The Environmental Liability Directive
Brief history

- Adopted in 2004, to be transposed by 2007
- Novel legal instrument at the time
- Implementing measure of the polluter pays principle (Article 191(2) TFEU)
- Purpose: to prevent and remedy environmental damage
- Aim YES: financial consequences of certain types of environmental harm will be borne by the economic operator who caused this harm
- Aim NO: right of compensation as a consequence of environmental damage or of an imminent threat of such damage occurring.
Environmental damage

- **3 categories:**
  
  “damage to protected species and natural habitats”,
  
  “water damage”
  
  “land damage”

- **2 liability regimes**
  
  strict (in relation to Annex III)
  
  fault-based (in relation to any activity not listed in Annex III and in relation to the 3 above damages)

- **Damaged resources and services must be returned to baseline conditions**
Stakeholders

- Competent Authorities
- Operators
- Financial service providers and others
- Enabled Persons
- Other participants (non-Stakeholder) in the process can include experts (science, economics, law) and the public
Link to LCPD/IED

- The IPPC Directive is referred to in Annex III.1
- IPPC/IED
- LCPs

ELD requires strict liability for LCPs and related mining waste
Time limits

- Before 30 April 2007, if the damage and the underlying causative activity occurred wholly before that date;
- Events or incidents that took place 30 years before the damage having been detected; and
- If more than 5 years have passed since preventive or remedial actions were completed, or the responsible party was identified, whichever is the later.
Exemptions

- Coverage by International Conventions, Euratom Treaty
- Act of armed conflict, hostilities, civil war or insurrection
- A natural phenomenon of exceptional, inevitable and irresistible character
- Activities, the main purpose of which is to serve national defence or international security or protection against natural disasters
- Diffuse pollution and causality
Thank you for your attention!

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