

# Open public consultation on the evaluation of the Environmental Liability Directive (Directive 2004/35/CE)

Fields marked with \* are mandatory.

## Introduction

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The Environmental Liability Directive ([ELD](#)) established a framework of environmental liability based on the 'polluter pays' principle, to prevent and remedy damage to land, water (surface, ground, transitional, coastal and marine waters), and biodiversity (species and natural habitats protected by the [Birds](#) and [Habitats](#) Directives).

Making operators financially liable for preventing and remedying environmental damage is intended to induce them to develop practices that minimise the risk that their activities will cause such damage.

In 2016, the European Commission published the [first evaluation](#) of the ELD. The Commission is now carrying out the second such evaluation. [The evaluation](#) will examine the effectiveness, efficiency, relevance, coherence and EU added-value of the ELD.

It will consider the extent to which the Commission's and Member States' actions have improved the implementation and enforcement of the ELD, particularly since the Commission's first evaluation in April 2016.

The evaluation will also take into account recommendations to the Commission by the European Parliament in its [Resolution](#) of 20 May 2021 on the liability of companies for environmental damage, and the Court of Auditors' special [report](#) of 5 July 2021 on the polluter pays principle.

This public consultation represents an important means of collecting stakeholders' views and practical experience.

The evaluation will also be based on reports that Member States will submit to the Commission on implementation of the ELD (due by 30 April 2022).

The questionnaire is structured as follows:

- Introductory questions on the respondent
- Part I – General questions
- Part II – Technical questions

Part I contains questions of a more general nature, whereas Part II seeks to gather information on the experience of stakeholders with more expert knowledge of the ELD and its implementation.

You are encouraged to reply to the full questionnaire but should you so wish, after responding only to Part I you can go directly to the end of questionnaire and submit your contribution.

At the end of this questionnaire, you will have the possibility to add further comments or suggestions on the Environmental Liability Directive and to upload a document, such as a position paper, should you so wish.

## About you

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### \* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

\* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

\* First name

Oliver

\* Surname

LOEBEL

\* Email (this won't be published)

oliver.loebel@eureau.org

Role of respondent

secretary general

\* Organisation name

*255 character(s) maximum*

EurEau

\* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

## Transparency register number

*255 character(s) maximum*

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

39299129772-62

### \* Number of years of experience related to issues concerning damage to land, water and biodiversity:

- Less than 2 years
- 2-5 years
- More than 5 years
- Not applicable

### \* Country of origin

Please add your country of origin, or that of your organisation.

- |   |  |  |  |
|---|--|--|--|
| <input type="radio"/> Afghanistan         | <input type="radio"/> Djibouti           | <input type="radio"/> Libya            | <input type="radio"/> Saint Martin                     |
| <input type="radio"/> Åland Islands       | <input type="radio"/> Dominica           | <input type="radio"/> Liechtenstein    | <input type="radio"/> Saint Pierre and Miquelon        |
| <input type="radio"/> Albania             | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania        | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria             | <input type="radio"/> Ecuador            | <input type="radio"/> Luxembourg       | <input type="radio"/> Samoa                            |
| <input type="radio"/> American Samoa      | <input type="radio"/> Egypt              | <input type="radio"/> Macau            | <input type="radio"/> San Marino                       |
| <input type="radio"/> Andorra             | <input type="radio"/> El Salvador        | <input type="radio"/> Madagascar       | <input type="radio"/> São Tomé and Príncipe            |
| <input type="radio"/> Angola              | <input type="radio"/> Equatorial Guinea  | <input type="radio"/> Malawi           | <input type="radio"/> Saudi Arabia                     |
| <input type="radio"/> Anguilla            | <input type="radio"/> Eritrea            | <input type="radio"/> Malaysia         | <input type="radio"/> Senegal                          |
| <input type="radio"/> Antarctica          | <input type="radio"/> Estonia            | <input type="radio"/> Maldives         | <input type="radio"/> Serbia                           |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Eswatini           | <input type="radio"/> Mali             | <input type="radio"/> Seychelles                       |
| <input type="radio"/> Argentina           | <input type="radio"/> Ethiopia           | <input type="radio"/> Malta            | <input type="radio"/> Sierra Leone                     |
| <input type="radio"/> Armenia             | <input type="radio"/> Falkland Islands   | <input type="radio"/> Marshall Islands | <input type="radio"/> Singapore                        |
| <input type="radio"/> Aruba               | <input type="radio"/> Faroe Islands      | <input type="radio"/> Martinique       | <input type="radio"/> Sint Maarten                     |
| <input type="radio"/> Australia           | <input type="radio"/> Fiji               | <input type="radio"/> Mauritania       | <input type="radio"/> Slovakia                         |
| <input type="radio"/> Austria             | <input type="radio"/> Finland            | <input type="radio"/> Mauritius        | <input type="radio"/> Slovenia                         |
| <input type="radio"/> Azerbaijan          | <input type="radio"/> France             | <input type="radio"/> Mayotte          | <input type="radio"/> Solomon Islands                  |

- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago

- Cameroon
- Canada
- Cape Verde
- Cayman Islands
  
- Central African Republic
- Chad
- Chile
- China
  
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
  
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
  
- Curaçao
- Cyprus
- Czechia
  
- Democratic Republic of the Congo
- Denmark
  
- Iceland
- India
- Indonesia
- Iran
  
- Iraq
- Ireland
- Isle of Man
- Israel
  
- Italy
- Jamaica
- Japan
  
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
  
- Laos
- Latvia
- Lebanon
  
- Lesotho
- Liberia
  
- North Macedonia
- Norway
- Oman
- Pakistan
  
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
  
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
  
- Rwanda
- Saint Barthélemy
- Saint Helena  
Ascension and  
Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
  
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
  
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States  
Minor Outlying  
Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

### \* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

**Anonymous**

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

**Public**

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

### More information about you

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I am giving my contribution

- On behalf of an operator (company or other) subject to the ELD
- On behalf of an organisation in the re/insurance industry
- On behalf of a provider of other financial security
- On behalf of an academic/research institution
- On behalf of a trade organisation
- On behalf of a non-governmental organisation (NGO)
- On behalf of a competent authority involved in the implementation of the ELD
- On behalf of another governmental authority
- As an EU citizen

- As a Non-EU citizen
- Other

## Part I General Questions

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The purpose of the ELD is to establish a framework of environmental liability based on the 'polluter-pays' principle, to prevent and remedy environmental damage.

\* 1. The polluter pays principle is enshrined in the EU Treaties and is a fundamental principle in environmental policy to protect the public from paying for pollution caused by economic activities. The ELD aims to bring the principle into practical application so that operators pay the costs of remediating and preventing further environmental damage caused by their activities. Do you agree that it is necessary to have a dedicated legislation to implement the polluter pays principle?

- Strongly agree.
- Agree.
- Neutral.
- Disagree.
- Strongly disagree.
- I do not know/ No opinion.

\* 2. Prevention of environmental damage and its rectification at source are two other major principles enshrined in the EU Treaties. The ELD in its current form requires economic operators to take action to prevent environmental damage in case of an imminent threat and to remedy the damage when prevention fails. Do you agree that it is necessary to have legislation that requires companies to prevent and, when this has not succeeded, remedy the environmental damage?

- Strongly agree.
- Agree.
- Neutral.
- Disagree.
- Strongly disagree.
- I do not know/ No opinion.

3. Have the following expected benefits of the ELD occurred? That is, has the ELD assisted in the following?

								I do now
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	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	know/ No opinion
* Preventing and remediating damage to <b>biodiversity</b> in the EU.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Preventing and remediating damage to <b>land</b> in the EU.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Preventing and remediating damage to <b>surface, ground, transitional and coastal waters</b> in the EU.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Preventing and remediating damage to <b>marine waters</b> in the EU.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Application of the 'polluter pays' principle, with costs of preventing and remediating environmental damage paid by liable operators instead of the public.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Ensuring that liable operators carry out preventive and remedial measures (including primary, complementary and compensatory remediation) as applicable.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Raising awareness of environmental issues.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Preventing contamination of further sites.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Encouraging the availability to operators of financial security instruments at an affordable cost.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Allowing interested persons to request competent authorities to take action in case of environmental damage occurrences.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Allowing interested persons to request competent authorities to take action in case of imminent threat of environmental damage occurrences.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

\* 4. Do you consider that the absence of mandatory financial security for ELD liabilities at EU level has limited the effectiveness of the ELD?

- Yes.
- No.
- I do not know/ No opinion.

\* 5. Are there any factors that you consider have meant that the ELD has not worked as well as intended (prevented it from fully meeting its objectives and/or led to unintended negative consequences)?

- Yes.
- No.
- I do not know/ No opinion.

