



European Union Action to  
**Fight Environmental Crime**

# Environmental Liability and Environmental Crime in Selected Member States: an Overview

Workshop “Environmental Liability and  
Environmental Crime”

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# FP7 EFFACE

- 🌐 Within EFFACE, one overall task is to perform a wide ranging collection and analysis of information on **instruments, actors and institutions** concerning the fight against environmental crime in the European Union territory and beyond.

# FP7 EFFACE

- ⊕ EFFACE analyses relevant legal provisions, at the international, European and national level as well as relevant case law showing the real content, strengths and weaknesses of the law “in action”.
- ⊕ EFFACE also focuses on the role of and linkages between political and enforcement actors and institutions as well as actors relevant for information on environmental crime and civil society organisations.
- ⊕ **Method:** both **theoretically** by reviewing the relevant existing legislative provisions, statutes etc. and **empirically** by drawing on the existing literature, document analysis, interviews.

# Instruments, Actors and Institutions: national level

🌐 At national level, the research on Instruments, Actors and Institutions has focused on 7 Countries:

- 🌐 France
- 🌐 Germany
- 🌐 Italy
- 🌐 Poland
- 🌐 Spain
- 🌐 Sweden
- 🌐 UK



# Environmental Crime

- ④ Scope of the analysis:
  - ④ existing national provisions on environmental crime, mainly focusing on those sectors covered by Directive 2008/99/EC on environmental crime;
  - ④ general provisions on substantive criminal law and criminal procedure (including e.g. organised crime and corporate liability);
  - ④ the role of relevant actors and institutions and their mutual cooperation.
- ④ **Effectiveness at the regulatory and enforcement level**

# Environmental Liability

- ④ Describe and analyse briefly the national provisions concerning the **implementation of Directive 2004/35/EC** of 21 April 2004;
- ④ Analyse if and how national environmental criminal provisions are **linked** to national provisions implementing Directive 2004/35/EC of 21 April 2004 on environmental liability;
- ④ Evaluate whether the transposing instruments of Directive 2004/35/EC on environmental liability brought **limited/symbolic or important changes to the national law** (also in light of the links, if any, with environmental criminal provisions).

# Examples of findings.

## National Provisions on EL: the Competent Authority

### ⊕ *Different solutions:*

- ⊕ **France:** *Prefect*, a decentralized governmental authority with its headquarters in the capital of each department;
- ⊕ **Germany:** the identification of the competent authority is demanded to the Länder;
- ⊕ **Italy:** Minister for the Environment, it uses its central departments for assessing damage and taking action against the liable parties, governmental decentralized bodies are used only to receive reports of damage;
- ⊕ **Poland:** the competent authorities in cases governed by the Environmental Harm Act are the Regional Directors for Environment Protection and the Chief Director for Environment Protection (serving as an authority of the second instance). In particular cases, e.g. those relating to the use of the GMOs, its potential introduction to the environment or its marketing a competent authority is Minister of the Environment;

# The Competent Authority in the National Provisions on EL

- 🌐 **Spain:** the Autonomous Community Ministry responsible for environment;
- 🌐 **UK:** the ELD was transposed in England through the Environmental Damage (Prevention and Remediation) Regulations 2009 as amended in 2010; in Wales, through the Environmental Damage (Prevention and Remediation) regulations 2009; in Scotland, through the Environmental Liability Regulations 2009 as amended in 2011; in Northern Ireland, through the Environmental liability (prevention and Remediation) Regulations 2009 as amended in 2011. Many (too many?) various enforcing authorities are involved under these Regulations, such as the EA and the local authorities.



# Links between provisions on EL and provisions on environmental crime

## 🌐 *Italy:*

- 🌐 No explicit links between provisions on EL and environmental criminal law.
- 🌐 However, failure to comply with procedure in case of soil contamination or failure to comply with a duty of information on potential contamination event are criminal offences (art. 257 Legislative Decree n. 152 of 2006).

# Links between provisions on EL and provisions on environmental crime

## ⊕ **UK:**



- ⊕ Failure to comply with a remediation notice is an offence (sections 18 and 20 of the Environmental Damage (Prevention and Remediation) Regulations 2009).
- ⊕ A breach of the national provisions implementing the ELD constitutes a criminal offence punished through a summary conviction (fine not more than £5000, imprisonment not more than 3 months; Scotland: not more than 1 year), or both; or through a conviction on indictment (unlimited fine, imprisonment not more than 2 years, or both).
- ⊕ If the breach is committed by directors and officers they may be convicted if the company's offence is committed with their consent or connivance or is attributable to their neglect (but in Scotland the partner of a Scottish partnership may be convicted if the partnership's offence was committed with their consent or connivance or is attributable to their neglect. Equivalent provisions apply to the member or a person purporting to act as a member, or a Scottish limited liability partnership).

# Changes brought by transposition of ELD

- ⊕ **France:**
- ⊕ No preexisting system on environmental liability/damages, but courts had created mechanism of liability extending general principles.
- ⊕ The limitation of the scope of liability only to the “grave” damage seems to entail only symbolic changes on French national law.
- ⊕ In fact, courts had already granted compensation for the environmental damage (“*prejudice écologique pur*”), also after the “*Erika case*”.
- ⊕ Nevertheless, it is not clear whether the implementation of the ELD is likely to take the environmental damage outside the scope of the civil liability or whether the courts will continue to recognize the role of civil liability whenever the environmental damage is outside the scope of environmental liability (for example, because the environmental damage is not “grave”).

# Changes brought by transposition of ELD

## **Sweden:**

-  Most provisions on environmental liability were already in place in the Environmental Code.
-  The ELD was added as an extra layer into the existing liability regime in the Swedish Environmental Code, which creates delineation problems.

# Changes brought by transposition of ELD

## 🌐 UK:

- 🌐 The ELD covers a range of damages that falls short of what already exists at the national level under the contaminated land regime, which extends to more general ecosystem damages.
- 🌐 It has been reported that the ELD applies to less than 1 per cent of all pollution incidents reported by the Environment Agency.

# Issues at stake

- ④ Strengths and weaknesses of ELD as well as of related instruments;
- ④ Links between ELD and directive 2008/99/CE on environmental crime as well as other instruments;
- ④ Links between provisions on EL and provisions on environmental crime at national level;
- ④ Lessons learnt and experiences;
- ④ Comparative advantages and disadvantages of criminal vs. civil remedies;
- ④ Policy recommendations to the EU and to national policy-makers.