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Minutes of the Meeting

18th ELD Government Expert Group Meeting
5th October 2017, Albert Borschette Conference Centre, Brussels

Nature of the meeting: non-public.

This document contains minutes of the 18th ELD Government Expert Group Meeting that took place in Brussels on 5th October 2017.

The document follows the agenda of the meeting. It presents the main points of the discussion and the agreed actions (Action points). The minutes refer to documents discussed at the meeting, together with reference to their specific titles, as presented in the material disseminated to the experts prior to the Meeting (e.g. Agenda (DOC1)).

1. Welcome

a. Opening of the meeting and adoption of the agenda

Joachim D'Eugenio (chairperson of the meeting, European Commission, DG Environment), welcomed the participants and opened the 18th ELD National Experts Group Meeting. Representatives of 21 Member States and of Norway took part in the meeting. Austria, Belgium, Cyprus, Czech Republic, Lithuania, Luxemburg and Slovenia were not present. The participants list is attached.

All meeting documents including presentations are available at: http://ec.europa.eu/environment/legal/liability/eld_meetings.htm

The Chair presented the Agenda (DOC1) of the meeting with an amendment regarding the timing of the presentation of the new P2P instrument in EIR. The participants adopted the presented agenda with the amendment proposed.
b. **Adoption of the summary report of the 17th meeting (DOC2)**

The Chair clarified that the written comments circulated by the Netherlands just before the 18th ELD Expert Group meeting on the developments in the Netherlands are included in the updated version of the report of the 17th meeting. It was agreed that the updated version can be considered as final. The updated version will be circulated after the 18th ELD Expert Group Meeting together with all other meeting documents.

2. **Summary Report from the 5th ELD Stakeholder Workshop**

Hans Lopatta (European Commission, DG Environment) summarised the main points of the 5th ELD Stakeholder Workshop that took place on 4th October 2017 in Brussels. About 60 participants from the financial security sector, industry, Member States and a few NGOs, took part in the 5th ELD Stakeholder Workshop. The Workshop represented the first exchange with stakeholders on the Multiannual Work Programme and on the outcomes of the project. The conceptual framework for the assessment as regards the evidence base, the IT tool for an ELD information system, the Common Understanding Document and the revision of the ELD training programme and capacity building explorative investigation were presented by the consultants. The results of the IMPEL project on the practical guide on financial provision for environmental liabilities were presented as well. The main objective of the workshop was to inform and to involve the stakeholders, which were encouraged to send their final comments and inputs by 10th October 2017 to the consultants.

Joachim D’Eugenio highlighted that the 5th ELD Stakeholder Workshop provided support to the fact that the current work programme is the right response to the ELD REFIT evaluation of 2016. The message from the stakeholders was that the work seems to be on the right track. He also referred to concerns raised by some stakeholders about the current discussions in the European Parliament and explained briefly the relevance.

**Action point:**

- The summary report of the 5th ELD Stakeholder Workshop will be circulated to the Expert Group for comments.

- All presentations and documents will be posted on the website within the next weeks.

3. **Financial security**

a. **Draft IMPEL Practical Guide and the planned financial security study 2018**

Kim Bradley (EPA Scotland) presented the results of the IMPEL project and the IMPEL Practical Guide (DOC7). Ms Bradley presented the rationale, the scope (i.e. restoration of coal sites, foreseen liabilities and unforeseen liabilities) and the methodology of the project. She also mentioned that the IMPEL Guidance should be adopted by the IMPEL General Assembly on 6th December 2017 in Tallinn. Based on the recognition of the need to address regulatory inconsistencies on rules dealing with financial provisions or with insolvency cases and the amounts to be covered, Ms Bradley presented the key findings related to ways for calculating the amount of foreseen and unforeseen liabilities, including an example of successful financial provision in Ireland that has been proposed by the guidance. An issue raised during the IMPEL project was that there are not many examples of methodologies applicable to unforeseen liabilities. Based on this issue, a new IMPEL project about calculating the amount of financial security for unforeseen liabilities is envisaged for the year 2018. In the new
project, the two existing models from Spain and Ireland will feed into a general guidance for regulators on the methodologies to calculate the amount of unforeseen liabilities.

Hans Lopatta encouraged the experts to share the IMPEL Guidance with the relevant national authorities that deal with financial security issues and welcomed feedback from the experts about the usefulness of the guidance and about the proposed future work under the 2018 project.

