



The Seventh meeting of the Task Force on Access to Information to the Aarhus Convention
Geneva (virtual meeting), 16 November – 17 November 2020

For Agenda Item 5 **Stocktaking of recent and upcoming developments**

Dear Mrs. Chair, dear Colleagues,

This statement is made on behalf of Justice and Environment network of environmental lawyers. Since 2011 the Environmental Liability Directive of the EU (ELD) has been one of the leading research and advocacy topics of the European network of public interest environmental lawyers, Justice and Environment. In 2020, we decided to focus on a narrower, but key, bottleneck area of the implementation of the ELD, namely the issues of access to information in connection with environmental liability. In the previous J&E efforts we have also dealt with this topic and examined it from two angles:

- a) what kind of sources of information (formal, informal) on ELD implementation do exist on national level?
- b) what kind of data is available on the number, locations, size of damage, procedural data, results of clean-up operations, costs, and timing?

Based on the results of the earlier J&E researches, we designed new, more detailed questions alongside these axes of sources and quality of data and have run a research anew. This time with the double advantage of comparison in time and comparison between different parts of Europe. The countries having participated in this new project show a good variety of East and West, South and North among the EU Member States, as well as of old and new members of the Union (namely Austria, Bulgaria, Estonia, Greece, Hungary and Spain).

I. Our approach and findings

1. The most important question of our study was the existence and status of a *specialised organisational infrastructure* of access to information in environmental liability issues. While there are ELD contact points in all countries in the ministry responsible for environmental protection, their primary task is to keep contact with the European Commission, and they have less responsibilities towards their national level stakeholders. We found no similar contact points in lower level environmental authorities and/or at municipalities. We learned that there are very few and little special units for managing the ELD cases themselves in the environmental administrative system of the analysed countries on national level, let alone the regional or local levels. This all means a general lack of administrative culture for environmental liability matters, while we have to acknowledge that the sophisticated, less organically developed ELD rules cannot be effectively implemented by general environmental experts only.

2. Our second guess was that even if there is no well organised, interactive ELD information service in a country, some forms of ELD *public registries or databases* might provide the general public and the interested communities with satisfactory information. We seldom found such facilities, although the legal bases were in place at some places, while the lack of organisational background as described above, would certainly prevent the proper implementation of such legislative wishes.

3. We also thought that at least the main issues of environmental liability information would be ensured through the annual (biannual etc.) reports on the state of the environment. Such reports represent the main interface between the environmental protection administration and the rest of the government and the society in general, so it would be of utmost importance to promote all aspects of environmental safety through them. Unfortunately, we found that there is generally little, if any room given for the ELD topic in these annual reports for the time being.

4. No doubt, under these circumstances we have to turn our attention to the alternative sources of information, primarily the other environmental branches, older than the environmental liability segment, such as water protection, nature conservation and waste management. Their reports and other sources of information seem to be more substantial, while they are naturally reflecting on only certain aspects of the complex environmental liability matters.

5. Also, we have to consider some ELD data upon request, while this piecemeal work can only be done by committed and specialised NGOs, which in turn might be useful sources of information on ELD issues.

6. In principle we counted also with the direct information flow on accidental releases from the concerned companies, but no signs could be revealed that this might become a general practice in the near future. Companies and their shareholders are not interested in revealing their faults in handling their environment, not even if with the secrecy they might induce deeper and more widespread dangers, not seldom with deleterious environmental and human health results.

7. An interesting finding of this side of the country researches was, however, that in some countries the *ombudspersons* responsible for environmental protection are excellent sources of ELD information, because they handle hundreds of relevant complaints and they can arrive at some quite important conclusions, which they can use in their legislative advocacy work and also for the outreach to the general society.

8. Concerning the sources of ELD information we reinforced our earlier experiences that in many cases one can have a much better and complex information on environmental liability matters through the European Commission's DG ENV homepage, compared to the listed above national sources of information.

9. Having discussed the infrastructure behind the collection and distribution of ELD data, as well as the major available sources of information in this field, in the second part of our research we examined some detailed features of the environmental liability information. Naturally, we had in mind that if the basic sources of information are in such poor status as we experienced, we could not have too high expectations about the content and quality of the ELD related information either.

10. First we examined important dichotomies in this field, because we are convinced that achieving a better balance between aggregate and broken down data as well as the accessibility of analysed information and rough data would serve a more effective ELD information system and therefore would

mean a major contribution to directing of social attention and resources to this topic of environmental protection. For the same reasons, our researchers added that brand new pollutions and ages old contaminations should be kept on the public agenda likewise, in order to be able to bring the best decisions on the whole system of problems.

