



# Environmental Liability Directive Financial security Instruments

13 June 2022

European Commission, DG ENV

# Environmental Liability Directive

Directive 2004/35/EC of 21 April 2004

- establishes a framework to prevent and remedy environmental damage, in accordance with the polluter pays principle.
- deals with damage to protected species and natural habitats, damage to water and damage to soil (and immediate threat of such damage).
- required response consist in:
  - *prevention in case of an imminent threat of damage*
  - *immediate limitation measures*
  - *remediation measures (including primary, complementary and compensatory remediation)*
- based on administrative approach

# Environmental Liability Directive

## Specific objectives of the ELD

(as defined in the context of the ongoing evaluation)

1. To establish the common framework for preventing and remedying environmental damage
2. To ensure that the polluter carries out preventive measures, remedial actions and remedial measures (including primary, complementary and compensation remediation) as applicable
3. **To ensure that the costs are borne by the polluter**
4. **To encourage the availability of financial security at an affordable cost**
5. To allow participation of interested parties

# Financial security instruments under the Environmental Liability Directive

## The ELD:

- encourages development of financial security instruments and markets
- does not render such financial security instruments mandatory
- some Member States have introduced mandatory financial security instruments - in particular in the context of activities covered by Annex III

## *Article 14 Financial security*

*Member States shall take measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under this Directive.*

## ELD 2nd evaluation 2023

- Evaluation as part of the EU policy cycle and the Better Regulation agenda
- Specific legal obligation - Article 18 of the ELD,
- EU Action Plan: [‘Towards a Zero Pollution for Air, Water and Soil’](#)
- [Call for evidence](#) published in November 2021 on ‘Have your Say’ portal
- Supported by external experts through a study contract

## ELD 2nd evaluation 2023 - Scope

- Double focus: (1) ELD overall functioning (2) Improvements in the implementation and enforcement of the ELD, since first evaluation of 2016
- European Parliament Resolution of 20 May 2021 on the liability of companies for environmental damage,
  - *Recommendation 43: 'the Commission to assess the introduction of a mandatory financial security system (covering insurance, bank guarantees, company pools, securities and bonds or funds) with a maximum threshold per case, aiming to prevent taxpayers from having to bear the costs resulting from remediation of environmental damage'*
- Court of Auditors' special report of 5 July 2021 on the polluter pays principle.
  - *Is the current approach, where financial security against environmental damage is not compulsory, appropriate?*

# ELD 2nd evaluation 2023 – evaluation questions (1)

Criteria:

effectiveness, efficiency, relevance, coherence, EU added-value

7. Is the current approach, where financial security for ELD liabilities is not mandatory, appropriate?

- *7.1 Has sufficient financial security for ELD liabilities been available for operators in annex III in all Member States?*
- *7.2 Has financial security for ELD liabilities been available and, if so, has it been available at a cost that is affordable, especially by SMEs and micro-enterprises?*
- *7.3 Have the different mandatory financial security systems for ELD liabilities introduced by the Czech Republic, Ireland, Portugal, Slovakia and Spain (and to a lesser extent the provisions introduced by Italy and Poland) proven to be efficient?*

## ELD 2nd evaluation 2023 – evaluation questions (2)

2.12 Has the absence of a harmonised mandatory financial security system at EU level reduced the effectiveness of the polluter pays principle inherent in the ELD as well as the ELD itself?

1.7 Has the availability of financial security for operators at a reasonable cost improved since 2016?



## ELD 2nd evaluation 2023 – some further reflection paths

- ❖ Mandatory financial security versus market based developments – egg and chicken dilemma
- ❖ Mandatory financial security in MSs which have no or very few ELD cases – how to assess added value?
  - *Prevention of environmental damage*
  - *ELD and other environmental damage*
- ❖ How efficient are financial security instruments to ensure that the polluter pays?
- ❖ Are there other ways to combat insolvency risks (secondary liability regimes)?
  - *Secondary liability of corporate boards, parental (capital groups), value chain, ELD financial compensation scheme*



**THANK YOU!**