The Dutch expert mentioned that in the Netherlands recently a method has been developed as a useful tool to help calculate the amount of money for financial security applicable for major risk (Seveso-type) companies, which could be of interest for the future IMPEL project; legislation is not in force yet. Kim Bradley replied that although it is envisaged to use the Spanish and Irish models, the IMPEL team would be open to include the Dutch model in the project.

b. and c.  Brief report from the 5th ELD stakeholder workshop discussion on financial security and presentation and discussion of the planned financial security study 2018

Hans Lopatta mentioned that during the 5th ELD Stakeholder Workshop, the Italian environmental insurance pool provided interesting feedback on a project that it has developed to implement financial securities to be applicable to all operators within the ELD. This experience could feed into the 2018 project. Hans Lopatta also stressed that the financial security issue is important because environmental liability without financial security will not work. Despite some progress in the last years, the situation about financial security for environmental liability is still not satisfactory in many regions, as also pointed out in the REFIT evaluation. While in some Member States financial security for unforeseen liabilities is already working well, this is not the case in other Member States. Therefore, the European Commission intends to help the Member States that are struggling with ensuring financial security for environmental liabilities and intends to launch a new study in 2018.

The Portuguese expert expressed support to the European Commission proposal of a new project. Also, the expert highlighted that the IMPEL report provides useful guidance but additional research that goes beyond the scope of the current IMPEL project is crucial. The Spanish expert confirmed the willingness of Spain to collaborate with IMPEL and stated that the project proposed by the European Commission is a good initiative. Furthermore, the Spanish expert enquired whether the European Commission has the intention to modify the ELD in the short or medium or long term, taking into account the European Parliaments’ report and motion for resolution of May/June 2017 and to be debated and voted in Plenary on 26 October 2017 (led by the JURI Committee)¹.

Joachim D'Eugenio replied that the European Commission has no intention to amend the ELD during the current mandate, but it intends to make sure that the ELD’s implementation will improve. However, in 2019 the new Commission will re-evaluate the progress on the ELD and this might trigger the Directive’s review, which will come in the long term but not within this Commission term. He also encouraged the participants to send written comments on that agenda point until end of October.

Action point:

- Written feedback from the national experts on future work on financial security should be provided by the end of October 2017. As resources have not been secured yet or discussed internally in the European Commission, the feedback will be reflected in the current and future work.

4. **ELD Support Contract 2017 to the Implementation of the MAWP**

   a. *Improving the evidence base including an IT tool supporting the ELD implementation – Task 1 of support contract*

Joachim D'Eugenio clarified that this discussion has two dimensions:
- Discussion on the work programme agreed and on finding a common perspective between the European Commission and national experts on how to continue the work. In this case, the experts will have the opportunity to comment on the final product.
- The support contract with the team of consultants will end in November and the European Commission does not intend to ask for approval of the outcome by the national experts. However, the discussion will be important for the future programme.

**Presentation of the work on the assessment framework and discussion of the results for the IT tool and on the way forward**

Joachim D'Eugenio highlighted that the team of consultants have developed an information tool rather than a register. The work covered not only the IT tool, but also conceptual work (framework assessment).

Marta Ballesteros (consultant, Milieu) presented the objectives of the support study, namely to respond to the three barriers identified by the ELD REFIT evaluation. An IT tool prototype to gather the necessary data for the implementation and evaluation of the ELD has been developed. Before developing the IT tool, a conceptual framework was created to identify the key elements that need to be incorporated in the IT tool in order to reflect full implementation of the ELD. The structure of the IT tool is informed by the conceptual framework. Marta Ballesteros presented the main aspects of the conceptual framework and highlighted that the prototype contains data from Portugal which is useful to test the tool. At the moment the data collection for the development of the IT tool is focused on data from 2013 onwards. However, it might be useful to have data from before 2013 for comparison and policy analysis purposes.

Joachim D'Eugenio encouraged the national experts to check the information in table 4 of DOC3 before publication of the report.

The Swedish expert commented on the tables (information supplied on the table already in June to be taken into account; responsible authority in Sweden).

Joachim D'Eugenio suggested that the Swedish expert should directly comment and add the missing information in DOC4 in track changes.

