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# **REPORT**

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

Committee on Legal Affairs

Rapporteur: Antonius Manders

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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

*The European Parliament,*

- having regard to Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage<sup>1</sup> (the Environmental Liability Directive – ELD),
- having regard to Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law<sup>2</sup> (the Environmental Crime Directive – ECD),
- having regard to the report from the Commission to the Council and the European Parliament of 14 April 2016 under Article 18(2) of Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage (COM(2016)0204),
- having regard to Articles 4 and 191 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Article 37 of the Charter of Fundamental Rights of the European Union,
- having regard to the amendment of Directive 2004/35/CE through Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from the extractive industries<sup>3</sup>, Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide<sup>4</sup> and Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations<sup>5</sup>,
- having regard to the Commission staff working document of 14 April 2016 entitled ‘REFIT Evaluation of the Environmental Liability Directive’ (SWD(2016)0121), which accompanies the report from the Commission to the European Parliament and to the Council pursuant to Article 18(2) of Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage,
- having regard to the briefing of the European Parliamentary Research Service (EPRS) of 6 June 2016 entitled ‘The implementation of the Environmental Liability Directive: a survey of the assessment process carried out by the Commission’,
- having regard to the study of its Policy Department for Citizens’ Rights and

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<sup>1</sup> OJ L 143, 30.4.2004, p. 56.

<sup>2</sup> OJ L 328, 6.12.2008, p. 28.

<sup>3</sup> OJ L 102, 11.4.2006, p. 15.

<sup>4</sup> OJ L 140, 5.6.2009, p. 114.

<sup>5</sup> OJ L 178, 28.6.2013, p. 66.

- Constitutional Affairs of 15 May 2020 entitled ‘Environmental liability of companies’,
- having regard to the Commission study of May 2020 entitled ‘Improving financial security in the context of the Environmental Liability Directive’,
  - having regard to the evaluation by the European Economic and Social Committee of 11 December 2019 on the Environmental Crime Directive,
  - having regard to the EPRS briefing note of October 2020 entitled ‘Environmental liability of companies: selected possible amendments of the ELD’,
  - having regard to the Commission staff working document of 28 October 2020 on the evaluation of the Environmental Crime Directive (SWD(2020)0259),
  - having regard to the conclusions and recommendations of the European Union Action to Fight Environmental Crime (EFFACE) of March 2016,
  - having regard to Rule 54 of its Rules of Procedure,
  - having regard to the opinions of the Committee on Development, the Committee on the Environment, Public Health and Food Safety and the Committee on Civil Liberties, Justice and Home Affairs,
  - having regard to the report of the Committee on Legal Affairs (A9-0112/2021),
- A. whereas pursuant to Article 191(1) of the TFEU, Union policy on the environment shall contribute to the pursuit of objectives such as protecting human health, protecting and improving the quality of the environment, promoting the prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems;
- B. whereas Article 37 of the Charter of Fundamental Rights requires that a high level of environmental protection and the improvement of the quality of the environment be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development;
- C. whereas the EU’s coordinated environmental strategy encourages cooperation and ensures that EU policies are consistent with each other; whereas the European Green Deal sets the ambition of zero pollution, which is to be delivered through a cross-cutting strategy to protect EU citizens’ health from environmental degradation and pollution, while also calling for a just transition that leaves nobody behind;
- D. whereas responsible business conduct implies that companies take due consideration of environmental concerns; whereas ensuring liability for environmental damage is key to making European businesses more sustainable in the long term; whereas such an achievement is closely interlinked through the development of related legislation on corporate due diligence, corporate social accountability and sustainable corporate governance; whereas liability must be in accordance with national law;
- E. whereas environmental damage, hazardous and harmful chemicals and climate change can cause significant risks to human health from air, soil and water pollution;

- F. whereas the ELD coexists with other liability instruments and provisions, both at EU and Member State level; whereas incidents that give rise to ELD liabilities may trigger criminal, civil or administrative proceedings in parallel, creating legal uncertainty and insecurity both for the companies concerned and potential victims;
- G. whereas the Commission's 2016 report on environmental liability indicates that, notwithstanding the benefits of the ELD in efforts to improve legal coherence at EU level, the EU is still faced with regulatory fragmentation in this area and a lack of uniformity in legal and practical terms;
- H. whereas the existing ELD definitions of 'environmental damage' and 'operator' have been the subject of various analyses which highlighted difficulties in their interpretation; whereas the significance of the threshold of environmental damage is interpreted and applied differently and therefore requires further clarification;
- I. whereas there have been an increasing number of cases in which the victims of pollution caused by subsidiaries of European companies active outside the EU have sought to bring environmental liability lawsuits against parent companies before courts in the EU;
- J. whereas liability regimes regarding diffuse pollution in EU law are fragmented;
- K. whereas the ELD established a framework of environmental liability based on the polluter pays principle to prevent and remedy environmental damage; whereas the ELD complements major pieces of EU environmental legislation, to which it is directly or indirectly linked, in particular the Habitats Directive<sup>6</sup>, the Birds Directive<sup>7</sup>, the Water Framework Directive<sup>8</sup>, the Marine Strategy Framework Directive<sup>9</sup> and the Offshore Safety Directive<sup>10</sup>;
- L. whereas the Commission's 2016 report on environmental liability advised all Member States to undertake to 'record data on ELD incidents and publish ELD registers if they have not done so already'<sup>11</sup>; whereas, despite this, only seven Member States have a register for ELD cases that is publicly available, while four other Member States have a register that is not public; whereas several Member States collect information covered by other pieces of EU legislation, but not specifically by the ELD, or have registers with a broader or different scope, and whereas several Member States collect data at regional level; whereas 14 Member States have no database of environmental incidents or ELD cases; whereas the implementation of the ELD is characterised by a substantial degree of flexibility for the Member States based on regulatory fragmentation and a lack of

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<sup>6</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7.

<sup>7</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20, 26.1.2010, p. 7.

<sup>8</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p. 1.

<sup>9</sup> Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy, OJ L 164, 25.6.2008, p. 19.

<sup>10</sup> Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations, OJ L 178, 28.6.2013, p. 66.

<sup>11</sup> COM(2016)0204, p. 10.

homogeneity from both a legal and practical perspective;

- M. whereas it appears that the majority of Member States do not provide for mandatory financial security instruments in their legislation, but several countries do require them<sup>12</sup>; whereas where implemented, these instruments seem to have proved their worth and demonstrated the need to assess the introduction of a mandatory financial security system;
- N. whereas although sufficient insurance cover is available in most markets, including for complementary and compensatory remediation, demand is generally low due to a lack of reported incidents, sub-optimal enforcement and slower developments in emerging markets<sup>13</sup>; whereas this is not in itself an obstacle to introducing mandatory financial guarantees;
- O. whereas operator insolvency as a consequence of major accidents remains a problem in the EU; whereas the Commission should analyse existing national and regulatory frameworks and adopt a harmonised EU approach with a view to shielding taxpayers from the consequences of a company's insolvency;
- P. whereas the availability of financial security instruments has significantly increased since the adoption of the ELD;
- Q. whereas Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers<sup>14</sup>, which repeals Directive 2009/22/EC, has been adopted and will be applied by the Member States from 25 June 2023;
- R. whereas in some cases, although corporate board members are aware of activities with a high risk of causing environmental damage, their decision-making remains profit-oriented at the expense of responsible behaviour and the environment;
- S. whereas an ELD review should necessarily seek to strike a balance between corporate concerns and environmental protection;
- T. whereas in recent years the European Parliament has taken a proactive role in pushing for an environmental liability regime for environmental and human rights harms occurring in third countries, notably with the adoption of its resolution of 25 October 2016 on corporate liability for serious human rights abuses in third countries<sup>15</sup>;
- U. whereas a mandate for the Commission should ensure the enforcement of provisions regarding establishing or maintaining a level playing field on environmental issues in EU trade agreements, where those provisions are part of such an agreement;
- V. whereas the European Environment Agency is exploring how environmental risks and

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<sup>12</sup> Directorate-General for Environment, *Outcome of the Specific Contract 'Support for the REFIT actions for the ELD – phase 2'*, European Commission, Brussels, 2019, p. 17.

