ir-regolamenti u minghajr preġudizzju għall-liġijiet tal-Komunità li fihom jinstabu regoli li jipprovdu dwar kunflitt bejn il-ġurisdizzjonijiet.

(3) Minghajr preġudizzju għall-liġijiet nazzjonali rilevanti, dawn ir-regolamenti ma jagħtux lill-partijiet privati dritt ta' kumpens bħala konsegwenza tad-dannu ambjentali jew ta' periklu iminenti ta' l-imsemmi dannu.

5. (1) Dawn ir-regolamenti ma jkoprox dannu ambjentali jew Eċċezzjonijiet. periklu iminenti ta' l-imsemmi dannu kaġunat minn:

(a) att ta' kunflitt bl-armi, ostilitajiet, gwerra ċivili jew insurrezzjoni;

(b) fenomenu naturali ta' natura eċċezzjonali, inevitabbli u irresistibbli.

(2) Dawn ir-regolamenti ma jghoddux għal dannu ambjentali jew xi periklu iminenti ta' dannu ambjentali li huma r-rizultat

ta' xi inċident li jkollu r-responsabbiltà u l-kumpens tiegħu regolati minn Konvenzjoni Internazzjonali fil-lista ta' Skeda IV, li tinstab ma' dawn r-regolamenti.

(3) Dawn ir-regolamenti għandhom jghoddu mingħajr preġudizzju għad-dritt ta' l-operatur li jillimita r-responsabbiltà tiegħu skond il-liġi nazzjonali li timplimenta l-Konvenzjoni ta' l-1976 dwar il-Limitazzjoni tar-Responsabbiltà fi Pretensjonijiet Marittimi (LLMC), li tinkludi kull emenda li ssir f'dik il-Konvenzjoni, jew il-Konvenzjoni ta' l-1988 ta' Strasbourg dwar il-Limitazzjoni tar-Responsabbiltà fin-Navigazzjoni Interna (CLNI), li tinkludi kull emenda li tista' ssir fiha.

(4) Dawn ir-regolamenti ma jghoddux għal riskji nukleari jew dannu ambjentali jew periklu iminenti ta' dannu li hu kaġunat minn attivitajiet koperti mit-Trattat li jstabilixxi l-Komunità Ewropea dwar l-Energija Atomika jew li jiġu kaġunati minn inċident jew attività li r-responsabbiltà jew kumpens għalihom huma koperti minn strumenti internazzjonali elenkati fi Skeda V, li tinsab ma' dawn ir-regolamenti.

(5) Dawn ir-regolamenti għandhom jghoddu biss għal dannu ambjentali jew periklu iminenti ta' dannu ambjentali kaġunat minn tniġġis ta' natura mifruxa, meta jkun jistgħu jiġu stabbiliti l-avvenimenti li jikkagunaw id-dannu fl-attivitajiet ta' l-operaturi individwali.

(6) Dawn ir-regolamenti ma jghoddux għal attivitajiet li l-iskop ewlieni tagħhom huwa d-difiża nazzjonali jew is-sigurtà internazzjonali u lanqas ma tghodd għal attivitajiet li l-iskop uniku tagħhom huwa l-protezzjoni minn diżastri naturali.

Mezz ta' prevenzjoni.

6. (1) Meta d-dannu ambjentali għadhom ma sehhewx iżda jkun hemm periklu iminenti li l-imsemmija danni jsehhu, l-operatur għandu, mingħajr dewmien, jiehu l-miżuri ta' prevenzjoni neċessarji.

(2) L-operaturi għandhom, f'kull każ, inklud meta l-periklu iminenti ta' dannu ambjentali ma kienx eliminat lanqas permezz tal-miżuri ta' prevenzjoni magħmula mill-operatur, jinformaw lill-awtorità kompetenti dwar kull aspett rilevanti tas-sitwazzjoni, malajr kemm jista' jkun.

(3) Mingħajr preġudizzju għal dan, l-awtorità kompetenti għandha:

(a) titlob lil l-operatur jipprovdi informazzjoni dwar periklu iminenti ta' dannu ambjentali jew f'każijiet fejn ikun hemm suspett ta' l-imsemmi periklu;

(b) titlob lill-operatur jiehu l-mizuri ta' prevenzjoni neċessarji;

(ċ) taghti istruzzjonijiet lill-operatur li huwa ghandu jsegwi dwar il-mizuri ta' prevenzjoni neċessarji.

(4) L-awtorità kompetenti tista tiehu dawn il-mizuri hi stess jekk l-operatur:

(a) jonqos milli jhares dawn l-obligi stabbiliti fis-subregolamenti (1) jew (3)(b) jew (ċ), jew

(b) ma jistax ikun identifikat, jew

(ċ) mhux obligat skond dawn ir-regolamenti li jhallas l-ispejjeż.

7. (1) Meta d-dannu ambjentali jkun fil-fatt sehh l-operatur ghandu, minghajr dewmien, jinforma lill-awtorità kompetenti dwar kull aspekt rilevanti tas-sitwazzjoni u jiehu: Azzjoni ta' Rimedju.

(a) kull pass prattikabbli biex jikkontrolla malajr, jillimita, inehhi jew b'kull mod iehor jikkontrolla l-kontaminanti rilevanti u, jew kull fattur ta' dannu iehor sabiex id-dannu ambjentali jkun limitat jew jiġi evitat aktar dannu u l-effetti negattivi fuq is-saħha tal-bniedem jew aktar tfixkil tas-servizzi, u

(b) il-mizuri ta' rimedju neċessarji, skond ir-regolament 8.

(2) L-awtorità kompetenti ghandha, f'kull waqt:

(a) titlob lill-operatur biex jipprovdi informazzjoni supplimentari dwar kull dannu li jkun sehh;

(b) tiehu, titlob lill-operatur jiehu jew taghti struzzjonijiet lill-operatur dwar, kull pass prattikabbli biex jikkontrolla malajr, jillimita, inehhi jew b'kull mod iehor jikkontrolla l-kontaminanti rilevanti u, jew kull fattur ta' dannu iehor sabiex id-dannu ambjentali jew aktar dannu jkun limitat u l-effetti negattivi fuq is-saħha tal-bniedem jew aktar tfixkil tas-servizzi jiġu evitati;

(ċ) titlob lill-operatur jiehu l-mizuri ta' rimedju neċessarji;

(d) taghti istruzzjonijiet lill-operatur li huwa ghandu jsegwi dwar il-mizuri ta' rimedju neċessarji.

(3) L-awtorità kompetenti tista' tiehu dawn il-miżuri hi stess jekk l-operatur:

(a) jonqos milli jhares dawn l-obligi stabbiliti fis-subregolamenti (1) jew (2)(b), (ċ) jew (d), jew

(b) ma jistax ikun identifikat, jew

(ċ) mhux obligat taht dawn ir-regolamenti li jhallas l-ispejjeż.

Kif jiġu stabbiliti l-miżuri ta' rimedju.

8. (1) L-operaturi għandhom jidentifikaw, skond Skeda II, miżuri ta' rimedju potenzali u jagħtu lill-awtorità kompetenti għall-approvazzjoni tagħha, kemm-il darba l-awtorità kompetenti ma tkunx hadet passi skond ir-regolamenti 7(3).

(2) L-awtorità kompetenti għandha tiddeċiedi liema miżuri ta' rimedju għandhom jiġu implimentati skond Skeda II, u bil-koperazzjoni ta' l-operatur rilevanti, kif rikjest.

(3) Meta jkun hemm iktar minn każ wiehed ta' dannu ambjentali b'tali mod li l-awtorità kompetenti ma tistax tiżgura li l-miżuri ta' rimedju neċessarji jkunu qeghdin jittiehdu fl-istess waqt, l-awtorità kompetenti jkollha jedd tiddeċiedi liema każ ta' dannu ambjentali għandhu jiġi rimedjat l-ewwel.