If you wish, please explain your answer.

*1000 character(s) maximum*

The ELD is not well-known and therefore rarely applied. The polluter-pays principle is not applied in practice, in particular, with regards to substances polluting drinking water resources (pesticides, nitrate, PFAS etc.) even if these substances do not only harm human health but also the environment.

In a number of cases, it is difficult to identify the polluter due to complex supply chains and responsibilities. In others, the polluter is no longer in business and cannot be held liable. Its effectiveness could be increased if the competent authorities were obliged to identify the pollution source at the earliest possible point in time. A decision of what is a 'significant environmental damage' remains difficult in practice.

\* 6. Are you aware of the public participation mechanism of the ELD that allows interested persons to request competent authorities to take action in case of an imminent threat of, or actual, environmental damage, and to provide comments and to have access to justice?

- Yes, and I haven't used it.
- Yes, and I have used it.
- No.

If you wish, please explain about your experience.

*1000 character(s) maximum*

\* 8. Are you aware of the existence of information on the ELD and registers of ELD occurrences (i.e. occurrences of environmental damage handled under the ELD) at national level?

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- Yes, I am aware and I have accessed such information or registers.
- Yes, but I have never tried to access either such information or registers.
- Yes, but I have had difficulty accessing such information or registers.
- I have never heard of such information or registers.

You have reached the end of the general part of the questionnaire. The following part deals with the more technical aspects of the ELD implementation. You are encouraged to reply to the full questionnaire but should you so wish, you can go directly to the end of questionnaire and submit your contribution.

## Part II Technical Questions

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9. In your view, have the following factors decreased the effectiveness of the ELD?

The questions concerning the significance criteria refer to the definitions of land, water and biodiversity damage in the ELD in which the ELD applies only if damage reaches or exceeds a specified level.

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I do not know/ No opinion
Difficulties in establishing whether an environmental damage occurrence meets the significance criteria for land, water and/or biodiversity damage?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Perception of the significance criteria as being high compared to national liability legislation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Difficulties in deciding whether national ELD legislation, national non-ELD liability legislation, or both apply to an environmental damage occurrence.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Limitation of liability for remediating damage to land to a significant adverse effect on human health.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insufficient access for interested persons to request action / submit comments on an imminent threat of environmental	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

damage under the public participation mechanism of the ELD in some Member States.						
Lack of awareness about the ELD.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Complexity of the ELD.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insufficient reporting / lack of publicly accessible records of ELD occurrences / cases.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Absence of EU legislation on environmental inspections (to detect company misconduct).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Impossibility to identify liable operators in some cases.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insolvency of liable operators in some cases.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Application by competent authorities of environmental permitting legislation, including the <a href="#">Industrial Emissions Directive</a> , instead of the ELD.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The 'permit defence' in the ELD that allows operators not to bear the costs of remediating environmental damage if the damage is caused by activities carried out in compliance with a relevant permit.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The 'state-of-the-art defence' in the ELD that allows operators not to bear the costs of remediating environmental damage if the damage is caused by activities carried out in compliance with scientific and technical knowledge at the time of the occurrence.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exempting liabilities subject to marine conventions listed in annex IV to the ELD, nuclear conventions listed in annex V to the ELD, and environmental damage caused by armed conflicts, natural disasters, activities serving national	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

defence, international security and preventing natural disasters, as well as diffuse pollution.						
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10. Experience has shown that many occurrences of environmental damage (or an imminent threat of such damage) have been handled under national legislation that implement the ELD in some Member States whilst very few or no environmental damage occurrences have been handled under such legislation in other Member States. In such cases the environmental damage has been prevented or remediated under non-ELD legislation. Do you consider that handling environmental damage occurrences under non-ELD legislation has provided the same, a lower, or a higher level of protection for the environment?’

- The same level of protection.
- A lower level of protection.
- A higher level of protection.
- I do not know / No opinion.

11. Are you aware of any environmental damage occurrences dealt with in a Member State under non-ELD legislation that should have been dealt with under the ELD?

- Yes.
- No.
- I do not know/ No opinion.

12. Is the following scope (coverage) of the ELD still appropriate?

The questions concerning annex III of the ELD refer to the list of EU legislation pursuant to which operators carry out so-called ‘dangerous activities’. Operators that carry out annex III activities (annex III operators) are subject to strict liability if their activities cause damage to land, water and biodiversity. Operators that carry out non-annex III activities (non-annex III operators) are subject to fault-based liability if their activities cause damage to biodiversity.

