



2020/2027(INI)

29.1.2021

OPINION

of the Committee on the Environment, Public Health and Food Safety

for the Committee on Legal Affairs

on liability of companies for environmental damage
(2020/2027(INI))

Rapporteur for opinion: Pascal Canfin

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SUGGESTIONS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas the European Green Deal sets the ambition of zero pollution, to be delivered through a cross-cutting strategy to protect citizens' health from environmental degradation and pollution, while at the same time calling for a just transition that leaves nobody behind;
- B. whereas environmental damage, hazardous and harmful chemicals and climate change cause significant risks to human health from air, soil and water pollution;
- C. whereas the Environmental Liability Directive (ELD) establishes 'a framework of environmental liability based on the 'polluter-pays' principle, to prevent and remedy environmental damage', and a duty to prevent damage;
- D. whereas the ELD complements the main pieces of EU environmental legislation, to which it is directly or indirectly linked;
- E. whereas an EU environmental liability framework should encourage cooperation and a level playing field; whereas the ELD coexists with other liability instruments and provisions, both at EU and Member-State level;
- F. whereas incidents that give rise to ELD liability may also trigger criminal, civil or administrative proceedings in parallel;
- G. whereas the European Environment Agency is exploring how environmental risks and benefits are distributed across society; whereas recent evidence indicates that poorer EU regions are more likely to be exposed to environmental health hazards at levels that negatively affect human health, often for several generations;
- H. whereas environmental inequality is a driver of health inequality, fostering feelings of injustice and being 'left behind' among vulnerable populations;
- I. whereas the 2015 Paris Agreement on Climate Change emphasises the importance of taking the rights of vulnerable people into consideration; whereas the Office of the UN High Commissioner for Human Rights recently published Framework Principles on Human Rights and the Environment, which clarify the human rights obligations of the UN member states relating to a clean, healthy and sustainable environment and ensuring protection against discrimination in relation to the enjoyment of such environments;
- 1. Considers that in accordance with the polluter-pays principle, companies should bear the full societal costs of the environmental harm they are directly causing in order to ensure they have incentives to internalise environmental externalities and avoid externalising those costs; furthermore considers that sanctions are important deterrents against environmental negligence that prevent environmental damage;

2. Expresses deep concern that the impact of environmental crimes adversely affects inter alia biodiversity, the climate system and notably human health;
3. Points out that polluting crimes, especially the illegal dumping of substances and waste, contaminate soil, crops, water, and land and marine ecosystems, damaging habitats, flora and fauna, and disrupting the food chain; underlines in this regard the increase in the number of infringements of the law relating to maritime and marine pollution, and the difficulty of monitoring and identifying these practices at sea, especially illegal dumping into the sea of waste and containers, vessel degassing and oil tipping so as to avoid treatment costs; calls, therefore, for more stringent control measures, for example measures using satellite observation systems;
4. Welcomes the fact that an increasing number of EU companies are pursuing the objective of sustainable value creation and calls on all companies to pursue a triple bottom line with equal attention paid to people, the planet and profit, and the results obtained in economic, social and environmental terms; calls on the Commission to incorporate this objective in relevant legislation and calls on the Member States to pursue this objective in their implementation of existing legislation as a matter of urgency;
5. Acknowledges that transitioning to more sustainable and more environmentally friendly production methods can be time- and cost-intensive, and points to the importance of legal and administrative certainty for affected businesses;
6. Regrets the low detection, investigation, prosecution and conviction rates for environmental crimes and damage, as well as the low level of fines and penalties issued, and the large disparities between Member States and the gaps in their implementation and enforcement of existing legislation; calls on the Commission to identify the causes and propose comprehensive legislative measures to improve the enforcement of administrative, civil and criminal law to better protect the environment;
7. Further believes that there is a strong need for a coherent and comprehensive mandatory liability framework at Union level to contribute to the achievement of the European Green Deal, the UN Sustainable Development Goals and the Paris Climate objectives;
8. Urges the Commission to present a revised and accelerated legislative calendar for the revision of the ELD and the Environmental Crime Directive (ECD);
9. Calls for the scope of the ECD to be updated to ensure that it covers all relevant environmental legislation, taking into account new types and patterns of environmental crime;
10. Notes that criminal penalties alone are often not sufficiently effective, while they may lead to impeachment for environmental misconduct and criminal action, and even in some cases to large numbers of environmental cases being dismissed, especially in Member States where established corporate entities have no criminal liability; also notes that in many Member States, administrative financial penalties are increasingly being used; calls, therefore, on the Commission and the Member States to facilitate access to justice and provide effective mediation and remedies to victims of environmental damage, and calls on the Member States to use administrative fines for less serious

infringements as a complementary tool alongside criminal sanctions for more serious infringements, with a view to taking all necessary measures to ensure those sanctions are enforced;

