



Environmental Liability Directive (ELD)

■ Why does it matter to intermediaries?

The Environmental Liability Directive (ELD - adopted in 2004 and first evaluated in 2016) sets out an environmental liability framework to prevent and remedy environmental damage to pre-damage condition when it is caused by economic operators. It contains the “polluter pays” principle. One of the issues that has come up over the years in the discussion at European level is the availability (at reasonable costs) of insurance and other types of financial security, and the need or not for mandatory financial security.

■ State of play

The ELD required the European Commission to carry out an evaluation before 30 April 2023 and every five years thereafter. The Commission started this second evaluation process of the ELD, aiming to examine the effectiveness, efficiency, relevance, coherence and EU added value of the ELD. Two public consultations were launched in the summer of 2022: a general public consultation by the Commission on the evaluation of the ELD and a targeted public consultation from external service providers who are preparing a supporting study on the evaluation of the ELD on behalf of the Commission. The questions dealt, amongst others, with:

- whether ELD influenced the availability of financial security instruments at an affordable cost;
- the availability of insurance for ELD liabilities for large/ multinational and for SME operators;
- whether intermediaries/brokers as stakeholders have been engaged in the process of improving the implementation of the ELD at Member State level.

On 12 May 2023, the Commission also launched a public consultation on the “polluter pays principle” (PPP) which aims to assess how the principle is applied across EU policies.

Following a report from the European Court of Auditors that found that the “PPP principle” is reflected and implemented to varying degrees in EU environmental policies and its coverage and implementation is therefore incomplete, the Commission has planned to issue a recommendation on how to better implement this principle on the basis of a fitness check in 2024.

In October 2023, the Commission published a summary of the online public consultation.

BIPAR participated in a dedicated workshop in November 2023.

■ BIPAR’s position / key messages

BIPAR is not in favour of mandatory financial security / insurance at EU level. Some of BIPAR’s key messages are:

- National markets are still very different in terms of “sensitivity” for this risk. Insurers from their side are not yet everywhere in Europe keen or able to take up the risk at reasonable or realistic prices.
- A mandatory regime for environmental liability insurance may be considered by clients and entrepreneurs as a “tax”.
- Considering the wide variety and the strict regulatory framework, there are probably many challenges in finding the right, “economically fair”, activity-adapted compulsory regime.
- Although the ELD brings uniformity, the local situation creates diversity.
- The discussion on environmental liability cannot be considered in a silo.
- The potential cost impact of a compulsory insurance on SMEs should be looked at.

■ Next steps

- The final external study regarding the ELD evaluation is not available.
- A Commission’s Staff Working Document was expected for the end of April 2023, but is also not as yet available.
- The outcome of the “polluter pays” fitness check was expected for the first half of 2024, but nothing has been published yet.

■ Links

- [Environmental Liability Directive](#)
- [Commission’s public consultation on the “polluter pays principle”](#)
- [Commission’s summary of the online public consultation](#)
- [How the Commission implements the ELD](#)
- [Evaluation of the ELD](#)