Filwaqt li tkun qeghda tiehu dik id-deċiżjoni, l-awtorità kompetenti għandha tikkunsidra, fost l-ohrajn, in-natura, il-firxa u l-gravità tal-każijiet varji ta' danni ambjentali konċernati, u l-possibilità ta' rkupru naturali. Ir-riskji lis-saħha tal-bniedem għandhom ukoll jiġu ikkunsidrati.

(4) L-awtorità lokali kompetenti għandha ssejjah lill-persuni msemmija fir-regolament 13(1) u f'kull każ lill-persuni li l-art li fuqha jitwettqu l-miżuri ta' rimedju tkun tagħhom biex jagħtu l-osservazzjonijiet tagħhom u dik l-awtorità għandha tikkunsidrhom.

L-ispejjeż ta' prevenzjoni u rimedju.

9. (1) L-operatur għandu jhallas l-ispejjeż għall-azzjoni ta' prevenzjoni u rimedju li ttiehdu skond dawn ir-regolamenti.

(2) Bla hsara għas-subregolamenti (3) u (4) ta' dan ir-regolament, l-awtorità kompetenti għandha tirkupra, fost l-ohrajn, permezz tal-garanzija fuq il-proprjetà jew garanziji ohra xierqa mill-operatur li ikkaguna d-dannu jew il-periklu iminenti ta' dannu, l-ispejjeż li ntefqu f'dak li għandu x'jaqşam mal-miżuri ta' prevenzjoni jew rimedju li ttiehdu skond dawn ir-regolamenti.

Madankollu, l-awtorità kompetenti tista' tiddeċiedi li ma tirkuprax l-ispejjeż kollha meta l-ispiża biex tirkupra l-ispejjeż tkun akbar mis-somma li għandha tkun irkuprata jew meta l-operatur ma jistax jiġi identifikat.

(3) L-operatur m'għandux ikun mitlub iħallas l-ispejjeż tal-miżuri ta' prevenzjoni jew rimedju mwettqa skond dawn ir-regolamenti meta jista' juri li d-dannu ambjentali jew il-periklu iminenti ta' dannu ambjentali:

(a) kien kaġunat minn terza persuna u seħħ minkejja li miżuri ta' sigurtà xierqa kienu f'posthom; jew

(b) huma r-rizultat ta' konformità ma' ordni jew istruzzjoni tabilfors minn awtorità pubblika hlief ordni jew istruzzjoni li harghet wara emissjoni jew każ kaġunat mill-attivitajiet ta' l-operatur innifsu.

(4) L-operatur m'għandux iħallas l-ispejjeż tal-miżuri ta' rimedju mwettqa konformament ma' dawn ir-regolamenti meta juri li hu ma kellux tort jew ma kienx neglġenti u li d-dannu ambjentali kien kaġunat minn:

(a) emissjoni jew każ espressament awtorizzat minn, u interament skond il-kondizzjonijiet ta', awtorizzazzjoni mogħtija minn jew mogħtija skond liġijiet u regolamenti applikabbli li jimplimentaw miżuri ta' leġislazzjoni speċifikati fi Skeda III, kif kienu applikati fid-data ta' l-emissjoni jew tal-każ;

(b) emissjoni jew attività jew kull mod ta' użu ta' prodott waqt attività li l-operatur juri ma kienitx meqjusa li x'aktarx tikkaguna dannu ambjentali skond l-istat ta' l-informazzjoni teknika u xjentifika meta l-emissjoni kienet rilaxxata jew meta l-attività seħħet.

(5) Il-miżuri li tiehu l-awtorità kompetenti skond ir-regolament 6(3) u 6(4) u r-regolamenti 7(2) u 7(3) għandhom ikunu mingħajr preġudizzju għar-responsabilità ta' l-operatur rilevanti skond dawn ir-regolamenti u mingħajr preġudizzju għall-Artikoli 87 u 88 tat-Trattat.

10. Dawn ir-regolamenti huma mingħajr preġudizzju għad-dispożizzjonijiet tal-liġijiet rilevanti dwar l-allokazzjoni ta' l-ispejjeż f'każijiet fejn hemm iktar minn parti wahda speċjalment f'dak li għandu x'jaqşam mat-tqassim tar-responsabbiltà bejn il-produttur u dak li juża l-prodott.

Allokazzjoni ta' l-ispejjeż f'każijiet fejn iktar minn parti wahda tintrabat mal-kawżalità.

Il-limitazzjoni tal-perjodu għar-rimedju ta' l-ispejjeż.

11. L-awtorità kompetenti tista' taghti bidu lill-proċedura ta' l-irkupru ta' l-ispejjeż kontra l-operatur, jew jekk xieraq, parti terza li kkaġunat id-dannu jew il-periklu imminenti f'dak li għandu x'jaqsam ma' miżuri li twettqu skond dawn ir-regolamenti fi żmien hames snin mid-data meta l-imsemmija miżuri tlestew jew l-operatur responsabbli, jew il-parti terza, ġew identifikati, skond liema data hija l-aktar tard.

Awtorità kompetenti.

12. (1) L-awtorità kompetenti għandha:

(a) tistabbilixxi liema operatur ikun ikkaġuna d-dannu jew periklu imminenti ta' dannu;

(b) tagħmel stima tas-sinifikat tad-dannu, u

(ċ) tistabbilixxi liema miżuri ta' rimedju għandhom jittiehdu b'referenza għal Skeda II.

(2) L-awtorità kompetenti tkun tista' titlob lill-operatur rilevanti, li jwettaq l-istima tiegħu u li jipprovdi kull informazzjoni u *data* neċessarji.

(3) L-awtorità kompetenti tista' taghti l-poter jew titlob lil terzi jwettqu l-miżuri neċessarji ta' prevenzjoni jew rimedju.

(4) Kull deċiżjoni mehuda konformament ma' dawn ir-Regolamenti li timponi miżuri ta' prevenzjoni jew rimedju għandha tiddikjara r-raġunijiet li tkun ġiet ibbażata fuqhom l-imsemmija deċiżjoni. Dik id-deċiżjoni għandha tkun notifikata malajr kemm jista' jkun lill-operatur konċernat, li għandu fl-istess waqt ikun informat dwar ir-rimedji legali lilu disponibbli skond il-liġijiet rilevanti u dwar it-termini li dawn ir-rimedji għandhom.

Talba għal azzjoni.

13. (1) Persuna fiżika jew ġuridika:

(a) li hija milquta jew x'aktarx tkun milquta minn dannu ambjentali, jew

(b) li għandha interess suffiċjenti fid-deċiżjonijiet dwar l-ambjent li għandhom x'jaqsmu mad-dannu, għandu jkollha jedd li taghti lill-awtorità kompetenti kull osservazzjoni li għandha x'taqsam ma' każijiet ta' dannu ambjentali jew il-periklu imminenti ta' dannu li tkun taf bihom u jkollha jedd ukoll li titlob lill-awtorità kompetenti tiegħu passi skond dawn ir-regolamenti.

(2) Persuna tkun meqjusa illi għandha "interess suffiċjenti" jekk tkun segwiet il-proċedura ta' l-artikolu 32(5) ta' l-Att dwar l-

Ippjanar ta' l-Iżvilupp, jew jekk tkun tikkwalifika bhala persuna konsultata jew *stakeholder* identifikata taht il-provvedimenti tar-Regolamenti ta' l-2007 dwar l-Istudju dwar l-Impatt Ambjentali:

Izda l-interess ta' kull organizzazzjoni mhux tal-gvern li tippromwovi l-protezzjoni ta' l-ambjent u li tilhaq kull hteġa taht il-liġi nazzjonali ghandha titqies suffiċjenti għall-iskop tal-paragrafu (b) tas-subregolament (1).