<sup>13</sup> REFIT Evaluation of the Environmental Liability Directive, p. 47.

<sup>14</sup> OJ L 409, 4.12.2020, p. 1.

<sup>15</sup> OJ C 215, 19.6.2018, p. 125.

benefits are distributed across society; whereas the 2015 Paris Agreement on Climate Change emphasises the importance of considering the rights of vulnerable people; 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 states relating to a clean, healthy and sustainable environment; whereas, moreover, a system of corporate liability for human rights abuses is currently being negotiated at the UN;

- W. whereas the impact of environmental damages and crimes adversely affects not only biodiversity and the climate, but also human rights and human health; whereas a review should consider the risks of the transboundary nature of environmental damage, serious organised crime and corruption, together with the risks to human rights and the environment;
- X. whereas Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration recognise the sovereign right of states to exploit their own resources pursuant to their own environmental policies, but equally the responsibility to ensure that activities within their national jurisdictions or control do not cause damage to the environment of other states or of areas beyond the limits of their jurisdictions;

### ***General observations***

1. Welcomes the Commission's efforts to assess and bridge gaps in the implementation of the ELD and the ECD across the Member States;
2. Deplores the fact that the discretionary powers set out in the ELD, the lack of awareness and information about the ELD, insufficient resources and expertise, and the weak mechanisms for securing compliance and effective governance at national, regional and local level have led to implementation deficiencies, considerable variability between Member States with regard to ELD enforcement and compliance levels and the number of cases in particular, and an uneven playing field for operators; deplores the fact that such flaws also have an impact on the implementation of the ECD; is therefore of the opinion that additional efforts are required to ensure regulatory standardisation in the EU and increased public confidence in the effectiveness of EU laws in order to prevent and remedy environmental damage more effectively and strike the right balance between corporate concerns and environmental protection;
3. Welcomes the setting up of the Environmental Compliance and Governance Forum, which brings together professionals with responsibilities in the field of environmental compliance assurance, as a follow up to the 2018 Commission action plan<sup>16</sup> and the 2020-2022 work programme to improve environmental compliance and governance that the forum endorsed in February 2020<sup>17</sup>;
4. Regrets that in many Member States, the budgets of environmental inspectorates have stagnated or decreased due to the financial crisis and that even large, well-resourced

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<sup>16</sup> Commission communication of 18 January 2018 on EU actions to improve environmental compliance and governance (COM(2018)0010).

<sup>17</sup> Environmental Compliance and Governance Forum, Endorsed work programme 2020-2022 to improve environmental compliance and governance, European Commission, Brussels, 2020.

authorities can find it difficult to independently develop knowledge of the best ways to ensure compliance; is thus of the opinion that stronger support at EU level is needed, for example through accessible information portals, commonly used networks (EU networks for practitioners), best practice information and guidance, additional training programmes on the specificities of environmental law and crimes at EU and national level for judges and practitioners, training materials, and guidance on skills, in coordination with the national authorities, as this could increase the pressure on ‘black sheep’ companies and benefit companies that respect the law and would enable stakeholders, operators and the public to become more aware of the existence of the ELD regime and its enforcement and thus contribute to better prevention and remediation of environmental damages;

5. Regrets that environmental crimes are among the most profitable forms of transnational criminal activity; calls on the Commission and the Member States, therefore, to allocate appropriate financial and human resources to preventing, investigating and prosecuting environmental crimes, and to increase the expertise of the authorities involved, including prosecutors and judges, with a view to more effectively prosecuting and sanctioning environmental crime; invites the Member States to set up or reinforce specialised units within their national police services at the appropriate levels for the investigation of environmental offences; calls, furthermore, on the Commission and the Member States to make sure that all Member States have proper environmental crisis management procedures in place at both national and transnational levels and encourages the Member States to use Joint Investigation Teams and the exchange of information in transnational environmental crime cases, which facilitates the coordination of investigations and prosecutions conducted in parallel across several Member States;
6. Takes the view that one of the various causes of the insufficient harmonisation of the ELD is the failure to provide for the application of a standard administrative procedure for notifying competent authorities of imminent threats of or actual environmental damage; regrets therefore that there is no obligation to publish such notifications or information about how cases are dealt with; notes that some Member States have identified this limitation in their national legislation and have consequently set up databases for notifications, incidents and cases; points out, however, that the practice varies greatly from Member State to Member State and is rather limited;
7. Points out that reliable data on environmental incidents giving rise to the application of the ELD or other administrative, civil or criminal instruments should be collected under the supervision of an EU ELD task force, with the relevant data being made public; calls on the Commission to duly assess the situation in order to establish whether a combination of different legal instruments could adequately respond to environmental harm, or whether serious gaps still exist that need to be remedied; insists on the correct implementation of the ELD, by encouraging Member States to record data on ELD incidents, publish ELD registers and gather the data required to document the effective and efficient application of the directive in their country in order to increase trust in the ELD system and better implementation;
8. Underlines that in almost all ELD cases, operators cooperate with administrative authorities to work towards remediation; notes, however, that the average cost of



remedial action is EUR 42 000<sup>18</sup>, but that costs were substantially higher in a few significant cases; regrets therefore that in those cases, cost recovery was impossible due to the operator's insolvency, and that as a result, costs had to be covered by the state, and indirectly the taxpayer, a phenomenon that has to be avoided in the future;

9. Notes that the number of companies prosecuted in environmental cases is low across the Member States, even though criminal offences within the meaning of the ECD are demonstrably taking place; points out, in this context, that the causes of this situation have not yet been comprehensively analysed or explained by the Commission or the Member States;

### ***Recommendations***

10. Calls for the ELD to be revised as soon as possible and to be transformed into a fully harmonised regulation; stresses, meanwhile, the need to update and align the ELD with other pieces of EU legislation designed to protect the environment, including the ECD; emphasises that differences in the implementation and application of EU rules for the liability of companies for environmental damage are not providing a level playing field for EU industry at present, which is distorting the proper functioning of the EU's internal market; calls for greater efforts to harmonise the implementation of the ELD in the Member States;
11. Calls for the ECD to be updated following a thorough impact assessment, which should assess inter alia the scope of the directive, while taking account of new types and patterns of environmental crime; stresses, furthermore, the need to ensure the effective enforcement of existing legislation;
12. Takes note of the Member States' increasing commitment to working towards the recognition of ecocide at national and international level; asks the Commission to study the relevance of ecocide to EU law and EU diplomacy;
13. Calls on the Commission to provide further clarification and guidance to competent national authorities and prosecutors on the key legal terms of the ECD and to develop a harmonised classification of environmental crimes;
14. Underlines the important role of soft law instruments, such as guidance papers on the interpretations of legal terms used in both the ELD and the ECD, evaluation of damage, or information on and comparison of sanction practices in the Member States, in enhancing the effectiveness of the implementation of the directives; stresses the need to introduce much more timely and stringent regulatory action in the Member States;
15. Is of the opinion that enforcement should be harmonised and that an EU ELD task force made up of highly qualified experts and Commission officials should be created to support the Member States, upon request, with the implementation and enforcement of the directive on the one hand, and to support and advise victims of environmental damage on the available options for legal action at EU level on the other (comparable to SOLVIT);

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<sup>18</sup> Policy Department for Citizens' Rights and Constitutional Affairs, Environmental liability of companies, European Parliament, Brussels, 2020, p. 110.

