

## THE ENVIRONMENTAL LIABILITY DIRECTIVE (ELD) IN PRACTICE

- Challenges in Implementation
- Future Perspectives

Brussels, 29-30 November 2018

**UP  
GRADE**  
YOUR LEGAL  
EXPERTISE

**Environmental  
Law**



### Speakers

**Lucas Bergkamp**, Partner, Hunton Andrews Kurth, Brussels;  
Professor at Erasmus University Rotterdam

**Kim Bradley**, Scottish Environment Protection Agency,  
Edinburgh

**Valerie Fogleman**, Professor of Law, Cardiff University School of  
Law and Politics; Consultant, Stevens & Bolton LLP

**Benedek Javor**, Member of the European Parliament (MEP),  
Brussels

**Hans Lopatta**, Policy Officer, DG Environment, European  
Commission, Brussels

**Karl Ortmann**, Manager, Liability and Aviation Insurance, German  
Insurance Association (Gesamtverband der Deutschen  
Versicherungswirtschaft – GDV)

**Ugo Salanitto**, Professor of Law, University of Catania

**Christoph Sobotta**, Legal Secretary (AG Kokott), CJEU,  
Luxembourg (invited)

### Key topics

- Genesis, development and objectives of the ELD
- Definition of “environmental damage” under the ELD
- Prevention and remediation regime
- Financial security mechanisms for environmental liability
- National experiences and practices
- Implementation opportunities and challenges

Language  
English

Event number  
418D94

Organiser  
Dr Kleoniki Pouikli (ERA)



With the support of the Erasmus+  
programme of the European Union

# THE ENVIRONMENTAL LIABILITY DIRECTIVE (ELD) IN PRACTICE

**Thursday, 29 November 2018**

8:45 Arrival and registration of participants

9:15 **Opening of the seminar**  
*Kleoniki Pouikli*

## I. FRAMING AND MAPPING THE ENVIRONMENTAL LIABILITY DIRECTIVE

9:30 **The Environmental Liability Directive (ELD) in a nutshell**

- Background and genesis
- Adoption and historical development
- Key provisions and concepts

*Hans Lopatta*

10:15 Discussion

## II. ENVIRONMENTAL DAMAGE: DEFINITION AND DELIMITATION

10:30 **Unpacking the concept of environmental damage-**

- Interplay with EU substantive legislation
- Threshold and baseline information sources
- Article 2(1) and Annex I of the ELD

*Valerie Fogleman*

11:15 Coffee break

11:45 **Causation under the Environmental Liability Directive**

- Causal link for environmental damages
- Polluter Pays Principle (PPP)
- CJEU case law

*Christoph Sobotta*

12:15 Discussion

## III. REMEDIATION OF ENVIRONMENTAL DAMAGE: THE ELD IN PRACTICE

12:30 **The remediating regime under the Environmental Liability Directive**

- Primary, compensatory and complementary remediation
- Difficulties in assessing environmental harm
- Practical experiences

*Lucas Bergkamp*

13:15 Lunch

14:30 **Remediation of historical soil contamination**

- Case C-534/13 *Fipa Group*
- National examples
- Limits under Article 16 of the ELD

*Ugo Salanitro*

15:00 Discussion

## IV. FINANCIAL SECURITY UNDER THE ELD: A TOOL TO ENHANCE ITS IMPLEMENTATION

15:15 **Environmental liability and financial security systems**

- Article 14 of the ELD: state of play among Member States
- Developing financial security tools for environmental damages

*Kim Bradley*  
*Karl Ortmann*

16:00 Coffee break

## Objective

The aim of this seminar is to provide a comprehensive overview of the Environmental Liability Directive (ELD) addressing the challenges of its enforcement at national level and highlighting its implementation opportunities and perspectives. Emphasis will be given to the practical aspects related to prevention, remediation and financial security under the ELD as well as to national experiences of its application so far.

## Who should attend?

Legal practitioners, in-house counsel, staff of regulatory authorities, public administrations and NGOs in the field of environmental law.