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I do not know/ No opinion

No imposition of liability on non-annex III operators whose activities cause <b>water damage</b> .	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
No imposition of liability on non-annex III operators whose activities cause <b>land damage</b> .	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Imposition of fault-based rather than strict liability on non-annex III operators whose activities cause <b>biodiversity damage</b> .	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Limiting strict liability to annex III operators.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Limiting liability to operators rather than any person that causes environmental damage.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Including a defence in some Member States for annex III operators whose activities carried out non-negligently and in full compliance with a permit cause environmental damage.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Including a defence in some Member States for annex III operators whose activities are carried out non-negligently when the state of scientific and technical knowledge at the time of the occurrence could not have discovered that damage would be caused (state-of-the-art defence).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exempting liabilities subject to marine conventions listed in annex IV to the ELD.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exempting liabilities subject to nuclear conventions listed in annex V to the ELD.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Scope of activities listed in annex III is adequate.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

13. Please provide details if you have any further observations concerning the current scope of the ELD or you are aware of any environmental damage

occurrences where you believe the ELD would have offered a suitable response in terms of prevention and/or remediation but could not be applied due to limitations in its current scope.

*1000 character(s) maximum*

Urban waste water treatment plants (WWTP) are the final barrier between human activities and nature. They analyse treatment efficiency for many substances, according to their permit, but cannot test for all of the thousands of possible pollutants.

Furthermore, even the best treatment will not remove all pollutants and impacts on the environment cannot be excluded.

WWTP operators must not be held responsible for damage to water or land caused by illegal/unauthorised discharges into the sewer system. Producers (polluters) must take control-at-source measures (pre-treating industrial waste water, substance substitution).

In conclusion, WWTP may be a pathway of pollutants, but they are not the polluter. This must be considered in the ELD.

Instead of listing activities in annex III, the ELD could apply to operators handling harmful substances (for ex. based on art. 16 of directive 2000/60/EC (WFD)).

Better alignment with other EU legislation (directive 2010/75/EU (IED)) is necessary.

14. In their recent recommendations the [European Parliament](#) and the [European Court of Auditors](#) pointed to a number of issues related to the ELD (such as considerable variability between Member States with regard to ELD enforcement, lack of a secondary civil liability regime including parent company and chain liability, corporate board liability, and a financial compensation scheme). In your view have these issues hindered the effectiveness of the ELD?

- Yes.
- No.
- I do not know/ No opinion.

If you wish, please give concrete examples to illustrate your answer.

*1000 character(s) maximum*

A Swedish municipal water supplier was found guilty of supplying PFAS-contaminated drinking water to citizens (violating product safety rules). The problem was caused by polluted groundwater due to fire drill exercises of the Swedish army. The PFAS-containing fire-fighting foam was supplied by a manufacturer who in turn bought the PFAS from a chemical company. While court proceedings are still ongoing, the PFAS producer is not held liable so far.

15. Has the ELD improved the availability of insurance for ELD liabilities for large and/or multinational companies?

- Yes.
- No.
- In part.

- I do not know/ No opinion.

16. Has the ELD improved the availability of insurance for ELD liabilities for small to medium sized enterprises?

- Yes.
- No.
- In part.
- I do not know/ No opinion.

17. There are significant differences between Member States in the implementation and enforcement of the ELD. In your view, has the efficiency of the ELD framework been improved by the introduction in some Member States of the following? You may select more than one.

- Mandatory financial security.
- Fund to provide money to remediate and prevent further environmental damage when the liable operator has insufficient funds to do so.
- National guidance on the ELD.
- Awareness-raising programmes about the ELD.
- Consultation procedures between ELD and non-ELD competent authorities to determine if an environmental damage occurrence is an ELD occurrence.
- Registers of ELD occurrences.
- Other.

18. To what extent have the following actions undertaken by the Commission since 2016 improved the efficiency of the ELD?

	To a substantial extent	To a limited extent	Not at all	I do not know/ No opinion
Issuing <a href="#">guidelines</a> on a common understanding of the term 'environmental damage'.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Continuing to develop and encourage training programmes on the ELD.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Encouraging compilation and publication of national registers of an imminent threat of, and actual, environmental damage occurrences.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Promoting the availability and demand for insurance for ELD liabilities.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>



19. Have the guidelines on a common understanding of the term 'environmental damage' provided sufficient clarity as regards the concept in the ELD?