(3) It-talba għal azzjoni ghandha jkollha magħha l-informazzjoni relevanti u *data* li jappoġġaw l-osservazzjonijiet mogħtija f'dak li għandu x'jaqsam mad-dannu ambjentali msemmi.

(4) Meta t-talba għal azzjoni u l-osservazzjonijiet li jakkompanjawha juru b'mod plawsibbli li d-dannu ambjentali jkun jeżisti, l-awtorità kompetenti ghandha tikkunsidra kull osservazzjoni u talba għal azzjoni imsemmija. F'dawn iċ-ċirkostanzi l-awtorità kompetenti ghandha tagħti lill-operatur relevanti opportunità li juri l-opinjoni jiet tiegħu f'dak li għandu x'jaqsam mat-talba għal azzjoni u l-osservazzjonijiet li jakkompanjawha.

(5) L-awtorità kompetenti ghandha, kemm jista' jkun malajar u f'kull każ skond id-dispożizzjonijiet relevanti tal-liġi nazzjonali, tinforma lill-persuni msemmija fis-subregolament (1), li jkunu taw osservazzjonijiet lill-awtorità, dwar id-deċiżjoni tagħha jekk taċċetax jew tirrifjutax it-talba għal azzjoni u ghandha tipprovdi r-raġunijiet għad-deċiżjoni tagħha.

14. (1) Meta d-dannu ambjentali jkun jolqot jew x'aktarx jolqot lil hafna mill-Istati Membri, dawk l-Istati Membri għandhom jikkoperaw, ukoll billi jiskambjaw informazzjoni adatta, bl-iskop li tiżgura li l-azzjoni ta' prevenzjoni u, meta neċessarju, l-azzjoni ta' rimedju tittiehed fil-kuntest ta' dak id-dannu ambjentali.

Il-koperazzjoni bejn l-Istati Membri.

(2) Meta jkun seħħ dannu ambjentali, l-Istat Membru li fit-territorju tiegħu oriġina d-dannu għandu jipprovdi informazzjoni suffiċjenti lill-Istati Membri potenzjalment milquta.

(3) Meta l-Istat Membru jidentifika dannu ġewwa l-fruntieri tiegħu li ma kienux kaġunati minn ġewwa t-territorju tiegħu, dan jista' jirraporta l-kwistjoni lill-Kummissjoni u lil kull Stat Membru ieħor involut; dan jista' jagħmel rakkomandazzjoni biex ikunu adottati miżuri ta' prevenzjoni jew rimedju u jista' jfittex, skond dawn ir-regolamenti, li jirkupra l-ispejjeż li jkunu ntefqu fl-adozzjoni tal-miżuri ta' prevenzjoni jew rimedju.

15. Dawn ir-regolamenti m'ghandhomx japplikaw ghal:

(1) dannu kaġunat minn emissjoni, ġrajja jew inċident li sehh qabel it-30 ta' April 2007, jew

(2) dannu kaġunat minn emissjoni, ġrajja jew inċident, li sehh wara t-30 ta' April 2007 meta dan ikun ir-riżultat ta' attività speċifika li sehhiet u spiċċat qabel dik id-data; jew

(3) dannu, jekk ikunu ghaddew aktar minn 30 sena minn meta jkunu ġraw l-emissjoni, il-ġrajja jew inċident, li jaghtu lok ghal dak id-dannu.

16. Ir-Regolamenti ta' l-2008 dwar il-Prevenzjoni u r-Rimedju ghal Danni Ambjentali, qeghdin b'dawn jiġu mhassra.

SKEDA I

IL-KRITERJI MSEMMIJA FID-DEFINIZZJONI TA' "DANNU AMBJENTALI"

Is-sinifikat ta' kull dannu li għandu effetti negattivi fuq il-kisba jew il-manteniment ta' l-istatus favorevoli ta' konservazzjoni ta' habitats naturali jew speċi għandu jkun kalkulat b'referenza għall-istatus ta' konservazzjoni meta jkun sar id-dannu, is-servizzi provduti mill-kumditajiet li jipproduċu u l-kapaċità ta' riġenerazzjoni naturali tagħhom. Tibdil negattiv sinifikanti għall-kondizzjoni tal-baži għandu jkun stabbilit permezz ta' data li tista' titqies, per eżempju:

- 1) in-numru ta' individwi, d-densità tagħhom jew iż-żona koperta;
- 2) ir-rwol ta' l-individwi partikolari jew taż-żona li sofriet id-danni f'dak li għandu x'jaqsam ma' l-ispeċi jew il-konservazzjoni ta' l-habitat naturali, ir-rarità ta' l-ispeċi jew l-habitat naturali (kalkolat skond livell lokali, reġjonali u saħansitra anke skond il-livell oghla tal-Komunità);
- 3) il-kapaċità ta' l-ispeċi li tiżdied (skond id-dinamika speċifika ta' dik il-popolazzjoni jew speċi), il-vijabbilità tagħha jew il-kapaċità ta' l-ambjent naturali għal riġenerazzjoni naturali (skond id-dinamika speċifika ta' l-ispeċi karatteristika tagħhom jew tal-popolazzjoni tagħhom);
- 4) il-kapaċità ta' l-ispeċi jew ta' l-habitat naturali, wara li jkun sar id-dannu, li jirkupraw fi żmien qasir, mingħajr interventzjoni ħlief iż-żjieda fil-miżuri ta' protezzjoni, għal kondizzjoni li twassal, unikament bis-saħħa tad-dinamika ta' l-ispeċi jew l-habitat naturali, għal kondizzjoni meqjusa ekwivalenti jew aħjar mill-kondizzjoni tal-baži.

Dannu li jkollu effett ippruvat fuq is-saħħa tal-bniedem għandhom jiġu klassifikati bħala danni sinjifikanti.

Dan li ġej m'għandux ikun ikklassifikat bħala dannu sinjifikanti:

- 1) varjazzjonijiet negattivi li huma iżgħar mill-varjazzjoni naturali meqjusa normali għall-ispeċi jew habitat naturali konċernat;
- 2) varjazzjonijiet negattivi dovuti għal kawżi naturali jew li huma r-riżultat ta' intervent li għandu x'jaqsam ma' l-amministrazzjoni normali ta' siti, kif imfissra fir-rekord jew dokumenti speċifiċi ta' l-habitat naturali jew kif meqjusa qabel mill-proprjetarji jew operaturi;
- 3) dannu lil speċi jew lill-habitat naturali li għalihom huwa stabbilit li għandhom jirkupraw, fi żmien qasir u mingħajr intervent, jew għall-kondizzjoni tal-baži jew lill-kondizzjoni li twassal, unikament bis-saħħa tad-dinamika ta' l-ispeċi jew

ambjent naturali, għal kondizzjoni meqjusa ekwivalenti jew ahjar mill-kondizzjoni tal-bażi.

SKEDA II

IR-RIMEDJU TAD-DANNU AMBJENTALI

Din l-Iskeda tistabbilixxi qafas komuni li għandu jkun osservat sabiex il-miżuri l-aktar xierqa jistgħu jintgħazlu biex ir-rimedju tad-dannu ambjentali jista' jiġi żgurat.