16. Believes that the revised framework should provide for improved EU-wide data collection, information exchange, transparency and the sharing of best practices among the Member States, supported by the EU ELD task force;
17. Recommends that the future EU ELD task force supports the implementation of a comprehensive monitoring system to provide competent authorities with an effective toolbox to monitor and enforce compliance with environmental legislation;
18. Calls on the Commission and the Member States, supported by the EU ELD task force, to set up protection and support schemes for the victims of environmental damage and to ensure their full access to justice, information and compensation; emphasises the role of environmental NGOs in raising awareness and in identifying potential breaches of EU and national environmental laws;
19. Calls on the Commission to assess the efficiency of rapid claim mechanisms with a view to ensuring swift compensation for victims in insolvency cases, which can lead to further damages;
20. Welcomes the adoption of Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers, which repeals Directive 2009/22/EC and will be applied by the Member States from 25 June 2023;
21. Recognises that the Aarhus Regulation is currently being reviewed<sup>19</sup>; reiterates that the Aarhus Regulation allows for access to information, public participation in decision-making and access to justice in environmental matters, and thus public scrutiny of EU acts that affect the environment; stresses that the Aarhus Regulation includes the ELD;
22. Emphasises, in particular, the role of environmental human rights defenders striving for rights and fundamental freedoms as they relate to the enjoyment of a safe, healthy and sustainable environment, and strongly condemns any form of violence, threat, harassment or intimidation perpetrated against them, including when its purpose is to procedurally undermine their efforts to hold those causing environmental damage legally accountable; calls on the Member States to ensure proper and effective investigation and prosecution of such acts;
23. Supports the existing requirements to also report on non-financial issues; notes, however, that such reporting has until now only been a legal duty for large undertakings; calls on the Commission to put emphasis on the enforcement of those reporting requirements in case of non-performance in the upcoming revision of the Non-Financial Reporting Directive (NFRD)<sup>20</sup>;
24. Believes that most definitions in the ELD, notably ‘environmental damage’ and ‘operator’, should be further clarified and where appropriate extended to make the

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<sup>19</sup> Commission proposal for a regulation of the European Parliament and of the Council of 14 October 2020 amending Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (COM(2020)0642).

<sup>20</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ L 330, 15.11.2014, p. 1.

directive fair and clear to all relevant stakeholders and to keep pace with the rapid evolution of pollutants; welcomes therefore the current efforts to develop a common understanding document (CUD) on key ELD definitions and concepts; regrets, however, that the Commission and the ELD government expert groups did not reach an agreement on its format, meaning that the CUD remains a document produced by the consultancy which was hired by the Commission to support the implementation of the 2017-2020 multiannual ELD work programme;

25. Is of the opinion that the ELD revision should be aligned with the Paris Climate Agreement in order to safeguard the interests of EU citizens and the environment alike; acknowledges the intrinsic value of the environment and ecosystems and their right to effective protection;
26. Notes that liability regimes regarding diffuse pollution in EU law are fragmented; calls on the Commission to carry out a study on how diffuse pollution is addressed by the different EU liability regimes;
27. Points out that differing interpretations and application of the criteria in Annex I to the ELD, which elaborate on the definition of 'environmental damage' as stipulated in Article 2(1)a of the ELD, are one of the reasons for the inconsistent application of the directive; calls, therefore, for a more consistent application and for further clarification and guidance of the criteria and thus what constitutes 'significant damage' under the ELD;
28. Calls on the Commission to evaluate whether extending the scope of the ELD and the activities listed in Annex III thereto could limit short and long-term damage to the environment, human health and air quality; asks the Commission, furthermore, to assess whether the precautionary principle approach properly and effectively presupposes potentially dangerous risks or effects;
29. Urges the Commission and the Council to consider environmental crimes as a priority; calls on the Commission to make full use of Article 83(2) of the TFEU and to consider the adoption of an overall framework directive on environmental offences and effective and proportionate sanctions, defining the behaviours to be punished, the nature of infringements, the types of offences, the reparation regimes, the restoration measures and the minimum sanctions, including overall liability of legal and individual persons; calls on the Commission to evaluate the possibility of including environmental crimes among the categories of offences in Article 83(1) of the TFEU;
30. Considers that comprehensive and effective prevention measures and dissuasive and proportionate criminal sanctions are important deterrents against environmental damage; deplors the low detection, investigation, prosecution and conviction rates for environmental crime; considers, moreover, that in accordance with the polluter pays principle, companies should bear the full costs of the environmental harm they have directly caused in order to incentivise them to internalise environmental externalities and avoid externalising the costs;
31. Stresses that environmental damage should entail administrative, civil and criminal liability for the companies responsible in accordance with the *ne bis in idem* principle; notes that those forms of liability coexist with other liability regimes in business law, such as consumer law or competition law;

32. Expresses its concern about the high incidence of environmental crime, as the combined estimates from the OECD, the UN Office on Drugs and Crime (UNODC), the UN Environment Programme (UNEP) and Interpol on the monetary value of all environmental crime show it to be the fourth largest category of international crime; recognises the direct or indirect connection between environmental offences and transnational organised crime and corruption<sup>21</sup>; calls on Europol to update the study carried out in 2015<sup>22</sup> and regularly provide updated data; points out that freezing and confiscation of the proceeds of crime, including environmental crimes, are crucial means for combating organised crime, and stresses the importance of using those proceeds also for social purposes aiming at repairing the damage done and improving the environment;
33. Calls on the Commission to explore the possibility of extending the mandate of the European Public Prosecutor's Office (EPPO), once it is fully established and fully functional, to cover environmental offences;
34. Calls on Europol and Eurojust to reinforce the documentation, investigation and prosecution of environmental crimes; calls on the Commission, Europol and Eurojust to provide further support and a more effective and institutionalised structure for existing networks of practitioners, cross-border law enforcement, environmental agencies and specialised prosecutors such as the European Network of Prosecutors for the Environment (ENPE) and the European Union Forum of Judges for the Environment (EUFJE);
35. Stresses the importance of (e-)training for law enforcement actors in environmental crime and calls on CEPOL to intensify its training in this field;
36. Stresses the importance of strengthening the Europol Environment Crime Network (ENVICrimeNet) at national and European level to enable independent and effective investigations to fight environmental crimes;
37. Stresses that the EU environmental liability regime must respect policy coherence for development and the do no harm principle;
38. Calls on the Commission to assess the introduction of a secondary liability regime, namely parental and chain liability for damage caused to human health and the environment<sup>23</sup>, and to carry out an assessment of the current liability situation of subsidiaries active outside the EU, including possible improvements for cases of environmental damage;
39. Welcomes the Commission's announcement that its proposal on corporate due diligence and corporate accountability will include a liability regime and considers that in order to enable victims to obtain an effective remedy, undertakings should be held liable in accordance with national law for the harm the undertakings under their control have caused or contributed to by acts or failures to act, where the latter have committed

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<sup>21</sup> See the report for EFFACE 'Organised Crime and Environmental Crime: Analysis of International Legal Instruments' (2015), or the study 'Transnational environmental crime threatens sustainable development' (2019).

<sup>22</sup> Europol, 'Report on Environmental Crime in Europe', 5 June 2015.