11. Calls on the Member States to ensure the existing directive is consistently implemented and calls on the Commission to provide further clarification and guidance on key legal terms used in the ECD (e.g. ‘substantial damage’, ‘non-negligible quantity’, ‘negligible quantity’ and ‘negligible impact’, ‘dangerous activity’ and ‘significant deterioration’);
12. Notes that data and statistics on environmental crimes and enforcement actions in Member States are very limited, fragmented and inconsistent; also calls, therefore, for the ECD to include requirements for Member States with regard to data collection, publication and reporting, while making use of synergies with existing reporting obligations, and further calls on the Commission to facilitate and encourage Member States to apply effective sanctions for non-reporting;
13. Considers that the current rules in the ECD have not been efficient in ensuring compliance with the environmental acquis and are not providing a proper level playing field;
14. Calls on the Commission to considerably strengthen the level of criminal sanctions imposed under the ECD while also addressing the role of serious organised crime in environmental damage, including by setting minimum levels of sanctions;
15. Calls on the Commission to enforce the application of sanctions established under the ECD;
16. Calls in this regard on the Commission to verify and enforce that the criminal sanctions established under the ECD are dissuasive, while emphasising that to ensure this, low detection and enforcement rates will dictate stricter sanctions; calls, furthermore, on the Commission to issue guidance to Member States on what constitutes effective, dissuasive and proportionate sanctions, as well as guidance on and recommendations for effective implementation;
17. Calls on the Commission to develop a harmonised classification of environmental crimes and ecological harm, together with a prescribed classification of appropriate sanctions, in order to provide guidance to competent national authorities and prosecutors regarding the enforcement of sanctions established under the ECD;
18. Believes that a provision cross-referencing the Confiscation Directive could be included in the ECD in order to reinforce the importance of confiscation and freezing measures within the context of environmental crime;
19. Further calls for the establishment of minimum standards for national authorities on the frequency and quality of checks on operators and calls on the Commission and the Member States to encourage independent audits of operators;
20. Considers that the Commission should offer judges and practitioners specific training on the specificities of environmental law and crimes at EU and national level, and that practitioner networks willing to provide training to their members should be encouraged

to do so;

21. Regrets that the Member States' implementation of the ELD has not been coordinated and has lacked harmonisation and effectiveness, leading to implementation deficiencies, considerable variability and an uneven playing field for operators, including in cases where the polluter becomes insolvent or bankrupt;
22. Notes with concern that the 2016 Commission Implementation Report on the ELD concluded that eleven Member States have reported no ELD damage incidents since 2007 and stated that this is 'possibly because they deal with cases exclusively under their national system'; therefore urges the Commission to assume its responsibility for effective implementation of the directive and calls for the ELD to be revised as soon as possible and to be transformed into a regulation;
23. Considers it necessary that not only companies as legal entities, but also corporate boards, are held accountable for the damage they inflict on the environment; calls on the Commission to assess the need for mandatory financial guarantees from all operators conducting activities that could carry environmental risks;
24. Calls on the Commission to include in the review of the ELD damage to human health and the environment caused by air pollution, as this could increase prevention and precaution levels;
25. Takes note that liability regimes regarding diffuse pollution in EU law are fragmented; calls on the Commission to assess aspects related to diffuse pollution;
26. Is also concerned to implement the 'polluter pays' principle more effectively in the ELD; calls therefore for the scope of the directive's strict liability to be expanded to cover all serious damage to the environment and to human health;
27. Believes that to ensure a more consistent application, it is essential that the Commission provides better clarification and guidance on key legal terms used in the ELD, in particular the threshold of 'significant damage'; emphasises that the ELD must be aligned with the Habitats Directive to ensure the conservation status of protected habitats and species is favourable;
28. Believes that the EU institutions and national authorities should promote structured dialogue with economic operators to facilitate their compliance with a changing and complex legislative framework; notes that companies need legal certainty in the form of guidance and information prior to the entry into force of environmental regulations;
29. Encourages the Commission to establish incentives for companies to voluntarily introduce sustainability policies that go beyond environmental and biodiversity standards laid down in law for the purpose of evaluating these policies, identifying best practices, and providing them as an example for other companies to follow;
30. Calls for the removal of the options to invoke a 'permit defence' and a 'state of the art defence' under the ELD, in order to promote the 'polluter pays', prevention and precautionary principles and corporate responsibility, while improving the effectiveness of the revised ELD;

