Background
The 7th ELD Stakeholder Conference was organised as a series of four webinars due to the COVID-19 crisis and travel restrictions. Each day was devoted to a specific topic which was discussed in the morning until the lunch time. On 18 November, the 23rd ELD Government Expert Group meeting took place, also online. The new ELD Multi-Annual Rolling Working Programme (MARWP) has been adopted during the latter meeting. The MARWP was then presented to the audience of the Stakeholder Conference during the last webinar on 20 November.

The purpose of the conference was to exchange views on the ELD implementation, present the draft Commission Guidelines on environmental damage and to share findings of recent studies that are aiming at collecting evidence on ELD implementation in the Member States (MS).

Monday, 16 November
The Conference was opened by Robert Konrad, the Head of Compliance and Better Regulation Unit at DG Environment who welcomed the participants and explained the meeting structure. He mentioned a long tradition of stakeholder conferences and a growing importance of ELD in the MS’ legal systems.

Hans Lopatta of DG Environment continued the webinar and introduced the theme of the day which was financial security. This topic has been discussed during previous Stakeholders’ meetings. This time, the presentation is focusing on challenges of ensuring financial guarantees for unforeseen events and analysing some national experiences. The aim is to reveal a more solid, evidence-based update on financial security, to see practical problems and to evaluate options to improve the practice. Mr. Lopatta welcomed Professor Fogleman, Consultant at Stevens & Bolton LLP and Professor of Law at Cardiff University School of Law and Politics, who has been carrying out the most systematic research so far on the financial security issues. Valerie Fogleman presented the main findings of the Financial security study 2019-20. She highlighted the challenges of preparing the first comprehensive European study on financial liability and mentioned that legal obligations of financial security do not exist in all Member States. Professor Fogleman compared the European system with the US Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and also mentioned examples from Australia and Canada which introduced innovative approaches to environmental liability.

The experience in Europe suggests that the operators, especially small and medium-sized enterprises (SMEs) do not understand properly financial guarantees and the relevant insurance policies. Some of
the conclusions point towards introducing a mandatory insurance regime for ELD liabilities in Europe, but doing so appears to be premature. In addition, an EU-wide fund for covering the expenses of major ELD cases could be established, but it would be also premature due to the absence of relevant insurance policies in all MS. At the same time, raising awareness, especially amongst SMEs about the ELD, as well as more general corporate environmental risk preparedness and management would be beneficial.

The presentation was followed by a discussion and Valerie Fogleman was asked to define environmental liability. There are many definitions and the ELD covers many different areas.

The question was raised on liabilities under the ELD that are not supported by insurance products. Valerie Fogleman responded that they were all supported by stand-alone environmental insurance policies for larger companies with operations in more than one MS. However, none of them are truly supported by environmental extensions to general liability or property policies. In some MS yes, but only to a very limited extend (with the exception of Austria and Germany for extensions to general liability policies). If there is no demand in a MS to create stand-alone environmental insurance policies for ELD, even the largest insurance company in the country will not create such products.

Professor Fogleman was asked whether there was a sharp definition to distinguish environmental liabilities from environmental responsibilities in her presentation. She responded that in most MS there was and that she was impressed by the system in Ireland which has a hybrid system with mandatory financial security for ELD liabilities as well as for environmental responsibilities. There is a sharp distinction between the two, however it does not mean that there cannot be some of the same products for both environmental liabilities and environmental responsibilities.

Following the Q&A session, Professor Fogleman presented an ongoing follow-up study focusing on facilitating the enforcement of ELD. The major goals of this ongoing study are:

- enhancing the evidence base about the practice of the ELD on national level,
- increasing the actual use of the Directive, rather than relying on the old environmental liability rules, and
- improving the financial security measures.

By April 2013, 11 countries had not reported any ELD cases and a half a dozen further countries reported only a few. Greece and Germany reported 50-60 cases, while in Italy, Poland and Hungary there were several hundreds. The key factor in this extremely diverse distribution of ELD cases across the EU is certainly the lack of knowledge about the ELD by the competent authorities and even if the knowledge exists, a lack of sufficient resources. There are significant parallel laws both at the national level (land, water, and biodiversity laws) and at the EU level (primarily the Birds and Habitats Directives and the Marine Strategy Framework Directive, the Water Framework Directive, the Offshore Safety Directive, the Industrial Emissions Directive, and the Seveso III Directive).