## You will learn...

- about the concept of “environmental damage” and the threefold regime of its remediation
- why the remediation of historical soil contamination constitutes a thorny problem under the ELD
- how the existing financial security mechanisms address environmental liability
- about the current state of play in ELD enforcement at national level
- what are the perspectives and opportunities for enhancing the ELD’s practical implementation
- whether the discussions about a potential compensation fund for environmental damage are moving forward

## Venue

Rue de l’Aqueduc/  
Waterleidingsstraat 118  
B-1050 Brussels

## CPD

ERA’s programmes meet the standard requirements for recognition as Continuing Professional Development (CPD). This event corresponds to **10 CPD hours**.

## Your contact persons



Dr Kleoniki Pouikli  
Course Director  
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Sabine Framing  
Assistant  
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16:30 **Compensation funds: an alternative for ensuring remediation?**

- Obstacles and perspectives
- Examples

*Benedek Javor*

17:00 Discussion

17:30 End of first seminar day

## Friday, 30 November 2018

### V. THE ENVIRONMENTAL LIABILITY DIRECTIVE AT NATIONAL LEVEL

09:15 **Overview of ELD implementation by Member States**

- Procedural and substantive fragmentation
- More stringent provisions under Article 16 ELD
- Inherent ambiguities of the ELD text

*Kleoniki Pouikli*

09:45 **PANEL DISCUSSION:  
National experiences of ELD application**

- Hungary: Benedek Javor
- Italy: Ugo Salanitro
- Belgium: (TbC)
- Poland (TbC)

Coordinator: *Kleoniki Pouikli*

10:45 Discussion

11:00 Coffee break

### VI. THE ENVIRONMENTAL LIABILITY DIRECTIVE: THE WAY FORWARD

11:30 **Actions and initiatives at EU level**

- REFIT
- Multi-Annual Programme
- European Parliament 'Resolution to improve harmonisation of the ELD'

*Hans Lopatta*

12:00 **Revision of the Environmental Liability Directive?**

- Inserting mandatory financial security?
- Extending the strict liability scope?
- Re-considering exceptions and defences?

*Valerie Fogleman*

12:30 Discussion

13:00 End of seminar

For programme updates: [www.era.int](http://www.era.int)

Programme may be subject to amendment.

## Save the date

### Annual Conference on European Environmental Law 2019

Trier, 1-2 April 2019

### Summer Course on European Environmental Law 2019

Trier, 24-28 June 2019

## e-Presentations on Environmental Law

### Lack of Transparency in EU Environmental Legislative Process

March 2016, Anaïs Berthier

### Enforcement of Environmental Law: New Tendencies in Access to Justice

March 2016, Darren Abrahams

### Access to Justice in Environmental Law – National Cases

March 2016, Matthias Keller

[www.era.int/elearning](http://www.era.int/elearning)

# Registration

## THE ENVIRONMENTAL LIABILITY DIRECTIVE (ELD) IN PRACTICE

Brussels, 29-30 November / Event Number: 418D94



### Registration

Fax: +49 (0) 651 93737-773

E-mail: [info@era.int](mailto:info@era.int)

Online registration:  
[www.era.int/?127451&en](http://www.era.int/?127451&en)

Postal address:

ERA  
Postfach 1640  
D-54206 Trier

### Location

Rue de l' Aqueduc/Waterleidingsstraat 118  
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### Language

English

### Contact Person

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I would like to register for the ERA event mentioned above.

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### Registration fee

Fee	Standard	EU & ERA patrons*	Young lawyers & other groups**
Registration until 29 October 2018	€ 531.00 <input type="checkbox"/>	€ 318.60 <input type="checkbox"/>	€ 398.25 <input type="checkbox"/>
Registration after 29 October 2018	€ 590.00 <input type="checkbox"/>	€ 354.00 <input type="checkbox"/>	€ 442.50 <input type="checkbox"/>

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- Fellows of the European Law Institute

### \*\* Young lawyers & other groups

- For young lawyers up to 30 years of age (important: the participant must provide a copy or details of his or her passport or identity card on registration);
- Full-time staff of universities or comparable academic institutions;
- Staff of charitable organisations or comparable institutions
- Registration of three or more employees from the same organisation

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