

Application of Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage ('ELD')

2016/2251(INI) - 11/10/2017 - Committee report tabled for plenary, single reading

The Committee on Legal Affairs adopted an own-initiative report by Laura FERRARA (EFDD, IT) on the application of Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (the 'ELD').

The Committee on the Environment, Public Health and Food Safety, exercising its prerogative as an associated committee in accordance with [Article 54 of the Rules of Procedure](#), also gave its opinion on the report.

Members acknowledged the importance of the Commission's studies and reports regarding the assessment of the implementation of the ELD and its impact on the Member States. They observed with concern that the findings of those reports give an **alarming picture** of the actual implementation of the ELD and noted that the directive has been **transposed in a patchy and superficial way** in many Member States.

State of play of the implementation of the ELD: several Member States **failed to comply** with the deadline for transposing the ELD and that only by mid-2010 had it been transposed by all 27 Member States. The transposition of the ELD into national liability systems has not resulted in a level playing field and that, as confirmed in the Commission report, it is currently totally **disparate in both legal and practical terms**, with great variability in the amount of cases between Member States. Seven Member States have yet to resolve a number of non-compliance issues.

Limits to the effectiveness of the ELD: the lack of uniformity is also due to the generic nature of the ELD, which was drawn up along the lines of the framework directive model.

The report pointed out that the different interpretations and application of the 'significance threshold' for environmental damage are one of the main barriers to an effective and uniform application of the ELD. Members deplored the fact that under the ELD, incidents are defined as '**serious**' only if they give rise to **deaths or serious injuries**, with no reference to the consequences for the environment. In addition, they regretted that other activities with potential negative impacts on biodiversity and the environment, such as the pipeline transport of dangerous substances, mining, etc. are currently not covered by the requirement for strict liability.

The **scope of the framework of environmental liability should be broadened** to include damage to the air, fauna and flora and the landscape.

The report stressed that problems persist regarding the application of the directive to **large-scale incidents**, especially when it is not possible to identify the liable polluter and/or the polluter becomes insolvent or bankrupt.

Members, on the other hand, welcomed the fact that, as regards the application of the ELD in relation to **protected species and natural habitats**, half the Member States apply a broader scope (Belgium, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovenia, Spain, Sweden, and the United Kingdom).

Suggestions to improve harmonisation of the ELD: Members called for the ELD to be **reviewed as soon as possible** and the definition of ‘environmental damage’ laid down in the directive, specifically with regard to the criteria relating to determining adverse effects on protected species and habitats (Annex I), and to risks of water damage and land damage, to be revised with a view to keep pace with the rapid evolution of pollutants from industrial activities.

The Commission is called on to:

- set out in detail the **concept of ‘significance threshold’** in order to standardise the application of the ELD, making it uniform in all Member States;
- provide a clear and coherent interpretation of the geographical scope of ELD **‘favourable conservation status’** (EU territory, national territory, natural landscape area);
- introduce **mandatory financial security**, e.g. a mandatory environmental liability insurance for operators and to develop a harmonised EU methodology for calculating the maximum liability thresholds, taking account of the characteristics of each activity and its surrounding area;
- consider the possibility of establishing a **European fund** for the protection of the environment from damage caused by industrial activity governed by the ELD, without undermining the polluter-pays principle, for insolvency risks and only in cases where financial security markets fail;
- come forward with a **proposal for environmental inspections** at the European level;
- establish a **register** for operators who engage in dangerous activities and a **financial monitoring scheme** to ensure that operators are solvent;
- ensure the application of the ELD to environmental damage caused by any occupational activity and to ensure **strict producer liability**;
- establish a publicly available European **database** of cases of environmental damage governed by the ELD;
- step up its **training programme** for the application of the ELD in the Member States and to set up helpdesks;
- assess the possibility of introducing **collective redress mechanisms** for breaches of the Union’s environmental law;
- review that directive’s scope so that it covers all applicable Union environmental legislation.