The presentation was followed by a lively Q&A session. The question was raised whether the issue was rather regarding awareness about environmental issues than access to insurance products. Valerie Fogleman responded that it was both and that they reinforce each other in a circular manner.

The following question was which types of liabilities were insured under policies in Germany and Austria and what their limits were. Professor Fogleman responded that they were not stand-alone insurance policies for ELD but extensions to general liability policies, and that they were available in both MS. The demand for stand-alone environmental insurance policies is very low in these two countries, because of the excellent extensions to general liability policies.
A question from Hungary was raised on the apparent high number of cases (563) under ELD; does it mean that Hungary pollutes more? Valerie Fogleman responded that there were many factors. One of them is more stringent national ELD legislation in Hungary than in many other MS. Another is the sectoral legislation and its application which differs across the EU. Some countries tend to apply sectoral legislation rather than the ELD regime on environmental damage.

Following the Q&A session, Professor Fogleman introduced the four topics of discussion in the breakout groups, organised after the coffee break. The conclusions from each working group are summarised below.

**Working group 1 topic:** the ELD has improved the prevention and remediation of environmental damage but has only done so to a limited extent compared with the situation before it was transposed into Member State law between 2007 and 2010. What can - or should - individual Member States do to improve the situation?

The group concluded that the effectiveness of ELD is hard to measure, but that the ELD contributed to better prevention. Both the aim to prevent and the legislation drove the implementation of risk assessments to prevent incidents and to make operators aware of the risks. In some Member States such as Spain, mandatory risk assessment contributed to a greater awareness and loss prevention.

The mandatory risk assessment and the implementation of the ELD improves the motivation of the operator to take prompt action and to organise an immediate incident response to prevent escalation of the circumstances. This is not only fuelled by the liability legislation and/or ELD liabilities and responsibilities, but also by the general consideration to protect the environment and address climate change.

The immediate incident response limits the number of cases that reach the significant threshold. It also implies that less ELD incidents are reported as a result. In countries where notification procedures are in place, the immediate response ensures, to the extent possible, that the reported incidents do not reach the significant threshold. The operators aim at avoiding incidents leading into a case triggering the ELD legislation.

The risk management approach and the related access to financial security, such as insurance, result in a reduction of potential incidents exceeding the significant threshold.

**Working group 2 topic:** competent authorities in some Member States are continuing to implement national environmental liability law instead of the ELD even when the ELD should be implemented. What should the Commission and Member States do so that competent authorities implement the ELD in such cases? Can you recommend any best practices that competent authorities or individual Member States have adopted?

The competent authorities are sometimes too accustomed to the old sectoral environmental protection laws. The ELD was not created in vain, it aimed at addressing problems in narrow sectoral liabilities and reinforcing the polluter pays principle. National ELD laws seem to be too complex and, in several aspects, not easy to understand by those who are supposed to apply them. The significant threshold is sometimes understood in a sense that the ELD laws would apply only in cases of large environmental disasters.

The lack of use of ELD is reinforced with a lack of financial security tools and environmental insurance. One solution could be a better integration of ELD laws into national sectoral laws. Better public participation and capacity building efforts should be supported, as well as the cultivation of the ELD related topics by the scientific community, the media, and the interested community,
forming an effective network that would support better implementation of ELD laws at the national level.

**Working group 3 topic:** Ireland has successfully introduced a hybrid system that includes mandatory financial security for ELD liabilities and environmental responsibilities under the Industrial Emissions Directive (IED) that are not required by the IED itself. Should other Member States that have not introduced mandatory financial security for ELD incidents introduce such a hybrid system? If so, what should it include?

Central and Eastern European operators and lawyers themselves have difficulties with the interpretation and the use of ELD. This group decided to discuss the mandatory insurance issue in general rather than the system in Ireland. The group found mandatory insurance a good idea, however, there are limitations in a sense that only very risky operators would be covered. Other operators would fall outside of the system.

**Working group 4 topic:** should Member States introduce secondary liability in their corporate law for directors and officers if their company fails to remediate damage caused by it? If so, why? If not, why not?