<sup>23</sup> See, for instance, the judgment of the Court of Justice of 10 September 2009, *Akzo Nobel NV and Others v Commission of the European Communities*, C-97/08 B, ECLI:EU:C:2009:536.

violations of human rights or have caused environmental harm, unless the undertaking can prove that it acted with due care in line with its due diligence obligations and took all reasonable measures to prevent such harm;

40. Is of the opinion that the optional permit and state-of-the-art defences under the ELD should only be maintained when a company can prove that it could not have known about the danger of its activity (reversed burden of proof); calls, therefore, for the revised environmental liability regime to restrict the scope of application of the permit and state-of-the-art defences in order to render it more effective, in line with the polluter pays principle;
41. Calls on the Commission to examine the possibility of aligning the ELD with civil liability legislation for corporate boards in cases where a causal link can be established between a corporate board's action or failure to act and environmental damage as defined in the ELD, including where such damage results from polluting activities carried out to maximise the profit of the company and increase the bonuses of its members<sup>24</sup>;
42. Highlights that the cost of environmental damage for the taxpayers and operators responsible could be greatly reduced through the use of financial security instruments; notes, however, that the ELD does not provide for a mandatory financial security system;
43. Asks the Commission to assess the introduction of a mandatory financial security system (covering insurance, bank guarantees, company pools, securities and bonds or funds) with a maximum threshold per case, aiming to prevent taxpayers from having to bear the costs resulting from remediation of environmental damage; asks the Commission, in addition, to develop a harmonised EU methodology for calculating the maximum liability threshold, taking into account the activity and the impact on the environment; stresses the need to ensure that financial compensation can be obtained, even in the event of insolvency of the operator responsible;
44. Asks the Commission to compile a study on the introduction of an ELD financial compensation scheme at EU or national level for cases where available remedies are inadequate given the extent of the damage; stresses that the related discussions should address, inter alia, possible ways of quantifying environmental damage;
45. Considers that, given the purpose of the ELD is to prevent and remedy environmental damage, a future regulation (Environmental Liability Regulation) should be applicable to all companies that operate in the EU, regardless of where they have been incorporated or where they are based, and that a holistic approach and reciprocity are necessary to meet the needs of companies in a global economy; considers, furthermore, that the application of the future regulation should be extended to any entity in receipt of EU, national or regional funds that causes or may cause environmental damage in the course of its activities;

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<sup>24</sup> E.g. the dieselgate scandal and the case of the CEO of Volkswagen.

46. Welcomes the fact that an increasing number of European companies are pursuing the objective of sustainable value creation and calls on all companies to pursue a triple bottom line;
47. 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;
48. Recalls that the EU should promote a high level of environmental protection on its own territory and do its utmost to prevent environmental damage in third countries caused by companies based in EU Member States; recalls equally that there is no EU legal instrument addressing the possibility of prosecuting European companies abroad for environmental crimes or activities causing environmental damage; calls for the EU to encourage parent companies to take sustainable and responsible approaches to their cooperation with third countries, in line with international human rights and environmental standards, and to refrain from taking investment strategies that lead directly to hazardous outcomes; encourages the Commission to establish incentives for companies whose sustainability policies voluntarily go beyond environmental and biodiversity standards laid down in law for the purposes of evaluating these policies, distilling best practices, and providing this as an example for other companies to follow;
49. Calls on the Commission to ensure the full implementation and enforcement of the biodiversity provisions in all trade agreements, including through its Chief Trade Enforcement Officer; considers that the Commission should better assess the impact of trade agreements on biodiversity, including follow-up action to strengthen the biodiversity provisions of existing and future agreements, where relevant;
50. Calls on the Commission to ensure the enforcement of provisions regarding establishing or maintaining a level playing field on environmental issues in EU trade agreements, where those provisions are part of such an agreement;
51. Is of the opinion that in predefined cases of extremely widespread pollution, not just environmental liability instruments, but a multitude of instruments, including administrative measures, financial penalties and in some cases criminal prosecution, should be applied to remedy the problem;
52. Calls on the Commission to enforce the application of sanctions established under the ECD;
53. Calls on the Commission, in this regard, to ensure that corporate social responsibility in preventing and remedying environmental harm is taken into account in procurement contracts and the allocation of public funds;
54. Calls on the Commission to come forward with a proposal for environmental inspections at EU level without further delay, as proposed by the Environmental Compliance and Governance Forum in action nine of its work programme, but is of the opinion that a recommendation to establish minimum criteria for environmental inspections is not enough;
55. Calls on the Commission to promote action by the EU, its Member States and the

international community to step up efforts against environmental crime; calls on the Commission and the Member States to raise awareness and promote solutions in international forums;

56. Suggests that the recommendation of the European Parliament and of the Council of 4 April 2001<sup>25</sup>, which provides a detailed explanation of how environmental inspections should be conducted, should be updated if necessary and transposed into a binding document or regulation;
  57. Asks the EU Ombudsman to strengthen its focus on issues related to the environment *acquis*;
  58. Considers that companies convicted for environmental crimes should not be allowed to benefit from the measures envisaged for registrants on the transparency register for an appropriate but limited period of time; 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 temporary removal of companies convicted for environmental crimes;
  59. Points out that the confidential treatment of information related to the effects of industrial activities, combined with the difficulties involved in monitoring and identifying practices such as illegal dumping of substances or waste into the sea, vessel degassing and oil tipping, can lead to an increase in the number of infringements of the law relating to water pollution; stresses, therefore, that the Member States must make the relevant information public in order to facilitate the evaluation of a possible causal link between industrial operations and damage to the environment;
  60. Supports the UN's call for global recognition of the right to a safe, clean, healthy and sustainable environment at UN level;
  61. Recalls that the global rise in environmental criminality is a growing threat to the achievement of the UN's 2030 Agenda for Sustainable Development and that people in developing countries directly depend on the environment for their food, health and economic security; deplores the fact that the degradation of biodiversity due to environmental crime and the resulting loss of resources increase their vulnerability;
  62. Calls for increased support for the local authorities and governments of developing countries in harmonising domestic legislation and policies with international environmental standards; stresses the need to support civil society and local actors in third countries and developing countries in holding government authorities accountable for state-tolerated or endorsed environmental damage caused by private and state-owned companies;
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- ◦
63. Instructs its President to forward this resolution to the Council and the Commission.

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<sup>25</sup> Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States, OJ L 118, 27.4.2001, p. 41.





## EXPLANATORY STATEMENT

With the ELD dating back to 2004, the European Parliament aims with this own initiative report to identify areas of possible improvement and to make specific recommendations to be taken up by the European Commission in its future legislative proposals. These proposals should among others aspects, be aimed at the prevention of environmental damage by reducing risks, strengthening the precautionary principle and the polluter pays principle, creating a level playing field for businesses and ensuring tax payers do not bear the cost for environmental damage. Overall, the ambition should be to balance environmental and business interests.

### Position of the Rapporteur

Significant differences exist in the Member States when it comes to the implementation and the enforcement of the ELD. This prevents a level playing field in the Internal Market, makes it unnecessarily hard and costly to navigate for businesses and limits the effective prevention and reversal of environmental damage. Therefore, the rapporteur is of the opinion that the ELD should be transformed into a fully harmonised regulation. During a workshop on the ELD in the JURI Committee on 27 October 2020, multiple experts on the topic confirmed this as a viable option.<sup>1</sup>

To support the Member States, upon their request, with the implementation and enforcement of the ELD, the Commission should consider creating an *EU ELD-taskforce* consisting of highly qualified experts. The *EU ELD-taskforce* could also offer support and advice to harmed individuals (comparable to SOLVIT) on the available options for legal action at EU-level in case of environmental damage.

The Commission should also assess the need for the potential introduction of a mandatory financial security system with the aim of ensuring that tax payers do not bear the cost of environmental damage in case of company insolvency.

For the same reason, the Commission should assess the appropriateness of introducing parental company and supply chain liabilities aimed at reducing risks.

Additionally, the ELD should apply to all companies operating in the Internal Market, regardless of where they have been incorporated or of where they are actually based. Reciprocity is necessary to prevent unfair competition and meet the needs of companies in a global economy. Combined with creating a level playing field in the Internal Market, these were the most frequent demands from the industry representatives to whom the rapporteur spoke.

The Commission should examine if it is necessary and possible to extend the scope of the ELD to align it with other EU-legislation and to have a holistic approach in avoiding long and short-term damage to environment, human health and air quality, and to assess whether the precautionary principle approach properly presupposes potentially dangerous risks or effects.

Furthermore, the rapporteur believes that the definitions of the ELD should be clarified to

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<sup>1</sup> <https://www.europarl.europa.eu/committees/en/workshop-on-liability-of-companies-for-e/product-details/20201023WKS03021>.

make the ELD fair and clear to all stakeholders and to keep pace with the rapid evolution of pollutants.

