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EXECUTIVE SUMMARY OF THE EVALUATION

of Directive 2004/35/CE of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage

{SWD(2026) 400 final}

Introduction

The purpose of the Environmental Liability Directive (ELD)[1] is to establish a framework of environmental liability across the European Union and to internalise the costs of preventive and remedial measures to liable operators. The ELD addresses cases of significant environmental damage to protected species and natural habitats, and cases of damage to water and to soil when this is caused by operators carrying out certain hazardous activities.

This ELD evaluation focuses on the period after 14 April 2016, when the Commission issued the previous ELD evaluation.

Since 2016:

- Regulation (EU) 2019/1010[2] amended the ELD making the obligation of reporting and evaluation of the ELD cyclical.
- the Commission, in cooperation with Member States, designed and carried out two multiannual work programmes to improve the ELD's implementation.
- In 2021, the Commission adopted guidelines that clarify the scope of the term 'environmental damage' under the ELD.

Also in 2021, the European Parliament adopted a resolution on the liability of companies for environmental damage, and the European Court of Auditors issued a special report on the polluter pays principle. Both documents informed the ELD evaluation and called for the ELD regime to be strengthened.

Effectiveness

The ELD has been effective in ensuring that all EU Member States have rules that address environmental damage, in line with the polluter pays principle enshrined in the Treaty on the Functioning of the European Union (TFEU). The ELD has also been effective in setting up a common minimum standard of in-kind remediation for environmental damage.

The ELD is, however, not evenly applied across Member States and it is underused in some of them. In some Member States, the ELD has substantially contributed to remedying environmental damage cases and to preventing damage in cases of imminent threats of such damage. Almost 600 ELD cases have been reported for the 2013-2022 reporting period with 236 cases handled in Poland, 165 in Greece and 6 further Member States having reported between 10 and 50 cases (Germany, Estonia, Spain, Latvia, Hungary and Portugal). However, 5 Member States reported no ELD cases, and 14 Member States reported 7 or fewer ELD cases for the same period. Overall, fewer ELD cases were reported in the second reporting period (2013-2022) than in the first (2007-2013). Where the ELD has not been used, environmental damage cases have often been addressed under other EU or national liability instruments.

The requirement for damage to be 'significant' to be handled under the ELD is unclear and has been perceived as very high in many Member States. The 2021 Commission Guidelines include more specific definitions of biodiversity, water and land damage, partly based on the EU caselaw. However, there is not yet sufficient data available to fully assess the extent to which the Guidelines can help to improve the ELD's implementation.

Remediation in kind is a cornerstone of the ELD. The ELD provides for primary remediation (aiming to restore the damaged natural resources and/or impaired services to their original condition), but also

[1] Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (consolidated version).

[2] Regulation (EU) 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations in the field of legislation related to the environment.

for complementary and compensatory remediation (in cases of damage to water and biodiversity) to ensure that in cases where the damage is not fully reversible or when its remediation takes time, a net loss to the relevant environmental resources is avoided. However, in most cases, only primary remediation takes place.

The ELD has not always been effective in ensuring that the polluter pays. Liable operators often lack the financial means to carry out remedial measures due to the lack of insurance and the resulting insolvency. The ELD does not impose liability on whole capital groups or on executives of liable operators, nor does it impose mandatory insurance schemes.

Efficiency

The ELD's efficiency is decreased by its limited scope and complexity. This has led some Member States to maintain parallel national rules also addressing environmental damage. Dedicated national methodologies and procedures can facilitate ELD application (including jointly with other national rules which address environmental damage). However, national administrations tend to invest little in the ELD in view of the low number of cases. Conversely, the lack of procedural integration between the national rules implementing the ELD and the parallel non-ELD liability regimes can result in duplicating procedures and thereby increasing the overall administrative costs.

A positive trend concerning the ELD efficiency is an increased uptake of the financial security instruments concerning environmental liability in some Member States, both through mandatory (at national level) and voluntary insurance schemes. Moreover, the use of financial security incentivises the prevention of environmental damage in general by requiring operators to adopt environmental risk management approaches.

Coherence

There are no direct inconsistencies with other liability regimes under EU law, but interfaces with them may present some challenges.