31. Calls for the EU to take into account the fact that companies which receive State aid or are involved in public procurement are committed to preventing and remedying environmental damage;
32. Considers that companies convicted for environmental crimes should not be allowed to benefit from any of the measures envisaged for entities on the transparency register; suggests, to this end, that the scope and the code of conduct of the transparency register be revised in order to include provisions on the removal of companies convicted for environmental crimes;
33. Acknowledges the intrinsic value of the environment and ecosystems and their right to effective protection; condemns any form of harassment, violence or intimidation against any of the stakeholders involved;
34. Asks the EU Ombudsman to strengthen its focus on issues related to the environment acquis;
35. Is concerned that environmental offences may cause irreversible damage to our environment, biodiversity and human health and that they constitute the fourth largest area of criminal activity in the world, converging with other forms of international crime and posing a growing threat; therefore urges the Commission and the Member States to make the fight against environmental crime a priority in international judicial cooperation;
36. Calls on the Commission to ensure a solid framework at the level of the European Union to address environmental crimes in the relevant EU legislation and calls on the Commission and the Member States to actively engage in bilateral and multilateral fora with the aim of securing an ambitious global level playing field and possibly an agreement to combat environmental crime and improve awareness raising; calls on Europol to update the study on interrelationship between environmental offences and transnational organised crime commissioned in 2015 and to regularly provide situational updates;
37. Recalls that damage caused to the environment knows no borders; therefore considers it essential to set up better cross-border cooperation in terms of intelligence on, prevention of, the fight against and the elimination of environmental crimes, inter alia by establishing the possibility to prosecute offences jointly and simultaneously in several Member States; further stresses the importance of strengthening the Europol Environment Crime Network (ENVICrimeNet) at national and EU level to allow independent and effective investigations to be conducted in order to fight environmental crimes that adversely affect biodiversity and human health, including ecocide;
38. Calls on the Commission, Europol and Eurojust to provide support and a more institutionalised structure for existing networks of practitioners and to reinforce the investigation and prosecution of environmental crimes;
39. Calls for greater clarity in respect of the participation of and access to justice of non-governmental organisations (NGOs) in the implementation of the ECD;
40. Welcomes the Commission's legislative proposal to amend Regulation (EC) No

1367/2006 (COM(2020)0642) to allow for better public scrutiny of EU acts affecting the environment; calls, in this respect, on the Council in its capacity as a co-legislator for the effective implementation of the third pillar of the Aarhus Convention to guarantee access to courts for natural persons and NGOs for representative action to enable them to directly file a lawsuit against an operator that is potentially liable for environmental harm;

41. Calls on the Union to work towards achieving recognition at European and international level of the right to a healthy environment;
42. Takes note of the growing commitment of the Member States to work towards the recognition of ecocide at national and international level; asks the Commission to study its relevance to EU law and EU diplomacy;
43. Calls on the Commission and the Member States to raise awareness of and promote solutions for the protection of environmental rights and the recognition of ecocide in international law that consider the risks posed by the transboundary nature of environmental damage and serious organised crime;
44. Is of the opinion that ensuring liability for environmental damage, accompanied by relevant legislation, will contribute to making EU businesses more sustainable in the long term; calls therefore on the Commission to put forward a legislative proposal on minimum mandatory corporate due diligence to compel companies to identify, mitigate, prevent and monitor adverse environmental effects in their supply chain while taking into account due diligence requirements agreed on at the international level, such as the Organisation for Economic Co-operation and Development's Guidelines for Multinational Enterprises;
45. Applauds, furthermore, the increasing number of requirements to also report on non-financial issues; notes, however, that reporting on non-financial issues has, until now, not been a clear legal duty; calls on the Commission to put an emphasis on the enforcement of those reporting requirements in cases of non-performance in the upcoming revision of the Non-Financial Reporting Directive;
46. Calls on the Commission to maintain a level playing field in the environmental provisions of all EU trade agreements and to ensure that environmental provisions are subject to enhanced mandatory enforcement mechanisms; calls for a high level of environmental protection by contracting parties to the agreement;
47. Notes that there is a national framework in place¹ allowing geological and hydrogeological survey results related to industrial activities to be kept confidential for number of years and that this has led to significant pollution of drinking water sources; highlights that there should be no confidential treatment of information which relates to foreseeable effects on human health, animal health or the environment, and that such information must be made public without delay in order to make it possible to establish the causality between the operation and the consequences, to remedy the situation and to appropriately apply the 'polluter pays' principle; urges the Member State concerned

