

The European Directive on Environmental Liability (ELD) – Update on recent developments

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Dear President of ISPRA and SNPA,

Dear Vice-President of the Parliamentary Commission,

Dear Conference participants,

Let me thank you for the kind invitation to contribute to the opening of this Conference. I regret that I cannot personally participate, but hope that you find this brief video-message instead useful.

I was invited to briefly present some recent developments concerning the Environmental Liability Directive 2004/35/EC – the ELD – which may provide interesting background information and link up to the theme of the workshop. I am really happy to do it as I realised the relevant work which has been done in Italy to produce the first ever report on environmental damage, to my knowledge not only in Italy, but across the European Union. This report links very well up to the efforts undertaken at EU level since some years in the context of the ELD Multi-Annual Work Programme 2017 – 2020 to increase the evidence base through more systematic and transparent information about environmental damage and ELD cases and other follow-up measures.

Therefore, I would like to start with a brief overview of the developments after the time when the Environmental Liability Directive had been subject to the so-called REFIT evaluation on its effectiveness, efficiency and relevance in 2016. Main findings of this REFIT evaluation had shown that the directive works in principle but that there is room for improvement in several areas and that the variance or diversity between the EU Member States in the implementation of the Environmental Liability Directive is significantly high.

Hence, the Commission set up together with the Member States a Multi-Annual Work Programme from 2017 to 2020 in order to improve the implementation and to increase the level playing field of this directive across the EU. That meant to tackle in particular the following challenges:

- low availability of data on ELD cases,
- low awareness of the directive by main stakeholders and practitioners,
- ambiguities around key concepts and definitions such as the ‘significance threshold’,
- the many exceptions and defences to the scope of environmental damage and strict liability,
- and insolvency of operators in case of large losses.

In 2017 and 2018 the main tasks consisted in

- building an assessment framework,
- establishing an Environmental Liability Directive (ELD) information system,
- investigating capacity building measures,
- developing a Common Understanding Document on ELD key terms and concepts, and
- reviewing an IT concept for risk and damage assessment.

In 2019, the work focused on improving the evidence base. Apart from some continued work on capacity building and the existing ELD training programme, an IT tool for damage assessment has been looked at and work on improving financial security for ELD liabilities is being carried out. The

main work stream in the first half of 2019 resulted however in the establishment of 28 ELD Member State fiches showing the implementation of the ELD in their country.

The ELD country fiches contain always the same structure for each Member State:

- legal framework,
- administrative structure, and
- facts and figures on ELD cases.

The country fiches are subject to continuous updates with fresh data and information and should thus become an important instrument for a better knowledge and evidence base. As they are based on CIRCABC-system hosted by the Commission's environmental liability website on the Europa server, they are of course accessible to everyone.

The purpose is not only to serve the Commission in its task to monitor and to evaluate the Directive and any progress achieved in it. The country fiches will also help all ELD stakeholders and practitioners, such as authorities, operators, insurers and NGOs to obtain reliable information and data about their own country and across the whole EU. They will also contribute to better information of interested citizens and the general public.

Another achievement of 2019, which is directly relevant for the establishment of a better evidence base at EU level, is the adoption by the European legislator of the new Article 18 of the Environmental Liability Directive on reporting. This provision is part of the streamlining of reporting and information efforts resulting in the so-called Reporting Alignment Regulation in the field of legislation related to the environment.

Consequently, by April 2022 information from the Member States on the experience gained in the application of this directive shall be collected, covering the data set out in the new Annex VI of the ELD. On the basis of that information the Commission shall by April 2023 carry out and publish an evaluation of the directive. Henceforth, every five years thereafter shall the information and data from the Member States be collected and likewise one year later the Commission shall publish its evaluation.

Finally, as part of this legal amendment the Commission is obliged to prepare "Guidelines on Environmental Damage" by the end of 2020. This work, taking results from

- the aforementioned Common Understanding Document,
- relevant case law of the Court of Justice of the European Union
- and other pertinent sources,

shall contribute to the task to improve the clarity and understanding of key terms and definitions in the Environmental Liability Directive.

In the latter context I would also like to make reference to an ongoing and potentially important IMPEL project on the ascertainment of environmental damage. For those who do not know: IMPEL is the "European Union Network for the Implementation and Enforcement of Environmental Law" composed of more than 50 environmental authorities and inspectorates across more than 30 European States. This project, which is lead by an Italian colleague of ISPRA appears also to complement relevant work done by ISPRA recently, that means it seems to fit in a way with the present Italian report on environmental damage, if I see it correctly.

And this report is a very positive and relevant development. It addresses basic challenges, such as the lack of widespread knowledge of the topic and the engagement of public and private stakeholders. The report allowed also to identify for environmental damage assessment. aspects

that require particular attention for future developments, such as the growing importance of the administrative procedure. It is at the same time a tool for better understanding of the complex topic as also an open and accessible document to the public. And what appears to be most important, is the insight that this report should not be a final point but an important element for the construction of a new approach towards communication and information sharing on environmental damage.

In this sense, it marks in my view not only a good starting point for the future developments in Italy, but may also act as a source of inspiration if not model for other Member States to follow the same path.

We certainly congratulate the authors and all who have contributed to this achievement and will not hesitate to invite a representative of ISPRA to report on the process and the results of this 2019 report in one of the next ELD government experts meetings.