1. Ir-rimedju ta' dannu lill-ilma, jew speċi protetti jew habitat naturali.

Ir-rimedju tad-dannu ambjentali, f'dak li għandu x'jaqsam ma' l-ilma jew speċi protetti jew habitat naturali, jinkluda b'ristawr ta' l-ambjent għal-kondizzjoni tal-bażi bis-saħħa ta' rimedju primarju, komplimentari u li jikkumpensa, billi:

(a) Ir-rimedju "Primarju" huwa kull miżura ta' rimedju li twassal lir-riżorsi naturali li sofrew dannu u/jew is-servizzi mfixkla lura għal, jew lejn, il-kondizzjoni tal-bażi;

(b) Ir-rimedju "Komplimentari" huwa kull rimedju li jittiehed f'dak li għandu x'jaqsam ma' riżorsi naturali u/jew servizzi biex jikkumpensa l-fatt li r-rimedju primarju ma jwassalx għal ristawr komplut tar-riżorsi naturali u/jew is-servizzi li soffrew dannu;

(c) Ir-rimedju li "Jikkumpensa" huwa kull azzjoni li tittiehed biex tikkumpensa kull telfa temporanja ta' riżorsi naturali u/jew servizzi li tigi fid-data meta jsehh id-dannu sakemm ir-rimedju primarju jkun lahaq l-effett komplut tiegħu;

(d) "telf temporanju" jfisser telf li jkun ir-riżultat tal-fatt li r-riżorsi naturali u/jew servizzi li sofrew dannu ma jistgħux jipprovvdur l-funzjoni ekoloġika tagħhom jew jipprovvdur servizzi lir-riżorsi naturali l-oħra jew lill-pubbliku sakemm il-miżuri primarji jew komplimentari ġew fis-seħh. Ma jikkostitwix kumpens finanzjarju lill-membri tal-pubbliku.

Meta r-rimedju primarju ma jwassalx għal ristawr ta' l-ambjent għall-kondizzjoni tal-bażi, għandu jittiehed rimeju komplimentari. Kif ukoll, rimedju li jikkumpensa jittiehed biex jikkumpensa għat-telf temporanju.

Ir-rimedju tad-dannu ambjentali, f'dak li għandu x'jaqsam ma' ilma jew speċi protetti jew habitat naturali, ifisser ukoll it-tneħħija ta' kull riskju negattiv sinifikanti lis-saħħa tal-bniedem.

1.1. L-ghanijiet tar-rimedju.

L-iskop tar-rimedju primarju.

1.1.1. L-iskop tar-rimedju primarju huwa r-ristawr tar-riżorsi naturali li sofrew dannu u/jew servizzi għal, jew lejn, il-kondizzjoni tal-baži.

Skop ta' rimedju komplimentari.

1.1.2. Meta r-riżorsi naturali li sofrew danni u/jew is-servizzi ma jirritornawx għall-kondizzjoni tal-baži tagħhom, ir-rimedju komplimentari għandu jittiehed.. L-iskop tar-rimedju komplimentari huwa li jkun provdut livell simili ta' riżorsi naturali u/jew servizzi, li jinkludi, meta jkun adatt, f'post alternattiv, kif kien ikun provdut kieku l-post li sofra d-dannu kien irritorna għall-kondizzjoni tal-baži. Meta jkun possibbli u adatt, il-post l-alternattiv għandu jkun konness b'mod ġeografiku mal-post li sofra d-dannu, wara li jkun kkunsidrati l-interessi tal-popolazzjoni milquta.

L-iskop tar-rimedju li jikkumpensa.

1.1.3. Ir-rimedju li jikkumpensa għandu jsehh biex ipatti għat-telfa temporanja ta' riżorsi naturali u s-servizzi sakemm isehh l-irkupru. Dan il-kumpens jikkonsisti minn titjib addizzjonali lill-ambjenti naturali u l-ispeċi jew l-ilma fil-post li sofra d-dannu jew fil-post alternattiv. Ma jikkonstitix minn kumpens finanzjarju lill-membri tal-pubbliku.

1.2. L-identifikazzjoni tal-miżuri ta' rimedju.

L-identifikazzjoni tal-miżuri ta' rimedju primarji.

1.2.1. Għandhom ikunu kkunsidrati l-għażliet li jinkludu azzjonijiet maħsuba biex iwasslu ir-riżorsi naturali jew is-servizzi lura direttament għall-kondizzjoni tal-baži, fi żmien aċċelerat, jew bis-saħħa ta' rkupru naturali.

L-identifikazzjoni ta' miżuri komplimentari u dawk li jikkumpensaw.

1.2.2. Meta tkun qegħda tiġi stabbilita l-iskala tal-miżuri ta' rimedju komplimentari jew li jikkumpensaw l-użu ta' l-approċċ ta' l-ekwivalenza bejn riżorsa u riżorsa jew servizz u servizz għandu jiġi ikkunsidrat l-ewwel. Skond dawn l-approċċi, azzjonijiet li jipprovdu riżorsi naturali u/jew servizzi ta' l-istess tip, kwalità u kwantità bħall dawk li sofrew dannu għandhom jiġu ikkunsidrati l-ewwel. Meta dan ma jkunx possibbli, għandhom jiġu għaldaqstant provduti riżorsi naturali u/jew servizzi alternattivi. Per

eżempju, tnaqqis fil-kwalità tista' tkun ikkumpensata b'żjieda fil-kwantità ta' miżuri ta' rimedju.

1.2.3. Meta l-ewwel għażla ta' l-approċċ ta' l-ekwivalenza bejn riżorsi u riżorsi jew bejn servizzi u servizzi ma tkunx possibbli, allura għandha tintuża teknika alternattiva ta' valutazzjoni. L-awtorità kompetenti tista' tistabbilixxi l-metodu, per eżempju valutazzjoni monetarja, biex ikun deċiż l-ammont neċessarju ta' miżuri ta' rimedji komplimentari u li jikkumpensaw. Jekk il-valutazzjoni tar-riżorsi mitlufa u/jew servizzi tkun prattikabbli, imma l-valutazzjoni tat-tibdil tar-riżorsi naturali u/jew tas-servizzi b'ohrajn ma tistax ssir fi żmien raġonevoli jew bi prezz raġonevoli, l-awtorità kompetenti tista' tagħzel miżuri ta' rimedju li jiswew daqs l-istima tal-valur monetarju tar-riżorsi naturali u/jew tas-servizzi mitlufa.

Il-miżuri ta' rimedju komplimentari u li jikkumpensaw għandhom ikunu ippjanati b'tali mod li jipprovvdur għal riżorsi naturali u/jew servizzi addizzjonali sabiex dawn ikunu jirriflettu l-preferenza u l-profil tal-hin tal-miżuri tar-rimedju. Per eżempju, iktar ma jkun twil il-perjodu ta' żmien sakemm tintlaħaq il-kondizzjoni tal-baži, iktar jittiehdu miżuri ta' rimedju li jikkumpensaw (meta fatturi oħra jkunu l-istess).

1.3. L-għażla minn rimedji varji.

1.3.1. Ir-rimedji raġonevoli varji għandhom ikunu evalwati, bis-saħħa ta' l-aħjar teknoloġija disponibbli, fuq baži tal-kriterji li ġejjin:

- (a) L-effett ta' l-għażla fuq is-saħħa u sigurtà tal-pubbliku;
- (b) L-ispejjeż biex tiġi fis-seħh dik l-għażla;
- (ċ) Il-probabbiltà ta' suċċess ta' kull għażla;
- (d) Kemm kull għażla jirnexxielha tevita dannu fil-futur, u tevita dannu kollaterali bħala riżultat ta' l-implimentazzjoni ta' l-għażla;
- (e) Kemm, kull għażla, hija ta' benefiċċju għal kull komponent tar-riżorsi naturali u/jew tas-servizzi;
- (f) Kemm, kull għażla, tikkunsidra problemi soċjali, ekonomiċi u kulturali u fatturi oħra rilevanti li huma speċifiċi għal post;
- (g) It-tul taż-żmien li jkun hemm bżonn biex ir-ristawr ikun effettiv;
- (h) Kemm, kull għażla, tirnexxi fir-ristawr tal-post fejn hemm id-dannu ambjentali;
- (i) Il-konessjonijiet ġeografiċi mal-post li sofra d-dannu.