What is more, as far as the optional permit and state-of-the art defences are concerned, the rapporteur is of the opinion that in cases of foreseeability, or if company scientists should have known better, that these defences should only remain if the company can prove that they could not have known the danger of their activity (reversed burden of proof).

The ELD should be aligned with civil liability legislation for company board members, who cause environmental damage through irresponsible decisions, as in the Volkswagen case (the so-called “Dieselgate scandal”).

Finally, in cases of extremely large pollution, not just environmental liability instruments, but a multitude of instruments including administrative measures, financial penalties and in some cases criminal prosecution should be possible to be applied as remedies.

7.12.2020

## **OPINION OF THE COMMITTEE ON DEVELOPMENT**

for the Committee on Legal Affairs

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

Rapporteur for opinion: Caroline Roose

## SUGGESTIONS

The Committee on Development calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Whereas in recent years Parliament has taken a proactive role in pushing for an environmental liability regime for environmental and human rights harms occurring in third countries, notably with the adoption of its resolution of 25 October 2016 on corporate liability for serious human rights abuses in third countries;
2. Whereas Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration recognise the sovereign right of states to exploit their own natural resources, but equally the responsibility, or obligation, not to cause damage to the environment of other states or of areas beyond the limits of national jurisdiction;
3. Whereas human rights abuses and environmental harms have been observed in many developing countries and include the expropriation of land from indigenous people and local communities, modern slavery, ecosystem destruction, water pollution and the overexploitation of natural resources;
4. Whereas there have been an increasing number of cases in which victims of pollution caused by subsidiaries of European companies try to bring environmental liability lawsuits against parent companies before courts in the EU;
5. Whereas human rights abuses and environmental harms are often deeply linked and need to be tackled accordingly through a holistic approach;
6. Recalls that the global rise in environmental criminality is a growing threat to the achievement of the UN's 2030 Agenda for Sustainable Development, the Paris Agreement and the Convention on Biological Diversity, in particular in developing countries; is concerned that environmental crimes often go undetected owing to the reticence or inefficiency of law enforcement, in particular in developing countries;
7. Supports the UN's call, and those by other international organisations, for global recognition of the right to a safe, clean, healthy and sustainable environment at UN level, which must entail a duty to prosecute those who violate this right; calls for the Union to adapt the Charter of Fundamental Rights of the EU to this end; calls for the EU and the Member States to step up their efforts towards the realisation of the Sustainable Development Goals (SDGs) in the context of the Decade of Action by 2030, the Green Deal and the EU 2030 Biodiversity Strategy;
8. Recalls that the EU should promote a high level of environmental protection on its own territory and do its utmost to prevent environmental damage in third countries caused by companies based in EU Member States; recognises the need for and urges the Member States to establish a mandatory, harmonised framework on due diligence at Union level, with a view to ensuring that action on due diligence is not strictly limited to national efforts at Member State level; recalls that due diligence is primarily a preventative mechanism and that the companies concerned should be required first and foremost to identify potential or actual adverse impacts and adopt policies and measures to address them; emphasises that if an undertaking causes or contributes to an adverse impact, it

should provide for a remedy and should be subject to corporate liability for such impacts; stresses that corporate liability, including for harms linked to an undertaking's operations, is necessary to ensure that companies are incentivised to practice due diligence and for due diligence to be effective;

9. Recalls that, according to the UN Environment Programme (UNEP) and Interpol, the monetary value of environmental crime is between USD 70 billion and USD 213 billion per year; stresses that illegal trade in animals and forest products mostly affects developing countries; calls for the EU to step up its support for these countries in combating illegal trafficking that affects the environment, deprives them of additional sources of income and hampers their social and economic development;
10. Stresses that people in developing countries are directly dependent on biodiversity for their food, health and economic security; deplores the fact that the degradation of biodiversity due to environmental crime and the resulting loss of resources increase their vulnerability;
11. Points out that, while international environment law has evolved through the adoption of treaties and conventions, criminal law remains insufficient to prevent significant ecological harm; urges the EU to ensure accountability and liability in the fight against environmental crime and to make it a strategic political priority in international judicial cooperation and for the EU institutions and the Conference of the Parties to the United Nations Framework Convention on Climate Change, notably by enhancing environmental good governance, by promoting compliance with multilateral environmental agreements (MEAs), including the adoption of criminal sanctions, by promoting the exchange of best practices on environmental protection through dialogue with the private and public sectors, local authorities in third countries and civil society, and by promoting the enlargement of the scope of the International Criminal Court to recognise criminal acts that amount to ecocide under the Rome Statute;
12. Calls on the Commission to consider a proposal for a reform of Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law in order to broaden the list of types of conduct classified as environmental offences and to establish a minimum framework of penalties to ensure that it has a deterrent effect throughout the EU;
13. Welcomes the EU Biodiversity Strategy for 2030 and the priority given to the protection of fauna and flora in the negotiation of trade agreements with developing countries; recalls the Commission's commitment to revising the EU Action Plan against Wildlife Trafficking, notably illegal ivory trafficking; calls, in this connection, for the African elephant, threatened with extinction as a result of the illegal ivory trade, to be included in Annex 1 to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
14. Calls on the Commission and the Member States to set up protection schemes for the victims of environmental damage and to ensure that they have full access to justice, compensation and assistance, in a context where the Environmental Liability Directive (ELD) does not allow for civil society organisations or individuals to file claims against companies for alleged violations of the directive; calls for the physical and legal persons affected to have the right to file claims against companies on the basis of the ELD; calls,

furthermore, for the facilitation of representative actions by NGOs against breaches of environmental norms by companies;

15. Stresses that the EU environmental liability regime must respect policy coherence for development (PCD) and the ‘do no harm’ principle;
16. Welcomes the Commission’s proposal to improve the implementation of the Aarhus Convention and to address the concerns expressed by the Aarhus Convention Compliance Committee regarding the EU’s compliance with its international obligations under the convention;
17. Calls on the Commission and the Member States to promote the ratification of the Aarhus Convention among third countries and to play an active role in the Task Force on Access to Justice in sharing information, experiences and good practices in relevant jurisprudence with third countries;
18. Calls on the Commission and the Member States to promote the principles of the Aarhus Convention in international organisations and international processes relating to the environment;
19. Recalls that the ELD is crucial to the implementation of the ‘polluter pays’ principle; deplores the fact that liability rules have largely not been applied and are unable to fulfil their compensatory and preventive functions; believes that, in order to ensure effective compliance with the ‘polluter pays’ principle, the ELD should establish a strict liability regime for any kind of environmental damage or situation of imminent danger to the environment, including in situations where damage is the result of explicitly authorised activities or where the potential damage of such actions could not have been known when the actions took place, and provide for the non-applicability of statutory limitations to penalty proceedings;
20. Believes that corporate social responsibility (CSR) and corporate environmental responsibility (CER) play a role complementary to environmental liability, as due compliance with CSR and CER can reduce the likelihood of environmental harm; calls on the Commission to adopt ambitious legislation on an mandatory EU due diligence framework accordingly; stresses that such legislation should follow a cross-commodity approach, apply to all economic actors in the supply chain, including financial actors, both upstream and downstream, and be accompanied by a robust reporting, disclosure and enforcement mechanism, including effective, proportionate and dissuasive penalties for non-compliance; recalls, however, that such legislation must complement the legislation setting out a binding framework on environmental liability for EU companies operating in third countries; reiterates equally the need to develop standards on mandatory disclosure of relevant information by undertakings within the remit of the revision of Directive 2014/95/EU of 22 October 2014 on non-financial reporting, notably by including an enforcement and sanctioning mechanism to support the reporting requirements;
21. Considers that, in order to achieve a high level of environmental protection, the scope of the Environmental Liability Directive should be extended to include any type of conduct that is harmful to or creates an immediate risk for the environment, especially any type of imminent risk for, or damage to, water and soil;