Overall, there is a lack of data on environmental liability. The information available does not point in the direction that secondary liability would be the best option. It would be very unlikely that judges would hold the directors responsible, unless there was a specific duty violated by the directors (e.g. in France, environmental duties do not have such a status currently). The application of the ELD is complicated by different regimes and it is not always clear under which regime the case falls (ELD or national civil liability). Even after deciding which laws to apply, there is a danger that some damage will not have been dealt with.

The conclusion of the group was that it would be good to have secondary liability, but it would be very hard to demonstrate the need for it, particularly in countries that have a robust system such as Ireland. In addition, the group mentioned the cost of introducing such a system, particularly under the current circumstances.

Following the presentation of each group’s rapporteur, Hans Lopatta closed the first webinar, thanking the participants for their valuable diverse opinions.

**Tuesday, 17 November**

The second webinar was opened by Hans Lopatta who introduced the topic of the day, ELD Guidelines on environmental damage, developed by the European Commission. Mr. Lopatta continued with the first part of the presentation and mentioned that the complexity of the ELD required the development of such guidelines that aim at improving the implementation of the Directive. The version available at the time of the event can be found on the conference web site: https://ec.europa.eu/info/sites/info/files/7th-eld-sc-201117_draft-commission-notice_eld-guidelines.pdf.

Some concepts and definitions are still not well understood and the ELD REFIT evaluation pointed out to the need to develop tools that would enhance better understanding of certain key concepts. The Guidelines are an explanatory, analytical and contextual document, but will not represent an authoritative interpretation of the ELD, which is the prerogative of the European Court of Justice.
The Guidelines will be adopted by the College and will be binding only for the Commission. Following several drafts and consultations both internally and with a range of stakeholders and experts, the document is expected to be available in January or February 2021.

Liam Cashman of DG Environment continued the presentation describing the consultation process. The Commission launched the consultation process over the summer targeting 300 interested parties. Approximately 200 submissions were received with more than 20 detailed comments, focusing on specific points. These comments were included into the subsequent drafts, and discussed further with national experts and Commission services.

Hans Lopatta continued the presentation reiterating the importance of the definition of environmental damage. In interpreting the definition, the Guidelines begin with the environmental policy principles, i.e. the polluters pay principle and the precautionary principle (acknowledged in two EUCJ decisions), the preventive principle, and the principle of rectifying environmental damages at the source, as well as the general proportionality principle applicable throughout all EU law. Mr. Lopatta presented the main obligations under the Directive and the basic concepts of damage.

Following the first part of the presentation, a Q&A session was opened for the participants who wanted to know how was the precautionary principle reflected in the Guidelines?

The presenters responded that the precautionary principle was at the heart of the EU environmental policy. Mr. Cashman explained that the proposal is made in the Guidelines to look at precautionary principle before the obligations of ELD apply. An operator starts to have an obligation from the time of an imminence of environmental damage. For economic operators who have activities with an intrinsic risk, it is reasonable to take a precautionary approach (e.g. to carry out risk assessment so that it does not even come to the case where they would be confronted with imminent damage). That is not a legal requirement of the Directive but it creates this incentive.

When the damage becomes imminent and the full facts are not known yet, it is essential to react quickly. Preventive action that needs to be taken at the stage when the full information is not available yet is also considered precautionary.

The question was raised whether the climate change, which more and more leads to natural phenomena of inevitable character, belongs under Article 4(1)b of the Directive. Hans Lopatta explained that Article 4 defines exceptions to the ELD and that Article 4(1)b says that the Directive shall not cover environmental damage of ‘a natural phenomenon of exceptional, inevitable and irresistible character.’

However, this definition is shifting as events that were considered exceptional, some decades ago are no longer considered as such. Therefore, there is a need to apply more flexible understanding.

Another participant asked what the meaning was of ‘personal’ and whether building a campsite would fall under the ELD provisions. Mr. Lopatta answered that the whole camping side, if it was close to a Natura 2000 site and of a permanent character, might be covered by Annex III of the Directive, and if the activity was affecting protected species or natural habitats in a negative way.

