

Procedure file

Basic information	
INI - Own-initiative procedure	2016/2251(INI)
Procedure completed	
Application of Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage ('ELD')	
See also Directive 2004/35/EC 2002/0021(COD)	
Subject	
3.70.16 Law and environment, liability	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 JURI Legal Affairs	 FERRARA Laura	12/10/2016
		Shadow rapporteur	
		 COMODINI CACHIA Therese	
		 GUTELAND Jytte	
		 DZHAMBAZKI Angel	
		 USPASKICH Viktor	
		 HAUTALA Heidi	
	Committee for opinion	Rapporteur for opinion	Appointed
	 ENVI Environment, Public Health and Food Safety (Associated committee)	 JÁVOR Benedek	25/10/2016
European Commission	Commission DG	Commissioner	
	Environment	VELLA Karmenu	

Key events			
06/10/2016	Committee referral announced in Parliament		
06/10/2016	Referral to associated committees announced in Parliament		
02/10/2017	Vote in committee		

11/10/2017	Committee report tabled for plenary	A8-0297/2017	Summary
26/10/2017	Results of vote in Parliament		
26/10/2017	Debate in Parliament		
26/10/2017	Decision by Parliament	T8-0414/2017	Summary
26/10/2017	End of procedure in Parliament		

Technical information

Procedure reference	2016/2251(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Implementation
	See also Directive 2004/35/EC 2002/0021(COD)
Legal basis	Rules of Procedure EP 54
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	JURI/8/08013

Documentation gateway

Committee draft report		PE599.856	08/05/2017	EP	
Committee opinion	ENVI	PE599.800	20/06/2017	EP	
Amendments tabled in committee		PE606.200	26/06/2017	EP	
Committee report tabled for plenary, single reading		A8-0297/2017	11/10/2017	EP	Summary
Text adopted by Parliament, single reading		T8-0414/2017	26/10/2017	EP	Summary
Commission response to text adopted in plenary		SP(2018)7	08/03/2018	EC	

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

The Committee on Legal Affairs adopted an own-initiative report by Laura FERRARA (EFDD, IT) 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).

The Committee on the Environment, Public Health and Food Safety, exercising its prerogative as an associated committee in accordance with [Article 54 of the Rules of Procedure](#), also gave its opinion on the report.

Members acknowledged the importance of the Commissions studies and reports regarding the assessment of the implementation of the ELD and its impact on the Member States. They 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: the lack of uniformity is also due to the generic nature of the ELD, which was drawn up along the lines of the framework directive model.

The report pointed out that the different interpretations and application of the significance threshold for environmental damage are one of the main barriers to an effective and uniform application of the ELD. Members deplored 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. In addition, they regretted 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.

The scope of the framework of environmental liability should be broadened to include damage to the air, fauna and flora and the landscape.

The report stressed that 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.

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: Members 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 in order to standardise the application of the ELD, making it uniform in all Member States;
- provide a clear and coherent interpretation of the geographical scope of ELD favourable conservation status (EU territory, national territory, natural landscape area);
- introduce mandatory financial security, e.g. a mandatory environmental liability insurance for operators and to develop a harmonised EU methodology for calculating the maximum liability thresholds, taking account of the characteristics of each activity and its surrounding area;
- 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;
- 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;
- assess the possibility of introducing collective redress mechanisms for breaches of the Unions environmental law;
- review that directives scope so that it covers all applicable Union environmental legislation.

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

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 Commissions 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 Unions environmental law;
- review that directives scope so that it covers all applicable Union environmental legislation.