

THE ENVIRONMENTAL LIABILITY DIRECTIVE

7 December 2021

PURPOSE AND SCOPE

- establish a framework of environmental liability, based on the polluter-pays principle,
- to prevent and remedy environmental damage
- financial consequences of certain types of harm caused to the environment will be borne by the economic operator who caused this harm
- Competent authorities (CP level) → implementation and enforcement of the ELD
- Safeguarding the legitimate interests of the relevant operators and other interested parties
- Assessment of the significance of the damage and determination of remedial measures (in co-operation with the liable operator)

DEFINITION OF „OPERATOR”

- ☀ Operator means any natural or legal, private or public person who operates or controls the damaging occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity.
- ☀ Ownership
- ☀ On-site responsible operator

DEFINITION OF „ENVIRONMENTAL DAMAGE”

- ☀ 3 categories of environmental damage under the ELD:
- ☀ (a) “damage to protected species and natural habitats”, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. The habitats and species concerned are defined by reference to species and types of natural habitats identified in the relevant parts of the Birds Directive 79/409 and the Habitats Directive 92/43;
- ☀ (b) “water damage”, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in the Water Framework Directive 2000/60, of the waters concerned;
- ☀ (c) “land damage”, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms

LIABILITY REGIMES

- The ELD provides for 2 liability regimes
- Annex III → any environmental damage + imminent threat caused by occupational activities listed therein (in the field of Network Energy)
 - Reference to the IPPC Directive (LCPs, refineries), large hydro, etc.
- Damage to species and natural habitats → any occupational activities other than those listed in Annex III
- Exceptions: armed conflict, force majeure
- Preventive and remedial actions/measures
- Cooperation between Contracting Parties (transboundary aspect)



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FOR YOUR ATTENTION

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