A question on damage resulting from approved operations was raised by the participant. Hans Lopatta responded that most damages occur because of approved operations. Hazardous activities listed in Annex III of the Directive are approved and need authorisation.

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There are several exclusions when it comes to damage to protected species and natural habitats. There are specific exclusions from adverse effects that would result from authorisations given under the Nature Directives. The authorisations must be valid under the Nature Directives and occupational activities must be executed in accordance with them. The same principle applies for specific water authorisations under the Water Framework Directive.

Mr. Cashman further explained the notion of natural damage in his presentation which was concluded with water damage and land damage presented by Mr. Lopatta. Another Q&A session followed which was opened by a question on climate change and whether an operator could be held liable for the tundra thawing occurring now. As such, climate change is not covered by the ELD. However, if the area such as a river is already vulnerable because of the climate change than that situation has to be taken into account when assessing the baseline, should the damage occur.

The speakers were asked to elaborate on the local scale when assessing damage to protected species. Mr. Cashman responded that the Habitats Directive clearly indicated the necessity of a localised notion of damage to habitats and species, such as breeding sites of protected species. The reference concept of favourable conservation status means that the damage should be assessed not only at the local level but also in a larger context (e.g. regional, national or EU level).

A question was raised on considering UNCLOS in judging the application of ELD on the continental shelf. Mr. Cashman responded that this refers to the text on protecting natural habitats and species. Regarding the scope of this category of damage, a reference is made to the exclusive economic zone and the continental shelf. The text was taken from the guidelines on the application of the Nature Directives. This interpretation is consistent with UNCLOS (United Nations Convention for the Law of the Sea).

The Guidelines are based on the Commission interpretation, including, where possible, the CJEU judgements. One participant wanted to know how the Guidelines would be updated with the future Court rulings. The speakers responded that the Guidelines would be updated and that there were other ways of keeping up with the European Court rulings such as a Q&A section at DG Environment web page. The Commission can publish an explanation linking the new rulings with the existing Guidelines, as it was done in case of Access to Justice.

Liam Cashman concluded the Q&A session by answering a question on what constitutes water damage. When looking at reference concepts in the Water Framework Directive (WFD) such as the ecological status, there are many components included in it. If there is a damage, one must look at the area of water affected and within this area look at various ecological components that constitute ecological status. In addition, difference between damage factors must be considered too, e.g. building a dam will have a different effect from a chemical discharge.

The webinar continued with the presentation about the Criteria for the Assessment of the Environmental Damage (CAED) project, implemented by the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL).

Francesco Andreotti explained that the final report of the project was approved by the Cross-cutting Expert Team of IMPEL and that it was expected to be adopted by the General Assembly of IMPEL in December 2020. Experts from 19 jurisdictions participated in the project to identify and compare common and different practices in the EU in detecting, identifying, and assessing environmental damage and imminent threat of environmental damage. The project report identified best practices, shortcomings, key findings, and lessons learned evaluating 32 ELD and non-ELD case studies from 22 Member States.
Key findings include:

- the speed of initial investigation and prompt collection of evidence at the time of an event is a determining factor;
- a sound evidence base is needed to make ELD determinations;
- routine inspections and cooperation amongst the authorities and the operators is very important;
- technical, procedural and organisational training sessions are needed, for mixed groups of authorities at different levels;
- site inspectors should be trained in ELD scope, principles, procedures and requirements;
- a pan-European, harmonised understanding of definition of environmental damage under ELD would be needed; and
- a practical guide of necessary steps for ELD preliminary investigations would be useful.²

The first question raised during the Q&A session was whether the project report included any guidance or recommendation on how to differentiate an ELD case from other types of environmental damage cases. Francesco Andreotti responded that it first depends on the national legal systems and how the national authorities transposed the Directive. Secondly, to distinguish between the ELD and non-ELD case also depends on the assessment; a case can be filed as a non-ELD case when the significance of damage does not meet the requirements of the Directive.

Regards the significance, when the national legislation defines thresholds for assessing the damage, it might be applied more than the ELD legislation. In the Netherlands, the legislation on land and water damage considers pre-defined thresholds and defines significance which makes it easier to apply than the ELD.

