

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

2016/2251(INI) - 26/10/2017 - Text adopted by Parliament, single reading

The European Parliament adopted by 502 votes to 74, with 35 abstentions, a resolution 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').

While acknowledging the importance of the Commission's studies and reports regarding the assessment of the implementation of the ELD, Members 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:** according to the Parliament, the main reasons of the variable effectiveness of the ELD are as follows:

- the generic nature of the ELD, which was drawn up along the lines of the **framework directive** model;
- the different interpretations and application of the '**significance threshold**' for environmental damage;
- 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;
- 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;
- 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.
- the failure to provide for the **application of a standard administrative procedure** for notifying competent authorities of imminent threat of, or actual, environmental damage.

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:** Parliament 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**’ and assess differentiated maximum liability thresholds for activities;
- provide a clear and coherent interpretation of the geographical scope of ELD ‘**favourable conservation status**’ (EU territory, national territory, natural landscape area);
- **determine what rules are necessary to establish a clear and irrefutable distinction between those cases in which the ELD is applicable and those in which the national standard should apply, where this is more stringent;**
- introduce **mandatory financial security**, e.g. a mandatory environmental liability insurance for operators;
- 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;
- **make public** all cases of proven liability as well as the details of penalties imposed in order to make the true cost of environmental damage transparent to all;
- 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;
- introduce tax relief or other favourable arrangements for companies which successfully endeavour to prevent environmental damage;
- 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.