11. As concerns the detailed content of the ELD information, we have found some good examples, but again, considering the poor infrastructure of distribution, access, and effective use of such information, these are good signs only for the future. It is also a matter of later researches how much the quality of the – hopefully – more and more available ELD information responds to the statistical requirements of reliability and several kinds of validity. At the present structures of data processing we see strong counter-interests, we have reasons to suspect incompetent or negligent data collection, transmission, and distribution.

12. The balanced content and high quality of environmental information will only evolve with the gradual development of the whole ELD information systems in our countries. We need more and better designed capacity building efforts, including information campaigns, awareness raising, trainings for all groups of stakeholders. The main actors who might move this system out of its stalemate status are the core administrative personnel, in cooperation with specialized NGOs, research and media experts. If they achieve initial successes, they will strengthen political will, amend the available infrastructure, and will be able to involve more specialised experts. DG Environment has a catalyst role in this virtuous circle, while international environmental protection networks, such as Justice and Environment try to take their share from this task.

II. Examples for ELD public registries or databases and alternative sources of information

13. Many think that a trustable compilation of environmental liability cases would be beneficial for the social awareness of this issue, and a widely accessible clarification of the threats and damage would also enhance the will of the political and economic decision-makers to amend the situation. Strangely enough, ELD related information is handled quite secretly in several countries. In Greece, the Registry of Environmental Inspections is only available to authorised users. Our research experts suspect with good basis that the registry would contain ample information on new incidents.

14. The Austrian research summarizes the contradiction between having the data (primarily because of the EU reporting requirements) and not providing the public with them: “There is no obligation to further process the relevant data, collect or keep it published as soon as the damage are remediated. There is no public database or registry to record environmental damage incidents in Austria. Nevertheless, the MoE holds information on environmental damage incidents as they need to report them regularly to the EC.”

15. There is no registry or any other database available on the home page of the environmental authority or any of the ministries responsible for environmental protection in Hungary. However, we do know that on the national level, there are strong data collections for all branches of environmental protection, which includes a multi-faceted environmental data system for environmental damage sites, too. Unfortunately, public access is not ensured, this is only accessible for officials. Indirectly and sporadically, lectures, presentations of officials at professional conferences show at least the operation and content of these databases.

16. In Spain, the website of the Ministry for Ecological Transition and Demographic Challenge also has a specific section on the ELD, which might be more accessible for the public, but contains less quantity and quality of information. This site includes information on the report sent to the European Commission and

also on the report submitted to the Spanish Advisory Council for the Environment. There is a Registry of cases on the homepage, too, however, that part of the website does not work properly and only compiles data on cases produced in a couple of months in 2017. On the regional level, the information provided by Autonomous Communities is very limited. In general, their websites only provide information on the Directive and the transposing Law on Environmental Liability, but they do not contain registries of cases.

17. In Estonia, an overview of the ELD cases in the form of an excel sheet is available on the website of the Ministry of Environment. Apparently, this sheet is not considered a public database in the meaning of the Estonian Public Information Act, as it does not have transparent regulations specifying which data is to be entered to it and how. In practice, according to the Estonian research, introduction or no introduction of data is decided on a case by case basis and even if the decision is yes, there are significant delays oftentimes.

18. In Bulgaria at least there is an expression of legislative will on building solid information basis for the ELD – we might have some doubt, however, how this all could be implemented without the proper infrastructural background, we witnessed above in Point a) in connection with Bulgaria, quite similarly to the other examined countries. According to the law, the Ministry of Environment and Water maintains a special section on its website dedicated to environmental liability, where the relevant legislation, guides, administrative orders, information materials, methodologies, information on on-going procedures, the ELD public registry itself, furthermore contacts and useful links, are listed. The Bulgarian ELD Act has a special section III dealing with Public Registry and Access to Information on ELD with detailed instructions about the basic data of stakeholders in each case, description of the locations and relevant activities. The law also regulates the flow of information from the relevant local authorities to the Ministry with a 60 days deadline. The fact is, nevertheless, that the Registry has been put in place, moreover, it has a searchable database according to operators, identification numbers, locations, activities, and authorities. The Bulgarian ELD homepage is interactive, it allows feedbacks form for the general public in three categories: questions, suggestions, and technical problems.

III. Conclusions

19. ELD information shall be collected from multiple sources, not only from the concerned operators and lower level environmental authorities, but also from other authorities and state organisations, such as the ombudsman offices, available statistics and reports, even if their primary topics are not the ELD matters. Only such a divergent set of sources can offer a sufficiently balanced ELD information system, where both aggregate and individual data, both new occurrences and old, unresolved pollution cases can be traced back and can be searched by interactive means. This way the problem with active and passive access to environmental information might be solved.

Our ELD comparative study can be read under the following link:

http://www.justiceandenvironment.org/fileadmin/user_upload/Publications/2020/ELD_comparative_study_2020.pdf

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