The first project report highlighted a common challenge of interpreting and assessing the significance of environmental damage. A lack of EU-wide guidance on the definition of environmental damage under the ELD, meant that countries had to refer to national guidance.

A participant was curious to hear IMPEL’s perspective on a perceived law level of ELD use to date. Francesco Andreotti responded that in some MSs, ELD is not regularly applied and that the national legislation is still preferred, mostly because it might be clearer and easier to apply. The ELD Guidelines that the EU Commission is about to publish will most probably boost the implementation of the Directive. Mr. Lopatta added that the same issue was discussed in one of the breakout groups the previous day. So, the issue is pertaining and with this IMPEL report and the Commission Guidelines, the implementation of ELD will hopefully be enhanced.

Hans Lopatta proceeded with closing the second day of the conference by thanking the participants for their questions and contributions.

² More details can be found on the project web site and the presentation at the conference web site at: https://ec.europa.eu/info/events/environmental-liability-directive-7th-stakeholder-conference_en.
Thursday, 19 November

Hans Lopatta welcomed the participants and introduced the topic of discussion of the third webinar. Better implementation of the ELD is indispensable for the application of the polluter pays principle. This webinar focused on a project aiming at improving the implementation and the evidence base for ELD.

Sándor Fülöp presented the project on improving implementation and the evidence base for the ELD – 2020-2021, implemented by COWI, Justice & Environment, and Prospect C&S. Professor Fülöp started by saying that in this project, 27 country experts who are from the non-profit sector, carry out the analysis and interviews, contributing to the knowledge on ELD from the perspective of civil society and academia. Reports and data from a variety of sources is being used in the research such as governmental reports, scientific literature, and conference reports. A valuable source of information proved to be the reports of ombudspersons responsible for human rights, environmental protection, and public health.

As mentioned before, the number of ELD cases varies from country to country. Many MS use sectoral laws rather than the national ELD laws for cases that would potentially be a subject to the ELD regime. Access to data is sometimes tricky and in some cases it is easier to obtain information through the EU than the national sources.

The authorities and courts expressed the need for more guidance and training in a number of interviews. There are parallel administrative, civil, and criminal (petty offence) liabilities, but it is not always clear how they relate to each other. The research is further complicated by the lack of data on ELD cases. The presenter concluded that the next stage of research focuses on in-depth research in selected countries which aims at developing proposals and suggestions on the national level to improve the implementation of ELD.

The Q&A session followed the presentation and one participant wanted to know what were the recommendations from the study. The presenter responded that the main goal of the first phase which just finished was to gather information and collect examples of the practice so far. The study should be finalised in February 2021. There are many elements of the ELD regime that could be improved such as guidelines for judges and the capacity of local communities and NGOs so that they can act as a partner of the authorities in ELD cases.

Responding to a question on countries that apply ELD well, Sándor Fülöp mentioned that there were many MS with ambitions efforts and new systems, however the ELD is complex and there are many issues to be considered to ensure its implementation. Another participant wanted to know whether the research is leading towards suggestions for amending the ELD or perhaps the national legislation. The presenter responded that comparison of different laws might show some possible ways and best practices.

The question was raised about the use of the study by DG Environment. Hans Lopatta responded that the objectives were to improve the implementation and evidence base for ELD. DG Environment will analyse the findings and take them into consideration during the ELD evaluation in 2023.

An NGO representative wanted to know whether mandatory financial security would boost the effectiveness of ELD. Professor Fülöp responded that Valerie Fogleman elaborated more on that issue during the first webinar on 16 November and said that it was a complex issue.
Another participant asked about countries with no ELD cases and whether that can be seen as poor implementation of ELD. Professor Fülöp said that EC published the number of ELD cases on its website and that about half of the MS had no significant number of cases. It does not necessarily mean a bad implementation.

A question was raised on ELD being fit for its purpose. The Commission representative responded that the ELD went through the REFIT process which concluded that the Directive is fit for its purpose. The question is rather why it is not applied more. Once further information is collected, issues that hamper implementation can better be tackled.

Sándor Fülöp proceeded with introducing the four topics of the breakout sessions. The short summary of the main conclusions is provided below.

