

ELD Stakeholder Conference 2013

*-Evaluating the experience gained in the implementation of the
Environmental Liability Directive (ELD)-*

ELD News Edition 2013/1

The association Justice and Environment (J&E) is a European network of environmental law organisations which was created in 2003 and was founded as non-profit association in 2004. J&E is striving to protect the environment, human health and nature by improving environmental legislation and enhancing the enforcement thereof.

Issues discussed at the Conference

On 11th June, the second ELD Stakeholder Conference took place in Brussels' Management Centre Europe. The issues discussed were the state of play regarding ELD application in EU member states and the upcoming ELD report provided by the European Commission and review in 2014. Several stakeholder groups such as public administrations, representatives from the insurance sector, from the industrial and business community, the academia and environmental NGOs have been present at the conference discussing the achievements and deficiencies in the application of the ELD. Special focus was given to the following issues which have been discussed in detail in the afternoon session: Financial security, ELD effectiveness, biodiversity damage, ELD – national legislation and International Conventions.

State of play: A patchwork of liability systems

The studies on implementation challenges and obstacles of the Environmental Liability Directive which have been launched by the European Commission in 2012 draw a differentiated picture. They highlight that the transposition of the ELD into the national law of Member States has not resulted yet in a level playing field but a patchwork of liability systems for the prevention and remediation of environmental damage across the EU. The minimum standards set by the ELD have been interpreted differently by various Member States. As a result, significant variations in implementation and enforcement of the transposing legislation have been detected. This is also due to the fact, that the ELD itself left open options for variation in transposing legislation. Environmental damage cases still seem to be rare, due to various reasons – the threshold could not be met, pre-existing legislative frameworks are used instead, lack of expertise, experience etc. [1] As the legal studies covered only 16 Member States, it is planned to have the other 11 Member States analyzed in 2013/2014.

The Member States had to report to the European Commission (EC) on the experience gained in the application of the ELD by April 2013. According to the EC reporting has not accomplished so far. The EC will base its 2014 Report to Council and European Parliament which has to include proposals for amendments on the foregoing ELD Report 2010 [2], the Member States Reports 2013, the respective ELD Studies launched by the EC and supplementary information gained from experts and stakeholder meetings and conferences.

“Stakeholder Findings”: range from suggesting better enforcement to ELD amendments

Opinions on the effectiveness of the ELD and its application on national level varied considerably throughout the different stakeholder groups. Recommendations from the group ranged from ensuring better coordination and cooperation on national level to ensure better enforcement of the ELD, elaboration of guidance documents and ELD registers, to amending the ELD based on general criticism on the vague and optional character of the ELD as such. The outcomes and findings of the Conference will be soon published on the EC Environmental Liability Homepage, where already Training Material for operators, competent authorities and other stakeholders and interested persons can be downloaded [3]. Furthermore, an ELD information brochure has been developed and will be soon available in all official EU languages [4].

[1] BIO Intelligence Service (2013), Implementation challenges and obstacles of the Environmental Liability Directive, Final report prepared for European Commission – DG Environment. In collaboration with Stevens & Bolton LLP: <http://eldimplement.biois.com/>

[2] REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Under Article 14(2) of Directive 2004/35/CE on the environmental liability with regard to the prevention and remedying of environmental damage (COM/2010/0581 final): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0581:EN:NOT>

[3] http://ec.europa.eu/environment/legal/liability/eld_training.htm

[4] Brochure: Environmental Liability Directive Protecting Europe’s Natural Resources (2013): <http://ec.europa.eu/environment/legal/liability/pdf/ELD%20brochure.pdf>