- Overlaps between some provisions of the ELD and the Industrial Emissions Directive (IED)[3] have resulted in underuse of the ELD (and of its more advanced system of remedial measures) with regard to cases covered by both regimes.

- Lack of clarity as regards the liability component that the ELD should provide to EU sectoral environmental legislation may result in inconsistent implementation. This is particularly the case regarding the interaction between the ELD and the Water Framework Directive (WFD)[4]. The WFD focuses on water bodies, while the ELD covers all environmental damage to water (including to only part of a water body and not necessarily resulting in a deterioration of status of the water body as a whole).

Interaction between the ELD and national liability rules is also challenging.

- When environmental damage is addressed as part of criminal proceedings, the ELD standard of remediation is rarely applied, and the damage is instead subject to partial remediation or financial compensation.

- Article 193 TFEU and Article 16 of the ELD allow Member States to maintain 'more stringent' national rules. Such national liability regimes are often maintained in parallel with the ELD due to their wider scope. Cases which would qualify under both regimes should then be handled under

[3] Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions.
[4] Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

the more stringent regime, which is often the ELD. However, Member States tend to apply the national rules (outside ELD) by default. This approach would seem in keeping with the obligation of transposing the ELD, provided that the same minimal standard is applied. However, the resulting standard of remediation can then be lower than under the ELD, as it would not include complementary and compensatory measures.

EU added value

The ELD's EU added value consists in ensuring that environmental damage caused by operators is addressed across the EU based on minimum common standards ensuring a high level of environmental protection. The ELD thus contributes to a level playing field for operators and makes it easier to handle cases of transboundary damage in the EU. However, these advantages are reduced by the limited scope of environmental damage covered by the ELD and its limited uptake.

Relevance

The ELD's objectives and mechanism remain highly relevant in the context of addressing the triple planetary crisis and the EU's actions to protect and restore EU natural resources. It implements the polluter pays principle and contributes to creating a level playing field for economic operators. As a cross-cutting instrument, the ELD supports the enforcement and implementation of other EU environmental legislation and the efforts towards a cleaner environment. The ELD remains thus highly relevant in the context of the 2024 Commission priorities supporting the implementation and compliance assurance for EU environmental legislation. More specifically, it provides a liability component complementing the sectoral legislation related to the protection and preservation of biodiversity and water, and serves as a safeguard of environmental compliance in less regulated areas. The ELD thus responds to systemic needs of the EU environmental legal order.

However, as regards the scope of the ELD, several issues have been identified which reduce its relevance and effectiveness.

- For activities which are not listed in Annex III of the ELD, operators are liable for damage to protected species and habitats but not for damage to water or land, and only in the case of fault/negligence.

- The list of 'hazardous' activities in Annex III to the ELD is limited and has become outdated. In addition, the structure of Annex III is based on references to specific legal acts, rather than on a more holistic and autonomous approach. This limits the ELD's potential to address new and emerging environmental challenges.

- The limited scope of the damage covered under the ELD: (i) the criterion of 'significant' damage used as a threshold for the application of the ELD is imprecise; (ii) damage to biodiversity is limited to species and habitats protected only at EU level; (iii) soil contamination is covered by the ELD only insofar as it affects human health (but not if it only affects the environment); and (iv) damage to air quality is not covered.

The objectives of the ELD are fully convergent with those of the Water Resilience Strategy[5] and the Nature Restoration Law[6] as the obligation to restore natural resources under the ELD can support the implementation of requirements for the non-deterioration and restoration of water resources and

[5] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 4 June 2025 - *European Water Resilience Strategy*, COM(2025) 280 final.

[6] Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869

biodiversity. However, the limits in the ELD scope diminish its relevance with regard to both initiatives.

The ELD has little relevance to emerging challenges such as microplastics or Per- and polyfluoroalkyl substances (PFAS), however, the polluter pays principle applies to these domains too. The cross-cutting liability regime of the ELD does not address diffuse pollution or compensation for damage to human health, which is central to addressing these challenges, and has been included in the recently amended sectoral instruments, such as IED and Ambient Air Quality Directive[7].

[7] Directive (EU) 2024/2881 of the European Parliament and of the Council of 23 October 2024 on ambient air quality and cleaner air for Europe