22. Highlights the barriers to holding companies liable for environmental harm, such as the regime of limited liability, insolvency, barriers to access to justice, latency, causal uncertainty and the lack of detail in the assessment criteria for environmental damage;
23. Welcomes the efforts made by some leading enterprises and corporations to implement voluntary measures on upholding human rights and environmental standards; recognises, however, that voluntary efforts do not suffice and that a comprehensive framework is vital to tackling environmental criminality and protecting and upholding universal environmental standards;
24. Recalls that the regulatory framework for multinational corporations (MNCs) is flawed, as the rules enshrined in MEAs are not binding on MNCs under international law; recalls equally that there is no EU legal instrument addressing the possibility of prosecuting European companies abroad for environmental crimes or activities causing environmental damage; stresses, therefore, that the current system of reliance on national laws is likely to underestimate the gravity of corporate environmental damage; calls for the EU and its Member States, on these grounds, to provide for access to justice by allowing victims to take parent companies to court in the EU, in a context where many host state legal systems are inadequate;
25. Calls, furthermore, for increased support for local authorities and governments of developing countries in harmonising domestic legislation and policies with international environmental standards in an effort to strengthen national enforcement of due diligence and corporate liability in third countries;
26. Considers that all Member States should establish strict civil liability regimes to determine the redress to be provided for any direct damage caused to individuals as a result of environmental damage caused by an operator; calls on the Commission to present a legislative proposal to that effect;
27. Recalls that under the current ELD, there is no room for imposing parent company liability, a negative side effect of which is that some companies may abuse their limited liability to invest in hazardous industries by establishing separate legal entities in order to externalise environmental costs, thereby limiting their legal and public relations exposure; believes that the EU must develop an inclusive approach to corporate liability; underlines that the environmental liability of companies should be connected to the global dimension of production processes;
28. Recalls the governance gap in global value chains; reiterates the need for a common regulatory framework that holds companies accountable and liable; calls for the EU to encourage parent companies to take sustainable and responsible approaches to their cooperation with third countries, in line with international human rights and environmental standards, and to refrain from taking investment strategies that lead directly to hazardous outcomes; insists on the need to create a level playing field for businesses and companies to uphold human rights and environmental standards;
29. Takes the view that the scope of strict liability should be extended to parent companies throughout the supply chain to avoid the risk of moral hazard, in line with/and complementary to the principle that EU undertakings have a duty of care and due diligence obligation to prevent environmental harm caused by subsidiaries active outside the EU; urges the Commission to evaluate the feasibility of taking such a

measure; stresses the importance of including clauses in EU trade agreements which ensure a high level of environmental protection;

30. Notes that companies play an important role in the ELD system; considers, however, that given the administrative nature of the ELD, administrative authorities play a crucial role in taking the initiative and reacting rapidly when environmental harm is detected, as well as in taking adequate action to prevent future harm;
31. Recalls that insolvency seriously undermines the deterrent effect of the ELD in preventing environmental harm; recalls that, as yet, there is no formal duty to provide financial guarantees under the ELD; calls, against this background, for the development of a harmonised framework of mandatory solvency guarantees to cover the ELD liabilities of companies in the event of insolvency in order to boost the preventive effect of the directive, and to search for an optimal mix between future EU legislation on mandatory environmental due diligence, and administrative, civil and criminal enforcement regimes aiming to address environmental harm;
32. Recalls that a system of corporate liability for human rights abuses is currently being negotiated in the UN, within the UN Human Rights Council's open-ended intergovernmental working group on transnational corporations and other business enterprises concerning human rights (OEIGWG); deplores the fact, however, that the Commission has no mandate from the Council to conduct negotiations on behalf of the EU concerning its participation in the OEIGWG; calls once more for the EU and its Member States to engage actively and constructively in the process, with a view to adopting a binding and enforceable UN treaty on business and human rights;
33. Stresses the need to improve access to justice for victims of environmental harm, i.e. through collective actions, representative actions and redress mechanisms, and calls for an assessment of those options in line with the UN Guiding Principles on Business and Human Rights (UNGPs) and under a binding and enforceable UN treaty on business and human rights; recalls the positive role of the future mandatory due diligence legislation with regard to the establishment of mechanisms to ensure that victims of environmental damage in third countries have effective access to justice in Member States when the harmful activities have been carried out by companies based in a Member State or by legal persons under the control of such companies;
34. Emphasises the key role of environmental NGOs in raising awareness and taking legal actions; stresses the need, therefore, to improve access to justice for NGOs, notably in the event of wide-spread pollution, including by removing financial litigation barriers to initiate legal actions under the ELD; deplores the fact, more broadly, that most of the major MEAs between states do not include provisions for international environmental liability; calls for the Union and its Member States, on these grounds, to push for the creation of an international independent authority in the field of environmental liability;
35. Recalls that environmental liability should be properly implemented and enforced to better preserve biodiversity resources, and to make sure that any unlawful habitat conversion is reversed and that restoration costs are borne by the entities responsible; stresses, in this context, that the ELD sets out an exhaustive list of activities that can give rise to company liability for environmental damage besides damage to biodiversity; underlines that this approach seriously limits the application of the 'polluter pays'



principle; calls for liability for all companies and for any environmental damage, in particular when the damage is the company's fault or due to serious negligence; underlines, more broadly, that international law has evolved to embrace new concepts such as the common heritage of humanity, sustainable development and future generations, but stresses that there is no permanent international mechanism to monitor and address environmental damage/destruction that significantly alters the global commons or ecosystem services long-term; calls for the EU and its Member States, to this end, to support a paradigm shift to include ecocide and the right of future generations in international environmental law;

36. Recalls that there is but one ocean and that, in terms of the services it provides to all humanity, it is a common good; recalls that Part 12 of the UN Convention on the Law of the Sea confers sovereign rights on states over their exclusive economic zones and freedom of navigation beyond areas under jurisdiction; recalls, however, that this does not relieve states, and consequently national actors, in particular companies acting at sea, of their responsibility for the preservation of marine and coastal ecosystems; stresses, in this regard, the importance of ensuring the environmental liability of companies for the risks associated with the exploitation of marine resources and maritime transport in the waters of developing countries;
37. Calls for the establishment of clear liability rules for importers, processors and retailers to ensure the full legality and transparency of the supply chain of all agricultural commodities so as to prevent natural habitat destruction in and outside the EU;
38. Notes that the definition of environmental damage set out in the ELD hampers the effective protection of the environment by artificially separating damage to protected species and natural habitats, water damage and land damage; calls for the definition of environmental damage to be modified in order to take a more holistic approach;
39. Supports the correct implementation of the ELD, by encouraging Member States to record data on ELD incidents, publish ELD registers and gather the data required to document the effective and efficient application of the directive in their country;
40. Notes that the threshold of 'significance' required for damage to fall within the scope of the application of the directive has proved too high in practice to allow for sufficient protection of the environment; calls for the removal of this threshold or its clarification in order to remove barriers to the protection of the environment;
41. Stresses the need to support civil society and local actors in third countries and developing countries in holding government authorities accountable for state-tolerated or endorsed environmental damage caused by private and state-owned companies, notably by ensuring the early and constant involvement of local communities and accessible channels for reporting environmental risks;
42. Stresses, in particular, the crucial role of environmental defenders and civil society organisations in developing countries in preventing and combating environmentally damaging actions; recalls that these actors can face physical and psychological violence in many forms intended to suppress their actions; calls on the Commission to strengthen the framework for their protection, notably by enacting specific legal measures defining environmental defenders, in particular through financial instruments for development aid, in order to guarantee their rights and highlight their role in the protection,

preservation and restoration of the environment.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	7.12.2020
<b>Result of final vote</b>	+: 13 -: 10 0: 2
<b>Members present for the final vote</b>	Anna-Michelle Asimakopoulou, Hildegard Bentele, Dominique Bilde, Udo Bullmann, Catherine Chabaud, Antoni Comín i Oliveres, Ryszard Czarnecki, Gianna Gancia, Mónica Silvana González, Pierrette Herzberger-Fofana, György Hölvényi, Rasa Juknevičienė, Pierfrancesco Majorino, Erik Marquardt, Norbert Neuser, Janina Ochojska, Jan-Christoph Oetjen, Christian Sagartz, Marc Tarabella, Tomas Tobé, Miguel Urbán Crespo, Bernhard Zimniok
<b>Substitutes present for the final vote</b>	Barry Andrews, María Soraya Rodríguez Ramos, Caroline Roose

