European Union Network for the Implementation and Enforcement of Environmental Law

Criteria for the assessment of Environmental Damage (CAED)

Final Report

Date of report: 22 June 2020
Report number: 2019/18
**Introduction to IMPEL**

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international non-profit association of the environmental authorities of the EU Member States, acceding and candidate countries of the European Union and EEA countries. The association is registered in Belgium and its legal seat is in Brussels, Belgium.

IMPEL was set up in 1992 as an informal Network of European regulators and authorities concerned with the implementation and enforcement of environmental law. The Network’s objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. The core of the IMPEL activities concerns awareness raising, capacity building and exchange of information and experiences on implementation, enforcement and international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.

During the previous years IMPEL has developed into a considerable, widely known organisation, being mentioned in a number of EU legislative and policy documents, e.g. the 7th Environment Action Programme and the Recommendation on Minimum Criteria for Environmental Inspections.

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on both technical and regulatory aspects of EU environmental legislation.

Information on the IMPEL Network is also available through its website at: [www.impel.eu](http://www.impel.eu)
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<th><strong>Title of the report:</strong></th>
<th>Criteria for the Assessment of the Environmental Damage (CAED)</th>
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<tr>
<td><strong>Number report:</strong></td>
<td>2019/18</td>
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<tr>
<td><strong>Report adopted at IMPEL General Assembly Meeting:</strong></td>
<td>Date and location</td>
</tr>
<tr>
<td><strong>Total number of pages:</strong></td>
<td>199</td>
</tr>
<tr>
<td><strong>Report:</strong></td>
<td>60 pages</td>
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<td><strong>Annexes:</strong></td>
<td>139 pages</td>
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### Executive Summary

**Keywords**
Environmental Liability Directive (ELD), Environmental Damage, Imminent threat of environmental damage, Environmental investigations, Environmental incidents, Environmental non-compliance, Environmental offences, Eco-criminal acts, Environmental crime

**Target groups**
Competent authorities for environmental damage assessment and enforcement, industrial operators, environmental protection agencies, nature protection bodies, environmental inspectorates, environmental guard departments, environmental monitoring and research institutions, technical universities, environmental associations, NGOs, insurance companies and associations, environmental consultants.

As part of its 2016-2020 Strategic Work Programme, the IMPEL Network set up this project in the environmental damage thematic area, concerning the criteria for the determination of the environmental damage and imminent threat of damage, called CAED - Criteria for the Assessment of the Environmental Damage.

The CAED project takes guidance on key terms and definitions of Environmental Damage as a springboard and focusses on the technical/administrative procedures necessary to make determination of Environmental Damage. The project therefore builds on the ELD Multi Annual Rolling Work Programme and has strong links with the European Commission’s publication, later in 2020, of guidance on environmental damage and imminent threat of environmental damage.

The ultimate goal of the project is to produce a guide proving criteria for the assessment of the environmental damage and imminent threat of damage under ELD national legislation of Member States, based on reference parameters relating to ‘evidence’ and to ‘clue’ of environmental damage or imminent threat of damage.

The objective of this year’s CAED project was to identify, both from a regulatory, practical and technological point of view, how the clues and the evidences of environmental damage and threats of damage can be detected, identified and evaluated. This was done by the analysis of a collection of ascertainment practices of 32 ‘ELD cases’ and ‘non-ELD cases’ across Member States to identify criteria to assess environmental damage and imminent threat of environmental damage.
This report also provides an evaluation of guidance provided by some jurisdictions, with particular reference to the parts related to the determination of environmental damage.

Finally, the CAED project intends to contribute at improving the evidence base, envisaged as one of the working areas of the Multi-Annual ELD Work Programme (MAWP) for the period 2021-2024, by providing a better picture of the state of implementation of ELD in the process of the determination of the environmental damage and imminent threats of damage.

**Acknowledgements**

This report has been peer reviewed by a wider IMPEL project team and by the IMPEL Cross Cutting Expert Group.

The team also wish to acknowledge the valuable input and/or contribution received from:

1. Ministries of the Environment, Environment Protection Agencies, Inspectorates, Municipalities, Local Authorities, Insurance Consortia across Europe
2. DG Environment (Mr. Hans Lopatta)
3. Bayern AG
4. CEFIC (European Chemical Industry Council)

In particular, Bayern AG contributed to the project works providing a confidential case study. CEFIC provided views expressed in the past on the key review points (of the ELD) of concern to the chemical sector, which are also related to present IMPEL Project. In this regard, the project team believes that the CAED project won’t conflict with CEFIC’s view.

The project team wish to thank all the people that contributed to the questionnaire based survey: Sune Bach (DK), Enrico Barbone (IT), Lucrezia Belsanti (IT), Adriano Bortolussi (IT), Henrieta Cajkova (SK), Lisa Casali (IT), Massimiliano Confalonieri (IT), Lars Eg Hoppe (DK), Roberto Ferrari (IT), Mark Govoni (CH), Juergen Henneboele (DE), Jose Luis Heras Herraiz (ES), Tatiana Hornanova (SK), Klas Köhler (SE), Ekaterina Manolova (BG), Clemente Migliorino (IT), Šárka Mikundová (CZ), Elena Moretti (IT), Dietmar Müller-Grabherr (AT), Roberta Pantano (IT), Manuel Salgado Blanco (ES), Mette Schjødt (DK), Mari Sepp (EE), Christoffer Sheats (SE), Alexandra Škopcová (CZ), Emanuela Siena (IT), Marie Thrusholm (DK), Anna Torri (IT), Jaakko Vesivalo (FI), Regina Vilão (PT), and others.

The project manager wishes to thank the colleagues of ISPRA (Italian Institute for Environmental Protection and Research) of the Area for the Ascertainment, the Assessment and the Remediation of Environmental Damage, for their valuable suggestions: Laura Calcagni, Marina Cerra, Paola Di Toppa, Antonio Guariniello, Patrizia Scotto Di Carlo, Daria Vagaggini.

**Disclaimer**

1) This report is the result of a project within the IMPEL network. The content does not necessarily represent the view or the official position of IMPEL, the national administrations or the European Commission.
2) This report reflects only the authors’ views and the authors themselves are not liable for any use that may be made of the information contained therein.

3) The project team is not liable for the information and facts given in the case studies.


This project report is intended as a reference document for competent authorities and practitioners. It does not prescribe what a competent authority should do. Instead, it aims to provide information to assist competent authorities in making better decisions about the ascertainment of environmental damage. In this way, it should contribute to improve protection of the environment and promote compliance with the polluter pays principle.
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