1.3.2. Meta jkunu qegħdin jiġu ikkunsidrati l-għażliet ta' rimedju identifikati differenti, miżuri ta' rimedju primarji li ma jwasslux għar-ristawr komplet tad-dannu lill-ilma jew lill-ispeċi protetti jew lill-ambjenti naturali għall-kondizzjoni tal-baži, jew li jwasslu għal dan l-effett imma iktar bil-mod, jistgħu jintgħażlu. Din id-deċiżjoni tista' biss

tittiehed jekk ir-rizorsi naturali u/jew is-servizzi nieqsa fil-post primarju bħala riżultat tad-deċiżjoni jiġu kumpensati bis-saħħa ta' żjieda fil-miżuri komplimentari u li jikkumpensaw biex iwasslu għal livell simili ta' rizorsi naturali u/jew servizzi ta' dawk neqsin. Dan ikun il-każ, per eżempju, meta r-rizorsi naturali u/jew is-servizzi ekwivalenti jistgħu jkunu provduti f'post ieħor b'inqas spejjeż. Dawn ir-rimedji addizzjonali għandhom ikunu stabbiliti skond ir-regoli fit-taqsimha 1.2.2.

1.3.3. Minkejja r-regoli fit-taqsimha 1.3.2. u skond l-Artikolu 7(3), l-awtorità kompetenti tista' tiddeċiedi li l-ebda miżura ta' rimedju addizzjonali m'għandha tittiehed jekk:

- (a) il-miżuri ta' rimedju li ttiehdu jiżguraw li r-riskju sinifikanti lis-saħħa tal-bniedem, lill-ilma jew lill-ispeċi u lill-ambjenti naturali m'għadux jeżisti; u
- (b) l-ispejjeż tal-miżuri tar-rimedju li għandhom jittiehdu biex iwasslu għall-kondizzjoni tal-bażi jew livell simili ma jkunx proporzjonat mal-vantaġġi miksuba għall-ambjent.

2. Ir-rimedju ta' danni lill-art.

Il-miżuri neċessarji għandhom jittiehdu biex ikun żgurat, bħala minimu, li n-niġġiesa relevanti jkunu mneħħija, kontrollati, limitati jew mnaqqsa sabiex l-art mniġġsa, meta wiehed jikkunsidra l-użu korrenti jew l-użu taġġha fil-futur li huwa approvat meta jkun sar id-dannu, ma tibqax riskju sinifikanti għas-saħħa tal-bniedem. L-eżistenza ta' dawn ir-riskji għandu jkun kalkolat skond proċeduri ta' stima tar-riskji li jikkunsidraw il-karatteristiċi u l-funzjonijiet tal-ħamrija, it-tipi u l-koncentrazzjoni tas-sustanzi ta' dannu, preparazzjonijiet, organiżmi u mikro-organiżmi, ir-riskju li jikkostitwixxu u l-possibilità li jinfirxu. L-użu għandu jkun stabbilit skond regolamenti dwar l-użu ta' l-art, jew regolamenti oħra relevanti, li jkunu fi-sehħ, jekk ikun hemm, meta d-dannu jsehh.

Jekk l-użu ta' l-art jinbidel, kull miżura neċessarja għandha tittiehed biex ikunu evitati effetti negattivi lis-saħħa tal-bniedem.

Jekk ir-regolamenti dwar l-użu ta' l-art, jew regolamenti oħra relevanti, huma neqsin, in-natura taż-żona relevanti fejn sehh id-dannu, wara li wiehed jikkunsidra l-iżvilupp mistenni ta' l-imsemmija art, għandha tistabbilixxi l-użu speċifiku ta' dik iż-żona.

Għandha tkun ikkunsidrata l-għażla ta' rkupru naturali, li jfisser l-għażla li fiha m'hemm ebda intervent mill-bniedem fil-proċess ta' rkupru.

SKEDA III

L-ATTIVITAJIET MSEMMIJA FIR-REGOLAMENT 4

1. L-operazzjoni ta' l-installazzjonijiet li għandhom bżonn permess skond id-Direttiva tal-Kunsill 96/61/KE ta' l-24 ta' Settembru 1996 dwar prevenzjoni u kontroll ta' tingiż integrat [1]. Dak ifisser kull attività msemmija fil-lista ta' l-Anness I mad-Direttiva 96/61/KE bl-eċċezzjoni ta' l-installazzjonijiet jew partijiet ta' l-installazzjonijiet li huma użati għar-riċerka, żvilupp u ittestjar ta' prodotti jew proċessi godda.

2. Operazzjonijiet ta' maniġġar ta' l-iskart, li jinkludu l-kollezzjoni, trasport, irkupru u r-rimi ta' skart u ta' skart perikoluż, jinkludu wkoll is-sorveljanza ta' l-imsemmija operazzjonijiet u kura tal-postijiet tar-rimi, bla ħsara għall-permess jew registrazzjoni skond id-Direttiva tal-Kunsill 75/442/KEE: tal-15 ta' Lulju 1975 dwar skart [2] u d-Direttiva tal-Kunsill 91/689/KEE: tat-12 ta' Diċembru 1991 dwar skart perikoluż [3].

Dawk l-operazzjonijiet jinkludu, fost l-oħrajn, l-operazzjoni ta' postijiet ta' radam skond id-Direttiva tal-Kunsill 1999/31/KE tas-26 ta' April 1999 dwar ir-radam ta' l-iskart [4] u l-operazzjoni ta' fabbriki ta' l-inċinerazzjoni skond id-Direttiva 2000/76/KE tal-Parlament Ewropew u tal-Kunsill ta' l-4 ta' Diċembru 2000 dwar l-inċinerazzjoni ta' l-iskart [5].

Għal l-iskop ta' din id-Direttiva, l-Istati Membri jistgħu jiddeċiedu li dawk l-operazzjonijiet m'għandhomx jinkludu t-tifrix ta' kulma jgħorr id-dranagġ mill-fabbriki tat-trattament ta' l-ilma ta' l-iskart tal-bliet, trattat skond livell approvat, għal skopijiet ta' l-agrikoltura.

3. Kull rilaxx għal go l-ilma intern tal-wiċċ, li għandu bżonn permess minn qabel skond id-Direttiva tal-Kunsill 76/464/KEE ta' l-4 ta' Mejju 1976 dwar tingiż kaġunat minn ċerti sustanzi perikolużi, rilaxxati fl-ambjent akwatiku tal-Komunità [6].

4. Kull rilaxx ta' sustanzi fl-ilma li jinsab taħt l-art li għandu bżonn permess minn qabel skond id-Direttiva tal-Kunsill 80/68/KEE tas-17 ta' Diċembru 1979 dwar il-protezzjoni ta' l-ilma li jinsab taħt l-art mit-tingiż ikkawżat minn ċerti sustanzi perikolużi [7].

5. Ir-rilaxx jew injezzjoni ta' niġġiesa fl-ilma tal-wiċċ jew fl-ilma li jinsab taħt l-art li għandu bżonn permess, jew registrazzjoni skond id-Direttiva 2000/60/KE.