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

13	+
S&D	Udo Bullmann, Mónica Silvana González, Pierfrancesco Majorino, Norbert Neuser, Marc Tarabella
RENEW	Barry Andrews, Catherine Chabaud, María Soraya Rodríguez Ramos
GREENS/EFA	Pierrette Herzberger-Fofana, Erik Marquardt, Caroline Roose
EUL/NGL	Miguel Urbán Crespo
NI	Antoni Comín i Oliveres

10	-
EPP	Anna-Michelle Asimakopoulou, Hildegard Bentele, György Hölvényi, Rasa Juknevičienė, Janina Ochojska, Christian Sagartz, Tomas Tobé
ID	Gianna Gancia, Bernhard Zimniok
ECR	Ryszard Czarnecki

2	0
RENEW	Jan-Christoph Oetjen
ID	Dominique Bilde

Key to symbols:

+ : in favour

- : against

0 : abstention

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

### **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 place<sup>1</sup> 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 to amend its national framework accordingly.

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<sup>1</sup>Decree 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.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	27.1.2021
<b>Result of final vote</b>	+: 58 -: 15 0: 6
<b>Members present for the final vote</b>	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 Rooker, Silvia Sardone, Christine Schneider, Günther Sidl, Ivan Vilibor Sinčić, Linea Sjøgaard-Lidell, Nicolae Ștefănuță, Nils Torvalds, Edina Tóth, Véronique Trillet-Lenoir, Petar Vitanov, Alexandr Vondra, Mick Wallace, Pernille Weiss, Michal Wiezik, Tiemo Wölken, Anna Zalewska
<b>Substitutes present for the final vote</b>	Hildegard Bentele, Manuel Bompard
<b>Substitutes under Rule 209(7) present for the final vote</b>	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 Polfjärd, Pernille Weiss

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

### Key to symbols:

+ : in favour

- : against

0 : abstention

16.12.2020

## **OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

for the Committee on Legal Affairs

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

Rapporteur for opinion: Saskia Bricmont

PA\_NonLeg

### **SUGGESTIONS**

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Recalls that environmental protection is a fundamental right according to Article 37 of the EU Charter of Fundamental Rights, as confirmed by case-law of the Court of Justice of the European Union<sup>1</sup>; considers that a clean and unpolluted environment is essential for human development; stresses that a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union;
2. Considers that today's environmental degradation has far-reaching and long-lasting consequences for a wide range of human rights, including the right to life, liberty and health; recalls that damage to ecosystems and the environment has an impact on sustainable development and access to natural resources, and risks triggering disease, other environmental disasters, irreversible climate change, contamination of the food chain and reduced life expectancy;
3. Stresses that environmental crimes undermine the rule of law, pose a threat to peace and security and seriously hamper the establishment of an area of freedom, security and justice in the EU;
4. Considers that comprehensive and effective prevention measures and dissuasive and proportionate criminal sanctions are important deterrents against environmental damage; deplors the low detection, investigation, prosecution and conviction rates for environmental crime; considers that damage to the environment must be compensated;

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<sup>1</sup> See, for example, CJEU, case C-24/19 or case C-594/18 P.

5. Deplores the lack of effective implementation of EU directives that aim to establish criminal liability of legal persons for environmental offences<sup>2</sup>; emphasises the important role of soft law instruments, such as guidance papers on the interpretations of legal terms used in the directives, evaluation of damage, or information and comparison of sanction practices in the Member States, in enhancing the effectiveness of implementation of the directives; stresses the need to introduce much more timely and stringent regulatory action in the Member States, if necessary opting for a regulation instead of a directive, introducing directly applicable rules to accompany the Green New Deal policy that the EU considers a top priority today;
6. Stresses the need to update such legislation after a thorough impact assessment, and to ensure the effective enforcement of existing legislation;
7. Calls on the Commission and the Member States to allocate appropriate financial and human resources to preventing, investigating and prosecuting environmental crimes, and to ensure a high level of specialisation and expertise of the authorities involved, including prosecutors and judges, with a view to more effectively prosecuting and sanctioning environmental crime; calls, in this regard, on the Member States to set up or reinforce specialised units within their national police services at the appropriate levels for the investigation of environmental offences; calls, furthermore, on the Commission and the Member States to make sure that all Member States have proper environmental crisis management procedures in place at both national and transnational levels;
8. Urges the Commission and the Council to consider environmental crimes as a priority; calls on the Commission to make full use of Article 83(2) TFEU and to consider the adoption of an overall framework directive on environmental offences and effective and proportionate sanctions, defining the behaviours to be punished, the nature of infringements, the types of offences, the reparation regimes, the restoration measures and the sanctions, including overall liability of legal and individual persons; calls on the Commission to evaluate the possibility of including environmental crimes among the categories of offences in Article 83(1) TFEU;
9. Welcomes the Commission's commitment to submit a legislative proposal on mandatory due diligence legislation in global supply chains; recognises that unsustainable practices and lack of ambition for environmental protection within companies are a hindrance for reaching the objectives set in the UN's Sustainable Development Goals (SDGs), especially those set out in goals 3, 9, 12, 13, 14 and 15; stresses the need for transparent, liable and ambitious internal environmental policies and governance in companies, and the importance of a reinforced and highly skilled team monitoring and enforcing such environmental policies, with the main focus being on prevention measures;
10. Expresses its concern about the high incidence of environmental crime, as the combined estimates from the OECD, the UN Office on Drugs and Crime (UNODC), the UN Environment Programme (UNEP) and Interpol on the monetary value of all environmental crime show it to be the fourth largest category of international crime,

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<sup>2</sup> Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage, Directive 2008/99/EC on the protection of the environment through criminal law, and Directive 2009/123/EC amending Directive 2005/35/EC.

with traffic and illegal waste management at the top of the list of environmental crimes; recognises the direct or indirect connection between environmental offences and transnational organised crime and corruption<sup>3</sup>, whereby such environmental offences, which generally take the form of ‘corporate crimes’, open the door wide to mafia infiltration into the legal economy; warns about the risk of further infiltration attempts by criminal organisations in view of the additional opportunities offered to businesses by EU funding for post-pandemic recovery; calls on Europol to update the study carried out in 2015<sup>4</sup> and regularly provide updated data; points out that freezing and confiscation of the proceeds of crime, including environmental crimes, are crucial means for combating organised crime, and stresses the importance of using those proceeds also for social purposes aiming at repairing the damage done and improving the environment;

11. Calls on the Commission, Europol and Eurojust to provide further financial, human and technical support and a more effective and institutionalised structure for existing networks of practitioners, cross-border law enforcement, environmental agencies and specialised prosecutors such as the European Network of Prosecutors for the Environment (ENPE) and the European Union Forum of Judges for the Environment (EUFJE), with the participation of all EU Member States, including setting up networks where prosecutors and judges specialised in environmental crime can exchange experience and assist one another, with a view to improving the effectiveness of combating this type of crime; calls for reinforced action of Europol’s EnviCrimeNet; calls on Europol and Eurojust to reinforce documentation, investigation and prosecution of environmental crimes; underlines the importance of investing in adequate funding and staffing levels for Europol and Eurojust;
12. Calls on Europol to set up a dedicated unit competent to collect, store, process, analyse and exchange information to support and strengthen Member States in preventing, detecting and investigating environmental crime;
13. Stresses the importance of (e-)training for law enforcement actors in environmental crime, and calls on CEPOL to intensify its training in this field; recognises that sufficient resources must be made available to CEPOL;
14. Calls on the Member States to encourage the use of Joint Investigation Teams and the exchange of information in transnational environmental crime cases, which facilitates the coordination of investigations and prosecutions conducted in parallel across several Member States;
15. Calls on the Commission to explore the possibility of extending the mandate of the EPPO, once it is fully established and fully functional, to cover environmental offences; recalls that the EPPO must be equipped with the necessary means to be able to thoroughly investigate and prosecute cross-border criminal activities;
16. Calls on the Commission and the Member States to set up protection and support schemes for the victims of environmental damage and to ensure their full access to

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<sup>3</sup> See the report for EFFACE ‘Organised Crime and Environmental Crime: Analysis of International Legal Instruments’ (2015), or the study ‘Transnational environmental crime threatens sustainable development’ (2019).