Also the Spanish expert recalled the comments on the Spanish section of April that were not taken into account and noted that the document DOC3 is unbalanced as regards comparable information across Member States. Moreover, he criticised the current wording of DOC4 (transparency issue). In Spain there were 34 cases during 2014-2017 and this information was presented in the Spanish national congress for environment. He also reiterated that if in a Member State there are not many ELD cases, it could be because of preventive measures. The Spanish expert proposed as additional indicators the number of risk environmental analyses...
and the number of financial security instruments. It was agreed that he sends again written comments which will be taken into account in the final version.

The same argument regarding number of ELD cases was also brought by the UK expert. Additionally, the expert mentioned that in some Member States the data might not appear as ELD cases since there is pre-existing legislation regulating the issue. Finally, the UK expert mentioned regarding data collection for the purposes of the IT tool that there is not anymore a specific requirement on data collection under the ELD since 2013, hence the existing data has not been collected and compiled in the way required by the ELD. For instance, in the UK there are many regulators involved in the same territory and they might collect data in different ways, which would make the exercise of compiling this data consistently burdensome. It would be wrong to state that there is no data on ELD cases in the UK because the data is not compiled in the way required by the ELD.

Joachim D'Eugenio highlighted that the purpose of the data collection exercise was to get an overview of what data is available and that the experts are asked to verify that the information presented in DOC3 is factually correct. Nevertheless, the prevention side is taken into account as well in the current prototype and the European Commission welcomes comments on how the prevention part has been taken into account. The Commission needs to underpin everything by evidence and must not pursue a speculation based policy. He agreed that the distinction between "no data existing" and "data not collected" is useful.

The Portuguese expert made the same comment regarding omitted information in the country fiches in Chapter 3.1.1 of DOC3. The German expert agreed with the concerns expressed by the UK, Spain and Portugal and suggested to introduce a paragraph explaining that currently there is no obligation of publishing data on ELD cases and that no conclusions can be drawn on the status of environmental damages from the data availability exercise.

Joachim D'Eugenio agreed with that suggestion and pointed out that the current discussion should be about whether national experts find it useful to compile this information.

Marta Ballesteros replied that all the country fiches in DOC 4 were circulated to the experts back in March for comments and that all responses received were considered and dealt with, which does not exclude that mistakes might have slipped in the text. She stressed that the purpose of the exercise was to clarify how much information was publicly available to make it possible for the consultants to use it to develop and test the IT tool. She also welcomed the suggestion by the German expert to introduce a paragraph to explain this. Concerning the indicators suggested by the Spanish expert, she replied that they were too specific indicators and introducing them would have implied changing all the other indicators and that the comments on new indicators can be useful for the next stage.

Joachim D'Eugenio stressed that the European Commission will make sure that the Spanish comments, including the indicators suggested, will be considered and better incorporated in the draft. This issue will be discussed internally between the Commission and the consultants.

**Action points:**

- The team of consultants will incorporate the comments by the Swedish and Spanish experts in the revised report.
- If the national experts have additional comments or if something has been overlooked, national experts can send their remarks in written form by 10th October.
- The revised report will be circulated for further comments, and changes can be made by the national experts directly in the document in track changes.
Presentation of the IT tools: map viewer, dashboard, country fiche template and registry

Marta Ballesteros highlighted that the IT tool prototype is a smart and light tool, very easy to use and encouraged the national experts to test it and circulate the link to access the prototype to the IT colleagues in the national administrations for validation. It is an open source and therefore can be used by national authorities to gather information on ELD implementation at regional level. She mentioned that feedback on the structure of the IT tool and on the information requested would be welcome. Marta Ballesteros presented the four parts of the IT tool prototype: map viewer; dashboard; template for country fiches; data uploading tool.

She reported that real data made available by the Portuguese authority was used to test the IT tool and that soon Greek data will be made available for the test as well. Data can be uploaded either through a data input form (based on a questionnaire) or by massive upload of documents. Feedback on the best way for national authorities to upload data or to validate data from other sources was encouraged. The flexibility of this IT tool would allow to incorporate other types of data already provided by national authorities, for instance under the Nature Directive.

Discussion on the presentation and next steps

Joachim D’Eugenio thanked Portugal and Greece for their input and stressed the following points before opening the floor for discussion:
- The tool is not developed in isolation just for the ELD but may be a prototype to be used also in other areas, hence multiple forms to get to these data (example of INSPIRE Directive regarding regular information transfer). But it is at the present moment a test exercise and will not be published in the foreseeable future.
- After the support study will be finished, the link to the IT tool prototype will be deactivated.
- The European Commission is extremely interested in receiving feedback from the national experts and other colleagues in the national administrations.
- As the IT tool is an open source tool, Member States are invited to express their interest in re-using the structure and programming to further develop the tool for their own needs. The European Commission will respond to any such requests by Member States; the source code will be handed over at the end of the project.
- There is a strong mandate at the political level to improve the evidence based policy making and promote transparency rather than reporting obligations. Therefore, the European Commission will pursue its work on the development of this IT tool to promote transparency on the implementation of the ELD. The national experts are encouraged to participate in the future work, but consensual agreement is not required.
- The European Commission is in the process of discussion the programme and resources for the 2018 work and Member States have the opportunity to give comments and feedback.

The Portuguese expert mentioned the following in reaction to the IT tool presentation:
- National experts should share their views on the most important aspects: who should be enabled to upload data on the IT tool, which information should be uploaded, who should have access to the IT tool, where should cases be geographically located, and what information should be mandatory.
- Any information to be given should be mandatory and publicly available from the Portuguese perspective but the exact geographic location of ELD cases should not be
provided as this is not envisaged to be reported under the ELD and constitutes a sensitive issue. Rather, it should be a broad geographic area, not clearly identified by geographic coordinates and the information should be called incident and not ELD case.

- Other layers, in addition to the Birds and Habitats Directives, could be added to the map layers (e.g. water bodies).
- Reporting periods should be harmonised across Member States and it should be decided which period to cover in the IT tool; however, including information on the past period from 2008 on would enable comparison and therefore would be useful.
- Regarding the data uploading tool, the information not required by the ELD should not be mandatory, e.g. name of operator, administrative costs, description of financial security.

Joachim D’Eugenio replied that the European Commission is keen on pursuing the work on the IT tool as a means for data gathering, yet it is not decided by the Commission how to further develop or to use it. Therefore, the comments will be relevant if it is decided to adopt the IT tool. For the year 2018, the European Commission might decide to have workshops about the tool, for instance workshops with a group of Member States to allow for tailor-made discussions. Bilateral cooperation with Member States on a voluntary basis is envisaged to further work on the IT tool.

The Finnish expert mentioned that in Finland there are very few ELD cases, but Finland is interested in the progress of the IT tool to be used for other types of incidents. The Spanish expert mentioned that an IT tool would be useful, bearing however in mind that there is no reporting obligation, and he suggested that the mandatory information in the IT tool should be linked to an amendment of the ELD to make reporting on certain aspects mandatory. Information on non-ELD cases should be handled with care.

Joachim D’Eugenio replied that the Commission is trying to join forces with stakeholders to obtain information that is useful for all parties. He disagreed that Member States will not share information if it is not mandatory under the ELD. An issue to be taken into account is that insurance companies, for instance, have a lot of information but it is not clear how it could be shared. He encouraged the national experts to read the document published in June by DG Environment about reporting requirements and transparency. He highlighted that environmental data should be in the public domain, without any reporting requirements.

The Dutch expert mentioned there are already a lot of data in the public domain and also under other EU directives, but now additional data from the Member States are required that however are not covered by the ELD. The German expert mentioned that the precautionary approach is good but it represents a very complex task, as it is also linked to the overall system of compliance. Joachim D’Eugenio replied that it is indeed planned to link the ELD to other work of the European Commission. One part of the action plan of the compliance assurance is the idea to set up a European compliance assurance forum, and how this can be linked to ELD would be a question.

**Action points for the short-term**

- DOC 3 will be updated and sent to the national experts, which can send their comments by 10th October. After the new version of the document will be circulated, the national experts will have one week to comment, particularly on the parts of the relevant country. Based on the national experts’ comments, the consultants will finalise the document.
- The prototype of the IT tool is almost finished and will not go through major changes at this point, but comments from national experts will be taken into account as far as possible if sent up to end of October.
**Long-term operational plan** (outside the scope of the support study):

- The European Commission will explore the further development and use of the IT tool in 2018. Alternative data sources and the use of the IT tool at national level will be explored and in this process, comments by national experts are welcome, e.g. on which type of data is needed.
- The European Commission will explore further the precautionary and prevention dimension of the ELD, following comments at the Stakeholders Workshop and the Expert Group meeting.
- Practical questions about the IT tool (e.g. the comments made by Portugal) will be explored, should the IT tool be used.
- Concerning operational aspects for the work in 2018, the European Commission suggested having smaller drafting group sessions or workshops with those national experts that are interested and willing to explore the development of the IT tool and above-mentioned questions. In parallel, the European Commission could have a series of bilateral meetings (DG Environment and national authorities) to further look at specific issues.
- The European Commission is keen on having contact with other stakeholders, e.g. insurance, NGOs and exploring alternative data sources. For this purpose, it envisages to develop a set of questions.
- The content of country fiches can be explored further to present the existing information on the ELD in a more effective way.
- The European Commission would like to present the progress on the ELD in 2019. There will be a discussion with the national experts on the content of the new ELD webpage by the end of 2018.

**Presentation of the new P2P instrument in EIR**


Andreas Versmann mentioned that, as part of the Environmental Implementation Review (EIR), the European Commission published in spring 2017 28 country reports summarising the state of implementation of environmental legislation of each Member State, highlighting challenges and opportunities for improvement.

The objective of the P2P tool is to help sharing the existing expertise and current good practices in certain sectors of implementation of EU environmental law with other Member States. The P2P tool covers all sectors included in the EIR country reports. The tool finances and organises mainly the expert exchanges for short-term activities, e.g. organisation of workshops and study visits from one Member State to another. This tool is demand-driven, i.e. it is used upon Member State’s request. All governmental authorities can access the P2P since the tool is designed for sharing expertise between public authorities. In principle, only public officials are eligible to provide support but private experts are not excluded, they would however be used only if public experts are not available and they can be reimbursed only for travel and accommodation expenses. Andreas Versmann encouraged the dissemination of information on this tool in national networks.

Presentation of the work of the drafting group, results of the stakeholder consultation in July/August and of the stakeholder workshop

Katherine Salès (consultant, Deloitte) presented the objectives of the Common Understanding Document, the methodology adopted, and the recommendations for each key term analysed. It was stressed that the Common Understanding Document is not an authoritative document and does not represent the official view of the European Commission. Katherine encouraged feedback from the national experts on the recommendations, as well as on the additional terms and concepts (in particular whether these terms are relevant or not and why). Joachim D'Eugenio commented that it will still be internally discussed whether and how this work should be brought forward further.

Discussion on DOC5

The Swedish expert had a question on the term 'mitigation ground' (why this term on page 39 of DOC5 was used for Sweden as the only country). The Dutch expert had a remark concerning land damage on pages 32-33 (some Member States have already those limit values, so best practices could be mentioned). Concerning the recommendation on human health, it was stressed that it would be an additional administrative burden to have a human health risk assessment after the limit values are already set.

Hans Lopatta replied to the Swedish comment (mentioned in all official documents so far, starting by the official position of Sweden to describe their different system used) and replied to the Dutch comments that the ELD indeed refers to "human health risks" only.

Concerning the additional list of key terms and concepts, the UK expert mentioned that in the drafting group it was clear that these terms and concepts should not be analysed further.

Action points:
- Additional written comments on DOC5 are welcome by 10th October 2017.
- The introduction of the report will be updated to reflect the fact that the support study is going on until November.
- A limited number of changes will be made in the text based on stakeholders’ comments, while an additional section should be added to reflect stakeholders’ comments. The document as it stands now is the product of work of consultants taking into account national experts and the stakeholders’ views.
- After receiving the comments from the national experts, the consultants will finalise the document and send the final version to the European Commission in November.

Discussion on the next steps

Joachim D'Eugenio stressed that the European Commission wants to achieve consistent implementation of the ELD across Member States. To achieve this objective, three options to make use of the Common Understanding Document, prepared by the team of consultants, were suggested:
1) The final version of the Common Understanding Document (DOC5) would be published in English as a document prepared by the consultants, but without the additional list of key terms, as suggested by the UK. Although the document received internally by the European Commission from the consultants will include the additional terms, the
published document would not include them. This document could be shared with national authorities.

2) Based on the CUD (DOC5), the Commission and the ELD government experts could revise and modify the document. This document could for example be shorter and reflect only the recommendations of DOC5. This may not require much more work, and it could be adopted in accordance with the rules of procedure of this group under the MAWP at one of the next expert group meetings as a guidance document resulting from a joint cooperative work between the European Commission and the Expert Group with the objective of achieving better common implementation and interpretation of the ELD.

3) The European Commission could prepare a more authoritative document (with its own logo) reflecting only the view of the European Commission. This would be an interpretation of the ELD as adopted officially by the European Commission. However, this would not imply further consultation with the national experts.

Several national experts, namely from Portugal, Germany, Spain, expressed their will to think more about the implications of the different options proposed and the relative consequences of each option. The Portuguese and Spanish experts agreed with the position of the UK on the additional key terms in DOC5. The German expert highlighted that in case of option one, the document would simply be shared with national authorities; in case of options two and three the document might become a reference for Court cases. The Dutch expert asked clarification on why the Expert Group could not work on the document, under option one. Joachim D’Eugenio clarified that while under option 1 the European Commission was not asking for the endorsement of DOC5 by the Expert Group, under Option 2 the guidance document would be open for endorsement by the Expert Group.

**Action points:**

- The European Commission acknowledged that the national experts need more time to think about the three different options and welcomed future feedback in written form by the end of October 2017 about their views on next steps and the different options.
- The national experts should let the European Commission know about further areas of work for 2018 by the end of October 2017 in written form.

**c. ELD Training and Capacity Building measures – Task 3 of support contract**

**Presentation of the results of the ELD Training and Capacity Building activities including the survey**

Marta Ballesteros presented the results of the analysis regarding existing ELD training and capacity building initiatives as well as possible alternatives to improve the ELD training.

Joachim D’Eugenio clarified that no decisions will be made today, but that the document provides a solid basis for the further work and apart from updated training material the P2P tool presented earlier will contribute until then to capacity building.

The Greek expert mentioned incorrect information about the questionnaire in Greece (provided on page 8 of DOC6) and will send that to the consultants. The Portuguese expert mentioned that the Portuguese contribution to the survey of April is not reflected in the document and should be updated.
**Action points:**
- The consultants will check the parts where national experts expressed doubts or criticism and update the document.
- Comments from national experts are welcome in written form by 10th October. The European Commission will then share the final version of DOC6.
- The European Commission will come back to the training issue. At the moment, the P2P tool can be used by the national authorities. Feedback on P2P tool is also welcome.

5. **ELD Multi-Annual Work Programme 2017–2020 (MAWP – Action Plan following the REFIT evaluation)**

The ELD Multi-Annual Work Programme (MAWP) 2017–2020 is already available online. The European Commission proposed to update the MAWP in the light of the discussions with the Expert Group. However, no specific comments were made during the meeting. Hence, it was proposed to allow for written comments and aim for a more comprehensive update in autumn 2018.

**Action points:**
- The national experts are invited to comment on the current version of the MAWP in written form, according to point 9 of the rules of procedure.
- A more comprehensive review taken account of these comments will be foreseen in the second half of 2018. Hence, the revision of the MAWP will be put on the agenda of the next Expert Group meeting.


Joachim D’Eugenio highlighted that rules of procedure are obligatory for all new Commission expert groups. The current version for discussion follows the official format agreed between the European Commission and the European Parliament. The intention was to put forward these rules of procedure for endorsement.

During the discussion, Joachim D’Eugenio explained to the Dutch expert who made a reference to the standard rules which refer to calendar days rather than working days that using working days is more advantageous to the experts than calendar days as public holidays are different across Member States, that the timeline is related to documents where it is expected to get views from the experts and that the Commission is in any case committed to prepare and send out all documents as early as possible, but is up to the national experts to decide. The Danish expert asked about the rules for voting and how the experts would know whether a vote on an issue is intended or not. Joachim D’Eugenio replied that every time that an agenda item requires the opinion of the expert group in line with point 5 of the rules of procedure, this will be indicated in the agenda item. The Dutch expert asked clarification about the points 16 and 18 of the rules of procedure about public meetings and observers. Joachim D’Eugenio replied that issues of public interest can be web streamed or open to the public, the experts should be informed in such case. The involvement of observers or experts participating on ad-hoc basis is also possible. However, the Commission intends to continue the current setting of carrying out workshops with the stakeholders separately from the meeting national experts.

In conclusion, the Expert Group endorsed the Rules of Procedures unanimously without amendment. Beyond the standard provisions in the rules of procedures, the Chair committed
himself that for the purpose of the ELD Expert group, documents will be circulated more in advance than what is stated in the standard rules of procedure as much as possible (i.e. 10 working days, in particular for documents where the experts are required to provide an opinion or endorsement). Moreover, the Chair is committed to continue working with the Expert Group on a consensual basis.

