INFORMATION DOCUMENT ON ELD, RELATED POLICIES AND DEVELOPMENTS

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1. EP Own ELD Implementation Report

The European Parliament (EP) will issue an own report on the implementation of the Environmental Liability Directive. The responsible EP assigned for this task is the Committee for Legal Affairs (JURI) in association with the Committee for Environment, Public Health and Food Safety (ENVI), which will provide an opinion to the JUEI Committee. The work will include studies, contacts with experts and also fact-finding missions. An exchange between the JURI Committee (rapporteur: Laura Ferrara) and DG Environment took place on 29 November 2016. An exchange with the rapporteur of the ENVI Committee Benédék Jávor and DG Environment took place on 10 January 2017. Points of interest may inter alia be: financial security including industry fund, scope of the ELD (strict liability, environmental damage), significance threshold, uneven level of implementation in the MS. It is planned to adopt the draft report in the JURI Committee on 12/13 July 2017.

2. Transposition of Article 2(1)(b)(ii) ELD

With reference to the Commission note (ENV D4/ENER B4) circulated to ELD and OSD government experts of 14 July 2015 regarding transposition of Article 38 Offshore Safety Directive 2013/30/EU (OSD), we would inform you that the conformity assessment of the transposition of the OSD has been completed in autumn 2016. The assessment revealed that some Member States have not yet transposed Article 38 OSD concerning the amendment of Article 2(1)(b)(ii) ELD (extension of the definition of damage to water). Follow-up action will be launched soon by the Commission for those coastal MS where no notification or evidence of transposition was obtained by the Commission (BE, LT, LV, PL, SE, SI).
3. Conformity with ELD

The current state of the follow-up action taken by the Commission according to the results of the conformity assessment shows that seven Member States have still some non-conformities in their national legislation transposing the ELD (AT, BE, CZ, DK, HR, LT, UK) but 21 Member States had either completely compliant transposition in place or brought afterwards their legislation in full compliance within the Pilot or NIF cases. Most problems in the transposition relate to the definitions (Article 2), cost defences (Article 8) and request for action/review procedure (Articles 12, 13). The Commission endeavours to solve the last remaining problems together with the Member States concerned as soon as possible.

4. Requests for Preliminary Ruling

Case C-529/15, Gert Folk vs. Unabhängiger Verwaltungssenat für die Steiermark:

This case was referred to the Court of Justice of the European Union (CJEU) by the Austrian Verwaltungsgerichtshof in 2015. It concerns the negative effects on fish populations in the river Mürl through the operation of a hydroelectric power plant which was authorised in 1998 and put in operation in 2002. After a hearing before the CJEU in November 2016, General Advocate Bobek provided his Opinion on 10 January 2017: http://curia.europa.eu/juris/document/document.jsf?text=&docid=186676&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=632476

Case C-129/16, Túrkevi Tejtermelő Kft. vs. Orszagos Környezetvédelmi és Természetvédelmi Főfelügyelőség:

This case was referred to the Court of Justice of the European Union (CJEU) by the Hungarian Szolnoki Közigazgatási és Munkaügyi Bíróság in 2016. It concerns the damage to the environment caused by the incineration of municipal waste in a plant. No hearing was set.


5. Environmental Implementation Review

The objective of the Environmental Implementation Review (EIR) is to support delivering the objectives of existing EU environmental policies and legislation. The EIR process should be inclusive and participative, flexible and in synergy with existing work on environmental implementation. The plan is to publish country-specific reports every two years focusing on essential topics in the area of environmental legislation. Based on the reports high level discussions in the Environment Council are envisioned on significant implementation gaps common to several Member States. The country reports will be discussed bilaterally with the Member States.
Discussions with Member States and stakeholders also take place in the Expert Group 'Greening the European Semester / Environmental Implementation Review' which meets twice per year, normally in January and September. Adoption of the first set of 28 country reports, as well as a Communication analyzing the common challenges across the Member States, and an Annex putting together all the suggested actions to the Member States which are in the country reports, is expected to be published early February 2017. The ELD is part among many environmental policies in the country reports. The focus of this first exercise was on ELD registries and financial security.