<sup>4</sup> <https://www.europol.europa.eu/publications-documents/report-environmental-crime-in-europe>



justice, information and compensation; emphasises the key role of environmental NGOs in raising awareness and in identifying potential breaches of EU and national law, and calls on the Commission and the Member States to provide them with the appropriate financial support; reiterates the importance of enabling individuals or environmental NGOs to seek remedies and injunctive relief if public authorities fail to act to address environmental violations;

17. Emphasises the crucial role of environmental human rights defenders striving for rights and fundamental freedoms as they relate to the enjoyment of a safe, healthy and sustainable environment, and strongly condemns any form of violence, harassment and intimidation perpetrated against them; calls on the Member States to ensure proper and effective investigation and prosecution of such acts;
18. Stresses the importance of raising public and law enforcement awareness on the seriousness and increase of environmental crimes in the EU; calls on the Commission and the Member States to set up dedicated reporting points for environmental crime that would encourage and allow citizens to report, in an anonymous manner and without fear of retaliation, potential environmental offences to the appropriate authorities;
19. Calls for the creation of a centralised online repository for the collection of systematic, reliable and up-to-date statistics on environmental crimes and illegal conduct that harms the environment; calls on the Commission to oblige Member States to provide all relevant statistics covering all reported environmental offences in a standardised form; calls on the Commission to publish a quantitative analysis of the data provided on environmental crimes, with a view to assessing the effectiveness of national systems and providing recommendations on how to adapt them in order to fight environmental crime more effectively, and helping cross-border law enforcement in detecting, investigating and prosecuting such crimes;
20. Is convinced of the need to take an international approach to environmental crime due to its global impact on societies; calls on the Commission to promote action by the EU, its Member States and the international community to step up efforts against environmental crime; calls on the Commission and the Member States to raise awareness and promote solutions in international forums, including on the protection of environmental human rights defenders; highlights, in this regard, the example of the International Consortium on Combating Wildlife Crime, which brings together five international organisations.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	7.12.2020
<b>Result of final vote</b>	+: 51 -: 6 0: 6
<b>Members present for the final vote</b>	Magdalena Adamowicz, Konstantinos Arvanitis, Malik Azmani, Katarina Barley, Fernando Barrena Arza, Pietro Bartolo, Nicolas Bay, Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Saskia Bricmont, Jorge Buxadé Villalba, Damien Carême, Caterina Chinnici, Marcel de Graaff, Anna Júlia Donáth, Lena Düpont, Cornelia Ernst, Laura Ferrara, Nicolaus Fest, Maria Grapini, Sylvie Guillaume, Balázs Hidvéghi, Evin Incir, Sophia in 't Veld, Patryk Jaki, Lívia Járóka, Marina Kaljurand, Assita Kanko, Fabienne Keller, Peter Kofod, Łukasz Kohut, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Nuno Melo, Roberta Metsola, Nadine Morano, Javier Moreno Sánchez, Maite Pagazaurtundúa, Nicola Procaccini, Emil Radev, Paulo Rangel, Terry Reintke, Diana Riba i Giner, Ralf Seekatz, Michal Šimečka, Birgit Sippel, Martin Sonneborn, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Milan Uhrík, Tom Vandendriessche, Bettina Vollath, Jadwiga Wiśniewska, Elena Yoncheva
<b>Substitutes present for the final vote</b>	Bartosz Arłukowicz, Philippe Olivier, Anne-Sophie Pelletier, Isabel Santos, Hilde Vautmans

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

51	+
EPP	Magdalena Adamowicz, Bartosz Arłukowicz, Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Lena Düpont, Balázs Hidvéghi, Livia Járóka, Jeroen Lenaers, Nuno Melo, Roberta Metsola, Nadine Morano, Emil Radev, Paulo Rangel, Ralf Seekatz
S&D	Katarina Barley, Pietro Bartolo, Caterina Chinnici, Maria Grapini, Sylvie Guillaume, Evin Incir, Marina Kaljurand, Lukasz Kohut, Juan Fernando López Aguilar, Javier Moreno Sánchez, Isabel Santos, Birgit Sippel, Bettina Vollath, Elena Yoncheva
RENEW	Malik Azmani, Anna Júlia Donáth, Sophia In 'T Veld, Fabienne Keller, Moritz Körner, Maite Pagazaurtundúa, Michal Šimečka, Ramona Strugariu, Hilde Vautmans
ID	Peter Kofod
GREENS/EFA	Saskia Bricmont, Damien Carême, Alice Kuhnke, Terry Reintke, Diana Riba I Giner, Tineke Strik
EUL/NGL	Konstantinos Arvanitis, Pernando Barrena Arza, Cornelia Ernst, Anne-Sophie Pelletier
NI	Laura Ferrara, Martin Sonneborn

6	-
ID	Nicolas Bay, Marcel De Graaff, Nicolaus Fest, Philippe Olivier, Tom Vandendriessche
NI	Milan Uhrík

6	0
ID	Annalisa Tardino
ECR	Jorge Buxadé Villalba, Patryk Jaki, Assita Kanko, Nicola Procaccini, Jadwiga Wiśniewska

Key to symbols:

+ : in favour

- : against

0 : abstention

## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

<b>Date adopted</b>	18.3.2021
<b>Result of final vote</b>	+: 19 -: 6 0: 0
<b>Members present for the final vote</b>	Manon Aubry, Gunnar Beck, Geoffroy Didier, Pascal Durand, Angel Dzhambazki, Ibán García Del Blanco, Esteban González Pons, Mislav Kolakušić, Gilles Lebreton, Karen Melchior, Jiří Pospíšil, Franco Roberti, Marcos Ros Sempere, Stéphane Séjourné, Raffaele Stancanelli, Marie Toussaint, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Tiemo Wölken, Lara Wolters, Javier Zarzalejos
<b>Substitutes present for the final vote</b>	Patrick Breyer, Andrzej Halicki, Heidi Hautala, Ilhan Kyuchyuk, Antonius Manders, Sabrina Pignedoli, Jérôme Rivière, Nacho Sánchez Amor

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

19	+
PPE	Geoffroy Didier, Esteban González Pons, Antonius Manders, Jiří Pospíšil, Axel Voss, Marion Walsmann, Javier Zarzalejos
S&D	Ibán García Del Blanco, Franco Roberti, Marcos Ros Sempere, Tiemo Wölken, Lara Wolters
Renew	Pascal Durand, Ilhan Kyuchyuk, Stéphane Séjourné, Adrián Vázquez Lázara
Verts/ALE	Patrick Breyer, Marie Toussaint
The Left	Manon Aubry

6	-
ID	Gunnar Beck, Gilles Lebreton, Jérôme Rivière
ECR	Angel Dzhambazki, Raffaele Stancanelli
NI	Mislav Kolakušić

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention