

FACILITATING ENFORCEMENT OF THE ELD

AN ONGOING FOLLOW-UP STUDY

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TOPICS

- Objectives
- ELD incidents
- Relationship between national ELD legislation and national liability legislation
- Contents of Member State Reports
- Final Report

GENERAL OBJECTIVES

- To enhance the evidence base in relation to implementation of the ELD by Member States
- To promote implementation of the ELD through work with Member States on application of the ELD instead of national liability legislation for ELD incidents
- To improve financial security for ELD liabilities, as recommended in the study report on *Improving financial security in the context of the Environmental Liability Directive (ELD)*

SPECIFIC OBJECTIVE

- To assist the Commission and Member States in increasing the demand for insurance for ELD liabilities, and thus its availability, by increasing enforcement of the ELD by competent authorities across the EU
 - Study on *Improving financial security in the context of the Environmental Liability Directive (ELD)* found that insurance for ELD liabilities is extremely limited or not available in a substantial number of Member States

ELD INCIDENTS

- Number of incidents of actual, and imminent threat, of environmental damage (actual environmental damage incidents in parentheses)

○ Austria	0
○ Belgium	1 (1)
○ Bulgaria	4 (0)
○ Cyprus	1 (1)
○ Czech Republic	0
○ Denmark	0
○ Estonia	4 (2)

○ Finland	2 (2)
○ France	0
○ Germany	60 (60)
○ Greece	51 (40)
○ Hungary	563 (563)
○ Ireland	0
○ Italy	up to 150 (17)
○ Latvia	13 (13)
○ Lithuania	4 (4)
○ Luxembourg	0
○ Malta	0

ELD INCIDENTS

- Netherlands 0
- Poland 506 (506 maximum)
- Portugal 8 (2)
- Romania 5 (4)
- Slovakia 0
- Slovenia 0
- Spain 11 (11)
- Sweden 4 (4)
- (UK 20 (13))

Figures from the ELD REFIT Evaluation

- Croatia not included due to joining the EU on 1 July 2013

ELD INCIDENTS

- Summary of actual ELD incidents
 - 11 Member States: No incidents
 - 8 Member States: 1 to 5 incidents
 - 4 Member States: 6 to 20 incidents
 - Greece: 51 incidents
 - Germany: 60 incidents
 - Poland: 506 incidents
 - Hungary: 563 incidents
- Total actual ELD incidents across the EU
 - About 1,245

RELATIONSHIP BETWEEN NATIONAL ELD AND NATIONAL LIABILITY LEGISLATION

- Competent authorities in some Member States are continuing to enforce national liability legislation instead of national ELD legislation even when the ELD is more stringent
 - Example
 - Dutch authorities applied national liability legislation instead of national ELD legislation to the disaster at ChemiePack on 5 January 2011 for which remediation measures cost EUR 65.4 million
- Key reason for continued enforcement of national ELD legislation
 - Lack of knowledge by some competent authorities when to enforce national ELD legislation

RELATIONSHIP BETWEEN NATIONAL ELD AND NATIONAL LIABILITY LEGISLATION

- Land damage
 - National liability legislation in all Member States
 - Waste legislation
 - All Member States except Greece, Ireland and Portugal also have regimes to remediate contaminated land (focus is on remediation of historic pollution)
- Water damage
 - National liability legislation in virtually all Member States
 - Focus is on preventing and remediating pollution not other types of environmental damage
- Biodiversity damage
 - National liability legislation in some, but not all, Member States
 - Potential gaps in legislation depending on ELD threshold for biodiversity damage

MEMBER STATE REPORTS

- Individual reports for each Member State using an identical format to enable easy comparison and analysis with other Member State Reports
- Format will be modified as the study progresses and more information is gathered
- Experts in each Member State will be asked to check the accuracy of the reports and to provide insights into enforcement of national liability legislation versus national ELD legislation

CONTENT OF MEMBER STATE REPORTS

- Description of ELD incidents reported in the ELD REFIT Evaluation and the Country Fiches
 - Type and number of incidents
 - Imminent threat of environmental damage
 - Actual environmental damage
 - Nature of environmental damage
 - Land
 - Water
 - Biodiversity
 - Combination of land, water, and/or biodiversity

CONTENT OF MEMBER STATE REPORTS

- Description of key aspects of national ELD legislation
 - Competent authority(ies)
 - Threshold and standard of remediation
 - Land damage
 - Water damage
 - Biodiversity damage
 - Adopted optional provisions
 - Adopted more stringent provisions
 - Implementation and enforcement
 - Preventive measures, emergency remedial actions, notifications to competent authority, remedial measures, appeals

CONTENT OF MEMBER STATE REPORTS

- Liability provisions in national legislation that implements the Birds Directive (2009/147/EC) and the Habitats Directive (92/43/EEC)
 - In some but not all Member States
 - Examples
 - Ireland: person that unlawfully damages a Natura 2000 site can be ordered to restore the damage
 - Germany: person that damages natural resources can be ordered to remediate/restore them and, if the damage cannot be fully remediated, carry out substitution/replacement measures in the area of the damage to restore the natural balance before the damage

CONTENT OF MEMBER STATE REPORTS

- Liability provisions in national liability legislation that implements the Water Framework Directive (2000/60/EC)
 - Preventing and remediating adverse impacts on the condition of any hydromorphological quality element affecting waters that is likely to prevent achievement of the applicable environmental objectives
 - Other?

CONTENT OF MEMBER STATE REPORTS

- Liability provisions in national liability legislation that implements the Marine Strategy Framework Directive (2008/56/EC)
 - Do not appear to exist
 - Application to marine waters
 - Exclusions in the ELD for the marine conventions concerning spills from shipping
 - Application of the Offshore Safety Directive

CONTENT OF MEMBER STATE REPORTS

- Liability provisions in national legislation that implements EU legislation referring to the ELD
 - Industrial Emissions Directive
 - ‘Without prejudice to [the ELD], in the event of any incident or accident significantly affecting the environment, Member States shall take the necessary measures to ensure that:
 - a) the operator informs the competent authority immediately;
 - b) the operator immediately takes the measures to limit the environmental consequences and to prevent further possible incidents or accidents;
 - c) the competent authority requires the operator to take any appropriate complementary measures that the competent authority considers necessary to limit the environmental consequences and to prevent further possible incidents or accidents’
 - Activities under the IED are also covered by annex III of the ELD

CONTENT OF MEMBER STATE REPORTS

- Liability provisions in national legislation that implements EU legislation referring to the ELD (continued)
 - Seveso III Directive
 - Preparation and implementation of a major accident prevention policy
 - ‘major accident’ defined as
‘an occurrence such as a major emission, fire, or explosion resulting from uncontrolled developments in the course of the operation of any establishment covered by [the Directive], and leading to serious danger to human health or the environment, immediate or delayed, inside or outside the establishment, and involving one or more dangerous substances’
 - Activities under the Seveso III Directive are also covered by annex III of the ELD

CONTENT OF MEMBER STATE REPORTS

- Liability provisions in national legislation that implements EU legislation referring to the ELD (continued)
 - Offshore Safety Directive
 - Establishes minimum requirements for preventing major accidents and limiting their consequences
 - ‘major accident’ includes a ‘major environmental incident’
‘major environmental incident’ defined as ‘an incident which results, or is likely to result, in significant adverse effects on the environment in accordance with [the ELD]’
 - ‘Without prejudice to the existing scope of liability relating to the prevention and remediation of environmental damage pursuant to [the ELD], Member States shall ensure that the licensee is financially liable for the prevention and remediation of environmental damage as defined in [the ELD], caused by offshore oil and gas operations carried out by, or on behalf of, the licensee or the operator’
 - Activities under the Offshore Safety Directive are also covered by annex III of the ELD

CONTENT OF MEMBER STATE REPORTS

- Liability provisions in national environmental permitting legislation
 - Integrated pollution prevention and control outside the scope of the Industrial Emissions Directive
 - E.g., France: Installations Classées pour la Protection de l'Environnement (ICPE)
 - Applies to over 500,000 installations at different levels
 - Some but not all installations covered by the Industrial Emissions Directive
 - Declarations, registrations, and authorisations/permits depending on degree of risk to human health and the environment

CONTENT OF MEMBER STATE REPORTS

- National legislation that imposes liability for preventing and remediating environmental damage
 - Land damage
 - Water damage
 - Biodiversity damage

CONTENT OF MEMBER STATE REPORTS

- Description of liability provisions in legislation that implements the Birds and Habitats Directives and EU legislation that refers to the ELD, national environmental permitting legislation and national legislation to prevent and remediate environmental damage (collectively national liability legislation)
 - Standard of liability
 - Scope of liability
 - Persons that may be liable
 - Threshold of damage
 - Standard of remediation
 - Occupational activity or any act or omission
 - Other key aspects

CONTENT OF MEMBER STATE REPORTS

- Enforcement of national ELD legislation and national liability legislation
 - Procedures (if any) for consultation, including between competent authorities, to determine whether to enforce national ELD legislation or national liability legislation
 - Procedures and requirements (if any) for screening and evaluating environmental incidents to determine whether national ELD legislation or national liability legislation applies

CONTENT OF MEMBER STATE REPORTS

- Comparison and analysis of national ELD legislation and national liability legislation
 - Similarities
 - Differences
 - Overlaps
 - Gaps
- Reasons (if any) by competent authorities for continuing to implement national liability legislation instead of national ELD legislation for potential and/or actual ELD incidents
- Enforcement of both types of legislation for ELD incidents
 - E.g., entry of pollutants into water that was polluted before 30 April 2007

CONTENT OF MEMBER STATE REPORTS

- Recommendations and tools specific to each Member State
 - Checklists for determining when national ELD legislation should be enforced instead of national liability legislation
 - Comparison tables to indicate factors such as
 - Strict and/or fault-based liability
 - Primary and/or secondary liability
 - Joint and several or proportionate liability
 - Threshold of damage
 - Standards of remediation
 - Relevant competent authority(ies)

FINAL REPORT

- Overview of relevant provisions in EU legislation
 - ELD including options that may be adopted by Member States
 - Birds and Habitats Directives
 - Water Framework Directive
 - (Marine Strategy Framework Directive)
 - Industrial Emissions Directive
 - Seveso III Directive
 - Offshore Safety Directive

FINAL REPORT

- Comparison and analysis
 - Number and types of ELD incidents across the EU
 - National ELD legislation and national liability legislation across the EU
 - Consultation between competent authorities on applicable legislation
 - Screening potential ELD incidents to determine whether ELD incidents
 - Enforcement of national liability legislation instead of national ELD legislation
 - Enforcement of national liability legislation together with national ELD legislation

FINAL REPORT

- Recommendations at an EU level
 - European Commission
 - Member States
- Annex 1: Member State Reports
- Annex 2: Checklists and other tools at an EU level to assist competent authorities in determining when to enforce national ELD legislation