**Working group 1:** Application of previously existing (sectoral) environmental liability rules versus the application of the national ELD transposing law. Social perception and appreciation of the national ELD laws. Which positive novelties and effects has the ELD legislation brought for the environment? Are the previous existing national liability laws or the national ELD laws stricter and/or more effective? What are the reasons why several Member States keep on applying previous national legislation?

The group had a lively discussion and mentioned that in many countries the authorities were not as familiar with the ELD as they were with the national laws that existed before. These national laws are sometimes also easier to apply. The authorities in some countries believe that the national laws that existed before the ELD was transposed were equally strict. In some countries, the authorities are not eager to apply the ELD for various reasons, such as a lack of clarity of certain terms. There might be issues with establishing a causal link between damage and responsibility, and a clear understanding of remedial measures.

Even in countries that have done a lot to improve the implementation of the Directive and developed ELD implementation tools, the ELD legislation is not applied sufficiently due to a lack of insurance. In some countries the national legislation is indeed as strict as the ELD so the authorities do not see the reason to switch to a new legal regime.

**Working group 2:** Substantial rules (definitions, responsible persons, forms of liability, defences) and procedural rules (experts, evidence, decision, legal remedies), preventive and remedial as well as follow-up measures, time and cost aspects of cases. Are the concepts and definitions in the ELD sufficiently understandable and implementable or what would be needed to render them more applicable? How can the shortage in resources and expertise for the ELD implementation be overcome in your Member State? Is preventive and remedial action pursuant to the ELD working well in your Member State?

The working group was quite diverse and had representatives of authorities, private sector, academia, and NGOs. Regarding definitions in the Directive, the group thought that the forthcoming Commission guidelines, based on the EUCJ rulings, will define the notion of significant environmental damage under the ELD. A suggestion was made to make the national court rulings available, to better understand what is considered a significant damage. On the question on resources, the group said that the shortage in human, technological and economic resources were the key issues that hampered the implementation of ELD. It would be important to identify which are organizational and structural solutions to deal with these. The time needed to arrive to the conclusions further complicates the implementation of ELD as well as the challenges in establishing a causal link between the operator and the damage.
The common experience among the Member States is that the remedial action is not properly applied. The requirements for the operators were only to clean up the damage. It is rare to find requirements of restoration and complementary compensation. When cross-country incidents occur, countries might have different interpretation and procedures to apply the ELD.

**Working group 3: Public participation, including access to justice in the environmental liability decision making process.** Do you think that individuals and NGOs have enough rights to participate in the decision making on environmental remediation cases? Are the public participation and access to justice rights of individuals and NGOs in your Member State sufficiently recognised and implemented by the authorities? What would you change if anything?

The group concluded that the following two main pillars should be strengthened. The first one is transparency and the promotion of access to information. The competent authorities should share information proactively. Clear obligations of the authorities regarding the ELD and environmental damages should be laid down; it is often quite cumbersome for the citizens and NGOs to get the information. A registry of ELD cases should be easily available to the public.

The second pillar to be strengthened is capacity building of the following stakeholders:

- NGOs - knowledge on ELD and the capacity to participate should be enhanced. The costs of lawyers and experts should be covered as they can provide valuable information to administrative procedure to enforce appropriate measures.
- Authorities, particularly local level administration that lack knowledge about the ELD - training courses would be welcome.
- Judges – training should also be promoted, however, there are very few ELD cases before the courts which makes it tricky for capacity building efforts.

**Working group 4: Collecting information and data about the ELD implementation: numbers of ELD cases, alternative sources of data, etc.** Do you feel sufficiently informed about instances of environmental damage and the measures taken to restore the damaged natural resources? If not: what would you do to improve the data and information management?

At national and EU level: What should your Member State and/or the Commission do to modernise the ELD data management in line with the digital agenda of our times?

The group concluded that sometimes there very few ELD cases because the precautionary principle might be applied, or the damage might be remedied by applying other legislation. In France, a new legislation that was adopted in 2016 meant that the French Civil code now formally recognises “ecological prejudice” (préjudice écologique) as a category of indemnifiable damage, which is easier to use than the ELD.