6. Is-separazzjoni ta' l-ilma u l-ġbir ta' l-ilma bla ħsara għal permess bil-quddiem skond id-Direttiva 2000/60/KE.

7. Il-manifattura, l-użu, l-ħażna, l-ipproċessar, il-mili, u r-rilaxx fl-ambjent u t-trasport fil-post ta' :-

(a) sustanzi perikolużi kif mfissra fl-Artikolu 2(2) tad-Direttiva tal-Kunsill 67/548/KEE tas-27 ta' Ġunju 1967 dwar l-approssimazzjoni tal-liġijiet, regolamenti u dispozizzjonijiet amministrattivi ta' l-Istati Membri li għandhom x'jaqsmu mal-klassifikazzjoni, l-ippakkjar, u t-tikkettjar tas-sustanzi perikolużi [8];

(b) preparazzjonijiet perikolużi kif mfissra fl-Artikolu 2(2) tad-Direttiva 1999/45/KE tal-Parlament Ewropew u tal-Kunsill tal-31 ta' Mejju 1999 dwar l-approssimazzjoni tal-liġijiet, regolamenti u d-dispożizzjonijiet amministrattivi ta' l-Istati Membri li għandhom x'jaqsmu mal-klassifikazzjoni, l-ippakkjar, u t-tikkettjar ta' sustanzi perikolużi [9];

(ċ) protezzjoni tal-pjanti kif mfisser fl-Artikolu(1) tad-Direttiva tal-Kunsill 91/414/KEE tal-15 ta' Lulju 1991 dwar it-tqegħid ta' prodotti fis-suq għall-protezzjoni tal-pjanti [10];

(d) prodotti bijoċidi kif mfissra fl-Artikolu 2(1)(a) tad-Direttiva 98/8/KE tal-Parlament Ewropew u tal-Kunsill tas-16 ta' Frar 1998 dwar it-tqegħid fis-suq ta' prodotti bijoċidali [11].

8. Trasport bit-triq, bil-ferrovija, bil-passaġġi ta' l-ilma interni, baħar jew bl-ajru ta' prodotti perikolużi jew mniġġsa kif mfissra jew fl-Anness A tad-Direttiva tal-Kunsill 94/55/KE tal-21 ta' Novembru 1994 dwar l-approssimazzjoni tal-liġijiet ta' l-Istati Membri f'dak li għandu x'jaqsam mat-trasport ta' prodotti perikolużi bit-triq [12] jew fl-Anness tad-Direttiva tal-Kunsill 96/49/KE tat-23 ta' Lulju 1996 dwar l-approssimazzjoni tal-liġijiet ta' l-Istati Membri f'dak li għandu x'jaqsam mat-trasport ta' prodotti perikolużi bil-ferrovija [13] jew kif imfissra fid-Direttiva tal-Kunsill 93/75/KEE tat-13 ta' Settembru 1993 dwar kondizzjonijiet minimi għal vapuri ġejjin jew sejrini lejn jew mill-portijiet tal-Komunità u li jgħorru prodotti perikolużi jew mniġġsa [14].

9. It-tħaddin ta' installazzjonijiet li għandhom bżonn permess skond id-Direttiva tal-Kunsill 84/360/KEE: tat-28 ta' Ġunju 1984 dwar il-ġlieda kontra t-tiġis ta' l-arja mill-fabbriki industrijali [15] f'dak li għandu x'jaqsam mar-rilaxx fl-arja ta' kull sustanza li tniġġes koperti mid-Direttiva msemmija hawn qabel.

10. Kull użu limitat, li jinkludi t-trasport, li għandu x'jaqsam ma mikro-organizmi ġenetikament modifikati kif mfissra fid-Direttiva tal-Kunsill 90/219/KEE: tat-23 ta' April 1990 dwar l-użu limitat ta' mikro-organizmi ġenetikament modifikati [16].

11. Kull rilaxx intenzjonali fl-ambjent, it-trasport u t-tqegħid fis-suq ta' organiżmi ġenetikament modifikati kif imfisser fid-Direttiva 2001/18/KE tal-Parlament Ewropew u tal-Kunsill [17].

12. It-trasbord ta' l-iskart ġewwa, għal go jew għal barra mill-Unjoni Ewropea, li għandu bżonn permess jew li hu projbit skond ir-Regolament tal-Kunsill (KEE) Nru 259/93 ta' l-1 ta' Frar 1993 dwar is-sorveljanza u l-kontroll ta' l-iskart ġewwa, għal go u barra mill-Komunità Ewropea [18].

[1] ĠU L 257, ta' l-10.10.1996, p. 26. Direttiva kif l-ahħar emendata bir-Regolament (KE) Nru 1882/2003.

[2] ĠU L 194, tal-25.7.1975, p. 39. Direttiva kif l-ahħar emendata bir-Regolament (KE) Nru 1882/2003.

[3] ĠU L 377, 31.12.91, p. 20. Direttiva kif emendata permezz tad-Direttiva 94/31/KE (ĠU L 168, 02.07.94, p. 28).

[4] ĠU L 182, tas-16.7.1999, p. 1. Direttiva kif emendata bir-Regolament (KE) Nru 1882/2003.

[5] ĠU L 332, 28.12.00, p. 91.

[6] ĠU L 129, tat-18.5.1976, p. 23. Direttiva kif l-ahħar emendata bid-Direttiva 2000/60/KE.

[7] ĠU L 20, tas-26.1.1980, p. 43. Direttiva kif emendata bid-Direttiva 91/692/KEE: (ĠU L 377, tal-31.12.1991, p. 48).

[8] ĠU C 196, tas-16.8.1967, p. 1. Direttiva kif l-ahħar emendata bir-Regolament (KE) Nru 807/2003.

[9] ĠU L 200, tat-30.7.1999, p. 1. Direttiva kif l-ahħar emendata bir-Regolament (KE) Nru 1882/2003.

[10] ĠU L 230, tad-19.8.1991, p. 1. Direttiva kif l-ahħar emendata bir-Regolament (KE) Nru 806/2003 (ĠU L 122, tas-16.5.2003, p. 1).

[11] ĠU L 123, ta' l-24.4.1998, p. 1. Direttiva kif emendata bir-Regolment (KE) Nru 1882/2003.

[12] ĠU L 319, 12.12.94, p. 7. Id-Direttiva kif l-ahħar emendata bid-Direttiva tal-Kummissjoni 2003/28/KEE (ĠU L 90, 08.04.03, p. 45).

[13] ĠU L 235, 17.09.96, p. 25. Id-Direttiva kif l-ahħar emendata bid-Direttiva tal-Kummissjoni 2003/29/KEE (ĠU L 90, 08.04.03, p. 47).

[14] ĠU L 247, tal-5.10.1993, p. 19. Id-Direttiva kif l-ahħar emendata bid-Direttiva 2002/84/KE tal-Parlament Ewropew u tal-Kunsill (ĠU L 324, tad-29.11.2002, p. 53).

[15] ĠU L 188, tas-16.7.1984, p. 20. Id-Direttiva kif l-ahħar emendata bid-Direttiva 91/692/KEE: (ĠU L 377, tal-31.12.1991, p. 48).

[16] ĠU L 117, tat-8.5.1990, p. 1. Id-Direttiva kif l-ahħar emendata bir-Regolament (KE) Nru 1882/2003.

[17] ĠU L 106, tas-17.4.2001, p. 1. I-Direttiva kif l-ahħar emendata bir-Regolament (KE) Nru 1830/2003 (ĠU L 268, tat-18.10.2003, p. 24).

[18] ĠU L 30, 06.02.93, p. 1. Regolament kif l-ahħar emendat bir-Regolament tal-Kummissjoni (KE) Nru 2557/2001 (ĠU L 349, 31.12.01, p. 1).