6. **LIFE Funding for Governance Projects**

LIFE is the EU’s financial instrument supporting environmental, nature conservation and climate action projects throughout the EU. Since 1992, LIFE has co-financed some 4306 projects. For the 2014-2020 funding period, LIFE will contribute approximately €3.4 billion to the protection of the environment and climate. Since 2014 a new thematic strand on governance and information has been introduced, which is targeting awareness-raising, encouraging stakeholder participation, developing capacity building, providing environmental training and creating greener skills. The governance strand covers inter alia also an ELD-related topic under "governance and enforcement":

"Awareness-raising on the Environmental Liability Directive (ELD) for industrial operators, loss adjusters, risk assessment experts, decentralised competent authorities (in Member States where the designation of competent authorities is at local or regional level), and environmental NGOs, with regard to the rights and obligations of each stakeholder group." Within the next half a year the topics will be reviewed. Any suggestions are welcome. Applications are open to private companies, NGOs and public bodies/authorities and joint ventures. Applications for next year can be submitted as of September. More information available on the website: [http://ec.europa.eu/environment/life/](http://ec.europa.eu/environment/life/).

7. **HNS Convention**

The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, ('1996 HNS Convention') is one of the exceptions to the scope of the ELD according to Article 4(2) and Annex IV of the Directive – the one of the maritime liability conventions listed in the Annex not in force yet. The 1996 HNS Convention was aimed at ensuring adequate, prompt and effective compensation of persons who suffer damage caused by spills of hazardous and noxious substances, when carried by sea. The Protocol of 2010 to the 1996 HNS Convention contained necessary amendments to address problems identified in the 1996 HNS Convention. The 2010 Protocol and the provisions of the Convention are to be read, interpreted and applied together as one single instrument ('2010 HNS Convention').

Neither the 1996 HNS Convention nor the 2010 Protocol to the HNS Convention have entered into force. Therefore, the Commission launched the process to ratify the '2010 HNS Convention' two years ago¹. The Council in 2015 changed some points in the draft

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Council Decision prepared by the Commission, and following that, the European Parliament adopted Resolutions on 8 June 2016, largely following the original Commission proposal. The Council however refused to respond to the EP Resolutions, on procedural grounds related to the nature of the consent procedure (Article 218(6) TFEU), and the EP is now considering finalising its decision on giving consent to the two relevant draft Council Decisions. The rapporteur is expected to give his recommendation thereon to the Legal Affairs (JURI) Committee in February 2017, and the Committee is expected to vote on this recommendation at its March meeting, leading to the EP Plenary of April 2017 for a final decision on giving consent. The Commission continues to support ratification of the 2010 HNS Convention by all EU Member States in the interest of the Union, and has been actively following the international discussions to facilitate entry into force of the 2010 HNS Convention in the International Maritime Organisation.

8. IOPC Guidelines

Following up on the findings in the ELD REFIT evaluation as regards the difference in remediation standards between the ELD and IMO Conventions,² the Commission participated in the development of IOPC guidelines for presenting claims for environmental damage which are meant to complement the existing 1992 Fund Claims Manual (revised in 2013). Both of these instruments (i.e. Guidelines and Claims Manual) are non-binding, and are aiming to clarify the scope of environmental damage in the CLC and IOPC Funds Conventions. In particular, after having considered the latest draft guidelines with the support of an external expert (Edward Lockhart-Mummery), and after having informed the Member States of the intention to communicate to the IOPC Funds Secretariat comments on the draft guidelines for environmental damage claims, the Commission submitted its comments to the IOPC Funds recently. The Commission welcomed the initiative as a very positive development and emphasized the opportunity to work together in order to share experience, case studies and good practice, and offered some comments for further improvement of the guidance offered to claimants presenting claims for environmental damage.

² "The remaining issue consists therefore only in the fact that the maritime conventions provide at present only for primary and complementary remediation of damage to the environment, as well as preventive measures, while the definition of relevant damage is narrower than in the ELD. This issue could however be addressed by non-legislative means, in particular through working towards a common understanding closing the gap between the conventions and the ELD in that regard. For instance, the IOPC Funds have revised their 'Claims Manual' in 2008 to include under 'environmental damage' measures to re-establish a biological community in areas affected by an oil spill in order to enhance the natural recovery, as well as the cost of post-spill studies (see Claims Manual 2008, Section 3.6), and similar developments are envisaged under other conventions, e.g. the HNS Convention. These developments are encouraging with a view to bridging the current gap as regards the level of the remediation standards between the conventions and the ELD."