¹Decree No. 22/2015 implementing Act No. 569/2007 Coll., on Geological Works (Slovakia), allowed the results of the survey be kept confidential for up to 10 years and led to an environmental disaster in Western Slovakia.

to amend its national framework accordingly.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	27.1.2021
Result of final vote	+: 58 -: 15 0: 6
Members present for the final vote	Nikos Androulakis, Bartosz Arłukowicz, Margrete Auken, Simona Baldassarre, Marek Paweł Balt, Traian Băsescu, Aurelia Beigneux, Monika Beňová, Sergio Berlato, Malin Björk, Simona Bonafè, Delara Burkhardt, Pascal Canfin, Sara Cerdas, Mohammed Chahim, Tudor Ciuhodaru, Nathalie Colin-Oesterlé, Esther de Lange, Christian Doleschal, Marco Dreosto, Bas Eickhout, Cyrus Engerer, Eleonora Evi, Agnès Evren, Pietro Fiocchi, Andreas Glück, Catherine Griset, Jytte Guteland, Teuvo Hakkarainen, Martin Hojsík, Pär Holmgren, Jan Huitema, Yannick Jadot, Adam Jarubas, Karin Karlsbro, Petros Kokkalis, Athanasios Konstantinou, Ewa Kopacz, Joanna Kopcińska, Peter Liese, Sylvia Limmer, Javi López, César Luena, Fulvio Martusciello, Liudas Mažylis, Joëlle Mélin, Tilly Metz, Silvia Modig, Dolors Montserrat, Alessandra Moretti, Dan-Ștefan Motreanu, Ville Niinistö, Ljudmila Novak, Grace O’Sullivan, Jutta Paulus, Stanislav Polčák, Jessica Polfjård, Luisa Regimenti, Frédérique Ries, María Soraya Rodríguez Ramos, Sándor Rónai, Rob Rooken, Silvia Sardone, Christine Schneider, Günther Sidl, Ivan Vilibor Sinčić, Linea Søgaard-Lidell, Nicolae Ștefănuță, Nils Torvalds, Edina Tóth, Véronique Trillet-Lenoir, Petar Vitanov, Alexandr Vondra, Mick Wallace, Pernille Weiss, Michal Wiezik, Tiemo Wölken, Anna Zalewska
Substitutes present for the final vote	Hildegard Bentele, Manuel Bompard
Substitutes under Rule 209(7) present for the final vote	Veronika Vrecionová

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

58	+
PPE	Bartosz Arłukowicz, Traian Băsescu, Hildegard Bentele, Nathalie Colin-Oesterlé, Christian Doleschal, Agnès Evren, Adam Jarubas, Ewa Kopacz, Esther de Lange, Peter Liese, Fulvio Martusciello, Liudas Mažylis, Dolores Montserrat, Dan-Ștefan Motreanu, Ljudmila Novak, Stanislav Polčák, Christine Schneider, Edina Tóth, Michal Wiezik
Renew	Pascal Canfin, Martin Hojsík, Karin Karlsbro, Frédérique Ries, María Soraya Rodríguez Ramos, Nicolae Ștefănuță, Nils Torvalds, Véronique Trillet-Lenoir
S&D	Nikos Androulakis, Marek Paweł Balt, Monika Beňová, Simona Bonafè, Delara Burkhardt, Sara Cerdas, Mohammed Chahim, Tudor Ciuhodaru, Cyrus Engerer, Jytte Guteland, Javi López, César Luena, Alessandra Moretti, Sándor Rónai, Günther Sidl, Petar Vitanov, Tiemo Wölken
The Left	Malin Björk, Manuel Bompard, Petros Kokkalis, Silvia Modig, Mick Wallace
Verts/ALE	Margrete Auken, Bas Eickhout, Eleonora Evi, Pär Holmgren, Yannick Jadot, Tilly Metz, Ville Niinistö, Grace O'Sullivan, Jutta Paulus

15	-
ECR	Sergio Berlato, Pietro Fiocchi, Joanna Kopcińska, Rob Rooken, Alexandr Vondra, Veronika Vrecionová, Anna Zalewska
ID	Simona Baldassarre, Marco Dreosto, Teuvo Hakkarainen, Sylvia Limmer, Luisa Regimenti, Silvia Sardone
PPE	Jessica Polfjård, Pernille Weiss

6	0
ID	Aurelia Beigneux, Catherine Griset, Joëlle Mélin
Renew	Andreas Glück, Jan Huitema, Linea Søgaaard-Lidell

Key to symbols:

+ : in favour

- : against

0 : abstention