SKEDA IV

IL-KONVENZJONIJIET INTERNAZZJONALI MSEMMIJA FIR-REGOLAMENT 5(2)

- (a) il-Konvenzjoni Internazzjonali tas-27 ta' Novembru 1992 dwar ir-Responsabbiltà Ċivili għal Dannu kaġunat mit-Tiġis taż-Żejt;
- (b) il-Konvenzjoni Internazzjonali tas-27 ta' Novembru 1992 dwar l-istabbiliment ta' Fond Internazzjonali għal Kumpens għal Dannu kaġunat mit-Tiġis taż-Żejt;
- (ċ) il-Konvenzjoni Internazzjonali tat-23 ta' Marzu dwar ir-Responsabbiltà Ċivili għal Dannu kaġunat mit-Tiġis taż-Żejt tal-*Bunker*;
- (d) il-Konvenzjoni Internazzjonali tat-3 ta' Mejju 1996 dwar ir-Responsabbiltà u l-Kumpens għal Dannu li għandu x'jaqsam mat-Trasport ta' Sustanzi Perikolużi u Velenużi bil-Baħar;
- (e) il-Konvenzjoni ta' l-10 ta' Ottubru 1989 dwar ir-Responsabbiltà Ċivili għal Dannu kaġunat waqt it-Trasport ta' Prodotti Perikolużi bit-Triq, bil-Ferrovija, u b'Vapuri uzat f'Navigazzjoni Interna.

SKEDA V

L-INSTRUMENTI INTERNAZZJONALI MSEMMIJA FIR-REGOLAMENT 5(4)

- (a)** il-Konvenzjoni ta' Pariġi tad- 29 ta' Lulju 1960 dwar ir-Responsabbiltà ta' Terzi fl-Oqsma ta' l-Energija Nukleari u l-Konvenzjoni Supplimentaru ta' Brussel tal-31 ta' Jannar 1963;
- (b)** Il-Konvenzjoni ta' Vjenna tal-21 ta' Mejju 1963 dwar ir-Responsabbiltà Ċivili għal Dannu Nukleari;
- (ċ)** il-Konvenzjoni tat-12 ta' Settembru 1997 dwar il-Kumpens Supplimentari għal Dannu Nukleari;
- (d)** il-Protokoll Kongunt tal-21 ta' Settembru 1988 dwar l-Applikazzjoni tal-Konvenzjoni ta' Vjenna u l-Konvenzjoni ta' Pariġi;
- (e)** il-Konvenzjoni ta' Brussel tas-17 ta' Diċembru 1971 dwar ir-Responsabbiltà Ċivili fl-Oqsma ta' Trasport Marittimu ta' Materjal Nukleari.

L.N. 126 of 2008

**ENVIRONMENT PROTECTION ACT
(CAP. 435)**

**DEVELOPMENT PLANNING ACT
(CAP. 356)**

**Prevention and Remedying of Environmental Damage
Regulations, 2008**

IN exercise of the powers conferred by articles 9 and 11 of the Environment Protection Act, hereinafter referred as “the Act”, and of article 60 of the Development Planning Act, the Prime Minister has made the following regulations:–

Citation.

1. The title of these regulations is the Prevention and Remedying of Environmental Damage Regulations, 2008.

Scope.

2. The purpose of these regulations is to establish a framework of environmental liability based on the polluter-pays principle, to prevent and remedy environmental damage and to implement the provisions of Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004.

Definitions.

3. (1) In these regulations, unless the context otherwise requires:

”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;

“the competent authority” means the Malta Environment and Planning Authority,”and such other body or person as the Minister responsible for the environment may by order in the Gazette, prescribe and different bodies or persons may be designated as the competent authority for different provisions and different purposes of these regulations;

“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:

(i) its natural range and areas it covers within that range are stable or increasing,

(ii) 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

(iii) the conservation status of its typical species is favourable, as defined in paragraph (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:

(i) 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,

(ii) the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and

(iii) there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

“costs” means costs which are justified by the need to ensure the proper and effective implementation of these regulations 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;

“damage” means a measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly;

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

“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 Schedule 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) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or 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;

(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;

“imminent threat of damage” means a sufficient likelihood that environmental damage will occur in the near future;

“natural resource” means protected species and natural habitats, water and land;

“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;

“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;

“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;

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

(c) any habitat or species, not listed in those Annexes which the Authority designates for equivalent purposes as those laid down in these two Directives;

“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;

“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 Schedule II;

“services” and “natural resources services” mean the functions performed by a natural resource for the benefit of another natural resource or the public;

“waters” mean all waters covered by Directive 2000/60/EC.

Applicability.

4. (1) These regulations shall only apply to:

(a) environmental damage caused by any of the occupational activities listed in Schedule III, and to any imminent threat of such damage occurring by reason of any of those activities;

(b) damage to protected species and natural habitats caused by any occupational activities other than those listed in Schedule III, and any imminent threat of such damage occurring by reason of any of those activities, whenever the operator has been at fault or negligent.

(2) These regulations shall apply without prejudice to more stringent Community legislation regulating the operation of any of the activities falling within the scope of these regulations and without prejudice to Community legislation containing rules on conflicts of jurisdiction.

(3) Without prejudice to relevant national legislation, these regulations shall not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage.

Exceptions.

5. (1) These regulations shall not cover environmental damage or an imminent threat of such damage caused by:

(a) an act of armed conflict, hostilities, civil war or insurrection;

(b) a natural phenomenon of exceptional, inevitable and irresistible character.

(2) These regulations shall not apply to environmental damage or to any imminent threat of such damage arising from an incident in respect of which liability or compensation falls within the scope of any of the International Conventions listed in Schedule IV to these regulations.

(3) These regulations shall be without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, including any future amendment to the Convention, or the Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI), 1988, including any future amendment to the Convention.

(4) These regulations shall not apply to such nuclear risks or environmental damage or imminent threat of such damage as may be caused by the activities covered by the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of any of the international instruments listed in Schedule V to these regulations.

(5) These regulations shall only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators.

(6) These regulations shall not apply to activities the main purpose of which is to serve national defence or international security nor to activities the sole purpose of which is to protect from natural disasters.

6. (1) Where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator shall, without delay, take the necessary preventive measures. Preventive Action.

(2) An operator shall, in any such case, including whenever an imminent threat of environmental damage is not dispelled despite the preventive measures taken by the operator, inform the competent authority of all relevant aspects of the situation, as soon as possible.

(3) Without prejudice to the afore-said, the competent authority shall:

(a) require the operator to provide information on any imminent threat of environmental damage or in suspected cases of such an imminent threat;

(b) require the operator to take the necessary preventive measures;

(c) give instructions to the operator to be followed on the necessary preventive measures to be taken.

(4) The competent authority may take these measures itself if the operator:

(a) fails to comply with the obligations laid down in sub-regulations (1) or (3)(b) or (c), or

(b) cannot be identified, or

(c) is not required to bear the costs under these regulations.

Remedial Action.

7. (1) Where environmental damage has occurred the operator shall, without delay, inform the competent authority of all relevant aspects of the situation and take:

(a) 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, and

(b) the necessary remedial measures, in accordance with regulation 8.

(2) The competent authority shall, at any time:

(a) require the operator to provide supplementary information on any damage that has occurred;

(b) take, require the operator to take or give instructions to the operator concerning, 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 effect on human health, or further impairment of services;

(c) require the operator to take the necessary remedial measures;

(d) give instructions to the operator to be followed on the necessary remedial measures to be taken.

(3) The competent authority may take these measures itself, as a means of last resort if the operator:

(a) fails to comply with the obligations laid down in sub-regulations (1) or 2(b), (c) or (d), or

(b) cannot be identified, or

(c) is not required to bear the costs under these regulations.

8. (1) Operators shall identify, in accordance with Schedule II, potential remedial measures and submit them to the competent authority for its approval, unless the competent authority has taken action under regulation 7(3). Determination of remedial measures.