- Yes.
- No.
- In part.
- I do not know/ No opinion.

20. Are the main costs of the ELD justified, overall and for different stakeholder groups, given the benefits achieved by the ELD?

	Costs justified	Costs partially justified	Costs not justified	I do not know/ No opinion
Overall costs for operators and competent authorities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for preventing environmental damage by liable operators	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for remediating environmental damage by liable operators	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for preventing environmental damage by competent authorities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for remediating environmental damage by competent authorities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs of insurance for ELD liabilities for operators	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Administrative costs of competent authorities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for environmental NGOs and others in case of presenting comments, requests for action and participating in court cases	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

21. To what extent is the ELD internally consistent and coherent?

- Fully.
- To a substantial extent.
- To a limited extent.
- The ELD is not internally consistent and coherent.
- I do not know/ No opinion.

If you consider that the ELD is not fully internally consistent and coherent, please briefly describe the aspects that are not consistent and/or coherent.

*1000 character(s) maximum*

22. The ELD interlinks with numerous EU legal instruments and policies, in particular: Industrial Emissions Directive, Birds Directive, Habitats Directive, [Environmental Crimes Directive](#), [Offshore Safety Directive](#), [Seveso III Directive](#), [Environment Impact Assessment Directive](#), [Waste Framework Directive](#), [Water Framework Directive](#), [Marine Strategy Framework](#), [Non-Financial Reporting](#), [Sustainable Corporate Due Diligence Directive](#) (proposal), [Taxonomy Regulation](#), [European Green Deal](#), [Zero pollution action plan](#), [EU Biodiversity Strategy for 2030](#), [EU farm to fork strategy](#), [EU soil strategy for 2030](#), etc. To what extent is the ELD coherent with these other EU legislation and policies, or relevant international conventions?

- Fully.
- To a substantial extent.
- To a limited extent.
- The ELD is not coherent with them.
- I do not know/ No opinion.

If you consider that the ELD is not fully coherent with other EU legislation and policies, or with relevant international conventions please briefly describe which legislation/policy/convention it is not consistent with and the reason(s) why it is not coherent.

*1000 character(s) maximum*

There is no clear link between the ELD and environmental damage caused by substances covered by other Union acts: for example the priority substances under the Water Framework Directive or the list of substances included in the Industrial Emissions Directive (including those emitted by large farms). All operators handling/emitting these substances should be subject to environmental liability.

23. What is the added value of the ELD compared to what is likely to have been achieved by Member States in its absence?

	Major added value	Some added value	Little added value	No added value	I do not know/ No opinion

Creation of a level playing field for all Member States to prevent and remediate environmental damage.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Introduction of a minimum standard for preventing and remediating environmental damage.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reinforcing the polluter pays principle.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Allowing public participation for interested persons, i.e., to request action in case of an imminent threat of, or actual, environmental damage, provide observations and have access to justice.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Growth of an environmental insurance market.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Introduction of complementary and compensatory remediation for water and biodiversity damage.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

24. To what extent have stakeholders been engaged in the process of improving the implementation of the ELD at a Member State level?

	Substantial extent	Limited extent	No extent	I do not know/ No opinion
Governmental authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Re/insurers and re/insurance brokers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Environmental NGOs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Trade organisations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Others	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

FINAL (ADDITIONAL) FEEDBACK

In case you would like to share anything else in addition to the above questions related to the evaluation of the ELD, please provide details here (optional).

*1000 character(s) maximum*

Definitions need improvement. The 'polluter' must be defined in line with the principles of precaution and control at source (TFEU, 191.2). Pathways such as WWTP cannot be held liable for (unknown) pollution caused upstream, in particular in the case of illegal/unauthorised discharges into sewers.

The new ELD should put more focus on the principles of precaution and control at source.

Links with other Union acts must be reinforced to include all substances covered by acts such as the Industrial Emissions Directive, the Water Framework Directive (incl. Groundwater Directive) and the Sustainable Use of Pesticides Directive.

Stronger provisions are needed regarding diffuse pollution, as these are a major source of hazardous substances in the aquatic environment.

The new ELD must apply the polluter-pays principle to substances contaminating drinking water resources, incl. pesticides, nitrate and PMT substances such as PFAS. Today, the water consumer pays the cost of extra-treatment.

You can also upload a contribution file.

[Please note the maximum file size is 1 MB, however, multiple files may be uploaded.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

## **Contact**

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