Belgium, for instance, has a very active civil society so the authorities are informed in a case of an accident or pollution. It is then up to the competent authority to decide whether it is an ELD case or not, and to apply the relevant legislation. An example of soil legislation was given which sets stricter standards then the ELD in many countries, so sometimes a different regime will be applied to remedy the damage. The group thought that it was more important to deal with the accident if it happens than which regime to apply.

It is tricky to compare the numbers of ELD cases, they do not tell us much because some countries might have replaced all sectoral legislation with ELD, which would explain the high number of cases. Some countries that have no cases or very few might apply a strong precautionary principle whereby the operators invest in prevention (remediation would be too costly for them).
It is more useful to compare the number of incidents and the number of cases where damage was restored – irrespective of the regime applied (ELD or other).

Friday, 20 November

The last day of the conference was introduced by Hans Lopatta. The topics discussed included the ELD Multi-Annual Rolling Work Programme (MARWP) 2021-2024, the LIFE EcoLex project in Slovenia on raising awareness about the ELD, and finally the initiative of the European Parliament on “Liability of companies for environmental damage”.

DG Environment presented the MARWP, approved during the 23rd ELD Government Experts Group meeting on 18 November 2020. Mr. Lopatta presented the purpose and the structure of the new MARWP, the three working areas, the engagement of stakeholders, and the conclusions.

The MARWP covers the period of 2021 to 2024. It is a rolling work programme, which is open for adaptations according to the needs and interim results, including findings from studies or other deliverables from external contractors. The MARWP will be reviewed in 2024 by the Commission together with the Member States and stakeholders.

The presentation was followed by a lively Q&A session. A question was raised on the review of the ELD and whether there will be training sessions on the new Commission Guidelines. Hans Lopatta responded that the evaluation of the ELD was planned for 2023 and that the Commission took note of the need to organise the training, reflected already in the MARWP.

Another participant suggested that IMPEL also shares the knowledge within their countries. The Commission responded that it was a good idea, however, IMPEL is an independent organisation and it will therefore act as such.

The webinar was followed by the presentation of LIFE EcoLex project (Raising Awareness on Environmental Liability Directive in Slovenia). The main reason for implementing this project, said Lea Tomazič, was the realisation that two thirds of small- and medium-sized enterprises in Slovenia were not familiar with the legal basis of environmental liability. The main purpose of the EcoLex project was to raise the awareness on ELD in Slovenia and boost support for environmental liability implementation instruments.

The project developed an online tool with notifications on environmental legislation that is of interest to a particular user. The project web site collects all applicable environmental legislation in Slovenia and is a first such tool in the country. It further offers an environmental risk assessment tool, which is still used. The project also developed an environmental guide which is an interactive tool that describes the main requirements of complex environmental legislation in the country.

During the Q&A session, the presenter was asked to mention a sample question used to identify the risk of an operation. Lea Tomazic explained that a team of environmental experts developed these questions, such as how far is the operation site from a NATURA 2000 site? The website is available only in Slovenian, however, the participants were encouraged to get in contact with the organisation should they be interested in getting the information in English.

The webinar continued with an intervention of Marie Toussaint, Member of the European Parliament. She reiterated the importance of ELD and dealing with environmental liability more broadly. There is a growing support from academia and the non-profit sector to move towards a liability for climate-related issues and a more holistic approach that recognises the rights of nature.
The rapporteur of the European Parliament on the own initiative report concerning the responsibility of companies for environmental damage, Antonius Manders, MEP, continued and reminded the audience that the Environmental Liability Directive was one of the first EU laws based on the polluter pays and the precautionary principles. At present, the ELD is focusing too narrowly on the environment. It is necessary to have a holistic approach and extend its scope, connect it more to other pieces of legislation and foresee an improved and more harmonised enforcement procedure. It is necessary to broaden the liability of companies and ensure a level playing field across the EU. One of the ways forward would be to have a Regulation rather than a Directive.

The final day of the conference was concluded by Aurel Ciobanu-Dordea, Director at DG Environment who thanked the participants for their contributions and input. The Commission is eager to learn from those implementing the Directive, which is why events like these are useful. Legal tools that are practical and easy to use must be created and it is important to clarify the areas where changes are necessary. The week was fruitful, and a lot of information was received and exchanged during these four webinars. The Commission thanked the organisers and formally closed the event.