7. **Information topics (DOC9)**

1. **Information from Member States**

   There was no communication by the national experts on new important developments at national level.

2. **Update on ELD implementation resolution of European Parliament**

   The JURI and ENVI Committees of the European Parliament adopted a motion for a resolution. All amendments have been adopted by the Committees. The adoption by the Plenary of the European Parliament is expected for October or November 2017 (it was adopted on 26th October). Although the European Commission will take an opinion on the European Parliament resolution, it is clear that the Juncker Commission will not amend the ELD.

   **Action point:**
   - The European Commission will send the final EP resolution once it will be adopted.

3. **Update on transposition of Article 2(1)(b)(ii) ELD (damage to water)**

   The situation on the extension of the definition of water damage in the ELD is unchanged compared to the 17th ELD Expert Group meeting, i.e. the Commission will launch a Pilot request concerning the six coastal Member States that have not transposed the amendment.

4. **Update on open conformity assessment cases**

   One Member State has adopted the final missing legislation and the case will be closed soon. Two other cases will probably also be closed; thus the open non-conformity cases would drop from seven to four.

5. **Preliminary judgements of the Court of Justice of the European Union:**

   i. Judgment of 1st June 2017 in Case C-529/15 (Gert Folk vs. Unabhängiger Verwaltungssement für die Steiermark)

   ii. Judgment of 13th July in Case C-129/16 (Türkevi Tejtermelő Kft. vs. Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség)

   In both cases, the European Court of Justice (ECJ) has provided interesting judgements. The experts are encouraged to look into these as they represent an authoritative interpretation of the ELD. The Austrian judgement is relevant as regards the interpretation of water damage in combination with permitted activities and regarding the interpretation of 'enabled persons' pursuant to Article 12(1) ELD. In the Hungarian preliminary ruling case the interpretation of the polluter pays principle by the ECJ deviates from the previous Italian preliminary judgements, and also the view on damage to air may raise interest.

6. **Work by Justice & Environment on ELD implementation**
The NGO prepared a case study on six countries, with recommendations on better implementation and it published on its website a new opinion document on the MAWP of the European Commission.

8. AOB

Joachim D’Eugenio suggested making a tour the table about Member States’ developments during the next meeting. At the end of the year, the European Commission will send two tentative dates for the meetings next year. One meeting will take place before summer (e.g. April) and another one in autumn.

SUMMARY OF ACTION POINTS AND CONCLUSIONS

- The European Commission will further explore the potential of developing the ELD IT tool. However, the level of ambition will be considered and possibly the tool will develop gradually.
- For the preparation of the ELD information tool, several questions need to be addressed as highlighted during the discussion with the national experts:
  o Availability of and access to information at national and sub-national level and their use, being conscious about potential additional administrative burden.
  o Exploring the use of the tool by national authorities for their own purposes.
  o Identifying in more detail and exploring possible access to “alternative” data sources (such as from industry, NGOs, media, etc.).
  o Increasing the precautionary dimension (including what was sometimes referred to as “prevention” by the national experts) in the evidence base work.
  o Answering practical questions (e.g. uploading data, access rights, data fields covered, presentation of information etc.).
  o Design and use of country fiches.
  o Other questions and concerns, raised by the national experts and stakeholders.

- In 2018, the ELD work will continue in several strands, including:
  o Possible one or two workshops or drafting groups with those national experts that are interested and willing to explore the above-mentioned questions.
  o A series of bilateral meetings to look at the issues and the possibility of working together on these issues.
  o A set of exchanges or meetings with stakeholders, e.g. insurers, operators, NGOs, academia, to explore alternative data sources. The outcome of these contacts will be reported back to the ELD Expert Group.
  o Preparation of simple country fiches compiled from readily available information at Commission level, without new statistics and figures.

- The overall aim of the exercise is to present a simple version of structured information linked to, but not exclusively stemming from the ELD by 2019 at the latest.
- This will go hand-in-hand with an update of the Commission’s ELD web page which will present also the other results of the MAWP (common understanding, training material, etc.)
The Commission aims to elaborate this in close cooperation with those Member States of the ELD Expert Group that are interested. At the same time, some Member States have already indicated that they will not want to contribute to this action.