(2) The competent authority shall decide which remedial measures shall be implemented in accordance with Schedule II, and with the cooperation of the relevant operator, as required.

(3) Where several instances of environmental damage have occurred in such a manner that the competent authority cannot ensure that the necessary remedial measures are taken at the same time, the competent authority shall be entitled to decide which instance of environmental damage must be remedied first.

In making that decision, the competent authority shall have regard, inter alia, to the nature, extent and gravity of the various instances of environmental damage concerned, and to the possibility of natural recovery. Risks to human health shall also be taken into account.

(4) The competent authority shall invite the persons referred to in regulation 13(1) and in any case the persons on whose land remedial measures would be carried out to submit their observations and such authority shall take them into account.

9. (1) The operator shall bear the costs for the preventive and remedial actions taken pursuant to these regulations. Prevention and remediation costs.

(2) Subject to sub-regulations (3) and (4) hereof, the competent authority shall recover, inter alia, via security over property or other appropriate guarantees from the operator who has caused the damage or the imminent threat of damage, the costs it has incurred in relation to the preventive or remedial actions taken under these regulations.

However, the competent authority may decide not to recover the full costs where the expenditure required to do so would be greater than the recoverable sum or where the operator cannot be identified.

(3) An operator shall not be required to bear the cost of preventive or remedial actions taken pursuant to these regulations when he can prove that the environmental damage or imminent threat of such damage:

(a) was caused by a third party and occurred despite the fact that appropriate safety measures were in place; or

(b) resulted from compliance with a compulsory order or instruction emanating from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator's own activities.

(4) The operator shall not bear the cost of remedial actions taken pursuant to these regulations where he demonstrates that he was not at fault or negligent and that the environmental damage was caused by:

(a) an emission or event expressly authorised by, and fully in accordance with the conditions of, an authorisation conferred by or given under relevant laws and regulations which implement those legislative measures specified in Schedule III, as applied at the date of the emission or event;

(b) an emission or activity or any manner of using a product in the course of an activity which the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place.

(5) Measures taken by the competent authority in pursuance of regulations 6(3) and 6(4) and regulations 7(2) and (3) shall be without prejudice to the liability of the relevant operator under these regulations and without prejudice to Articles 87 and 88 of the Treaty.

Cost allocation in cases of multiple party causation.

10. The provisions of these regulations are without prejudice to any provisions of other relevant legislation concerning cost allocation in cases of multiple party causation especially concerning the apportionment of liability between the producer and the user of a product.

Limitation period for recovery of costs.

11. The competent authority shall be entitled to initiate cost recovery proceedings against the operator, or if appropriate, a third party

who has caused the damage or the imminent threat of damage in relation to any measures taken in pursuance of these regulations within five years from the date on which those measures have been completed or the liable operator, or third party, has been identified, whichever is the later.

12. (1) The competent authority shall have the duty to:

Competent
Authority.

(a) establish which operator has caused the damage or the imminent threat of damage,

(b) assess the significance of the damage, and

(c) determine which remedial measures should be taken with reference to Schedule II.

(2) The competent authority may require the relevant operator to carry out his own assessment and to supply any information and data necessary.

(3) The competent authority may empower or require third parties to carry out the necessary preventive or remedial measures.

(4) Any decision taken pursuant to these regulations which imposes preventive or remedial measures shall state the exact grounds on which it is based. Such decision shall be notified forthwith to the operator concerned, who shall at the same time be informed of the remedies available to him under the relevant laws concerned and of the time-limits to which such remedies are subject.

13. (1) Natural or legal persons:

Request for Action.

(a) affected or likely to be affected by environmental damage, or

(b) having a sufficient interest in environmental decision making relating to the damage, shall be entitled to submit to the competent authority any observations relating to instances of environmental damage of which they are aware and shall be entitled to request the competent authority to take action under these regulations.

(2) A person shall be deemed to have a “sufficient interest” if he has complied with the requirement of the provisions of article 32(5) of the Development Planning Act, or if he qualifies as a consultee

or an identified stake-holder under the provisions of the Environmental Impact Assessment Regulations, 2007:

Provided that the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of paragraph (b) of sub-regulation (1) hereof.

(3) The request for action shall be accompanied by the relevant information and data supporting the observations submitted in relation to the environmental damage in question.

(4) Where the request for action and the accompanying observations show in a plausible manner that environmental damage exists, the competent authority shall consider any such observations and requests for action. In such circumstances the competent authority shall give the relevant operator an opportunity to make his views known with respect to the request for action and the accompanying observations.

(5) The competent authority shall, as soon as possible and in any case in accordance with the relevant provisions of national law, inform the persons referred to in sub-regulation (1) hereof, which submitted observations to the authority, of its decision to accede to or refuse the request for action and shall provide the reasons for it.

Co-operation
between member
states.

14. (1) Where environmental damage affects or is likely to affect several Member States, those Member States shall cooperate, also through the appropriate exchange of information, with a view to ensuring that preventive action and, where necessary, remedial action is taken in respect of any such environmental damage.

(2) Where environmental damage has occurred, the Member State in whose territory the damage originates shall provide sufficient information to the potentially affected Member States.

(3) Where a Member State identifies damage within its borders which has not been caused within them it may report the issue to the Commission and any other Member State concerned; it may make recommendations for the adoption of preventive or remedial measures and it may seek, in accordance with these Regulations, to recover the costs it has incurred in relation to the adoption of preventive or remedial measures.

15. These regulations shall not apply to:

Temporal
application.

(a) damage caused by an emission, event or incident that took place before the 30th April 2007;

(b) damage caused by an emission, event or incident which takes place subsequent to the 30th April 2007 when it derives from a specific activity that took place and finished before the said date;
or

(c) damage, if more than 30 years have passed since the emission, event or incident, resulting in the damage, occurred.

16. The Prevention and Remedying of Environmental Damage Regulations, 2008 are hereby being revoked.

Revokes L.N. 121
of 2008.

SCHEDULE I

CRITERIA REFERRED TO IN DEFINITION OF “ENVIRONMENTAL DAMAGE”

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:

- 1) The number of individuals, their density or the area covered;
- 2) 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);
- 3) 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);
- 4) 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:

- 1) Negative variations that are smaller than natural fluctuations regarded as normal for the species or habitat in question;
- 2) 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;
- 3) 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.

SCHEDULE II

REMEDYING OF ENVIRONMENTAL DAMAGE

This Schedule 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;

(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:

- (a) The effect of each option on public health and safety,
- (b) The cost of implementing the option,
- (c) The likelihood of success of each option,
- (d) The extent to which each option will prevent future damage, and avoid collateral damage as a result of implementing the option,
- (e) The extent to which each option benefits to each component of the natural resource and/or service,
- (f) The extent to which each option takes account of relevant social, economic and cultural concerns and other relevant factors specific to the locality,
- (g) The length of time it will take for the restoration of the environmental damage to be effective,
- (h) The extent to which each option achieves the restoration of site of the environmental damage,
- (i) 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.

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.

SCHEDULE III

ACTIVITIES REFERRED TO IN REGULATION 4

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(1). 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(2) and Council Directive 91/689/EEC of 12 December 1991 on hazardous waste(3).

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(4) 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(5).

For the purpose of these Regulations, 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(6).

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(7).

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(8);

(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(9);

(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(10);

(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(11).

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(12) 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(13) 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(14).

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(15) in relation to the release into air of any of the polluting substances covered by the aforementioned Directive.

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(16).

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(17).

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(18).

- (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 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).

SCHEDULE IV

INTERNATIONAL CONVENTIONS REFERRED TO IN REGULATION 5(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.

SCHEDULE V

INTERNATIONAL INSTRUMENTS REFERRED TO IN REGULATION 5(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.