



# Environmental Liability Directive

## Aquaculture Advisory Council

### Working Group 3

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# ELD – Overview

# Environmental Liability Directive (I)

- Directive 2004/35/CE of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage
- Aimed to stop the net loss of environmental resources
- Based on and implementing the ‘polluter pays’ principle
- Type of liability:
  - ‘environmental’ - the ELD deals with ‘pure ecological damage’, without prejudice to criminal liability and civil liability
  - ‘administrative’ - based on the powers and duties of public authorities
- Target: significant environmental damage (and imminent threat thereof)

# Environmental Liability Directive (II)

- Protected natural resources:
  - Species and natural habitats (biodiversity) → defined by reference to the [Birds Directive](#) and [Habitats Directive](#)
  - Water → defined by reference to the [Water Framework Directive](#) and [Marine Strategy Framework Directive](#)
  - Land → No specific EU legislation is referred to

# Environmental Liability Directive (III)

- Scope of required response:
  - Remediation measures:
    - Primary remediation - to return the damaged natural resources and/or impaired services to the original condition.
    - Complementary remediation – if the damage is not fully reversible, measures to take at another site
    - Compensatory remediation – if a full remediation is delayed - to compensate for the interim loss of natural resources and services
  - at of damage
  - Immediate limitation measures
- **Remediation in kind** (as opposed to financial compensation)

# Timeline



# ELD Evaluation

**Effectiveness**



**Efficiency**

**EU  
added value**



**Coherence**

**Relevance**



# Legal and political context of the evaluation





# Effectiveness

# Effectiveness : legal framework for environmental liability



Establishing a minimum common standard of liability for environmental damage, implemented by all MS



Downside: very limited scope, and the complex architecture, leading to underuse

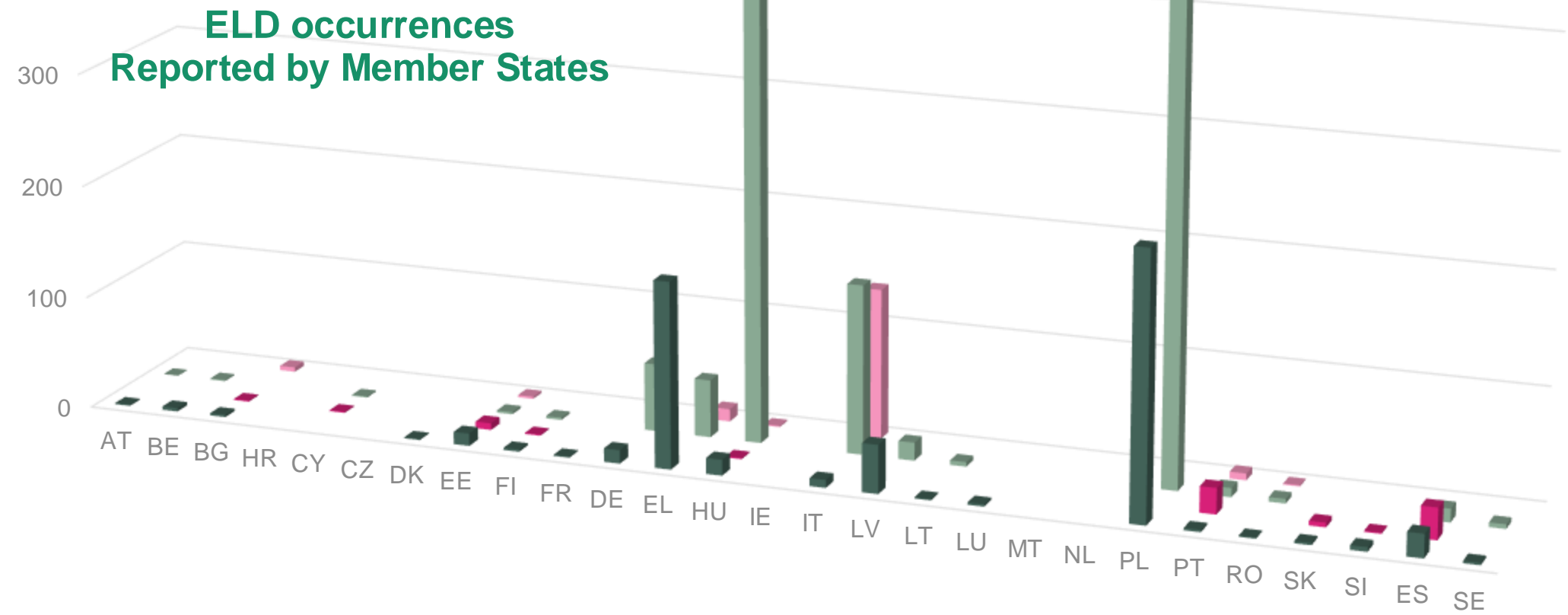


Establishing a high standard of remediation allowing to limit the net loss in environmental resources



Downside: underuse of complementary and compensatory measures

# Effectiveness - actual cases



■ Environmental damage 2013-2022  
 ■ Environmental damage 2007-2013

■ Imminent threats 2013-2022  
 ■ Imminent threats 2007-2013

# Effectiveness: main limiting factors

- Limited scope of environmental damage covered by the ELD
- Ambiguous criterion of ‘significant damage’, leading to restrictive interpretations
  - **NEW:** 2021 Commission guidelines on environmental damage
- Handling of ELD occurrences under other national or EU rules (no complementary and compensatory remediation )
  - national non-ELD liability rules
  - permitting legislation
  - criminal proceedings (monetary compensation instead of damage remediation)
- Lack of ELD expertise and awareness



# Efficiency

# Efficiency

- The ELD shifts the costs of damage prevention and remediation from the society to the liable operators (but does not generate them) → PPP implementation
- Costs of ELD implementation by MSs: duplication of procedures and costs when ELD is not well-integrated with other national level procedures → underuse
- The MSs investment in ELD implementation has been limited due to the low number of reported cases → lack of awareness and expertise
- Potentially high costs associated with ELD procedures → discourage participation from environmental NGOs and other stakeholders.

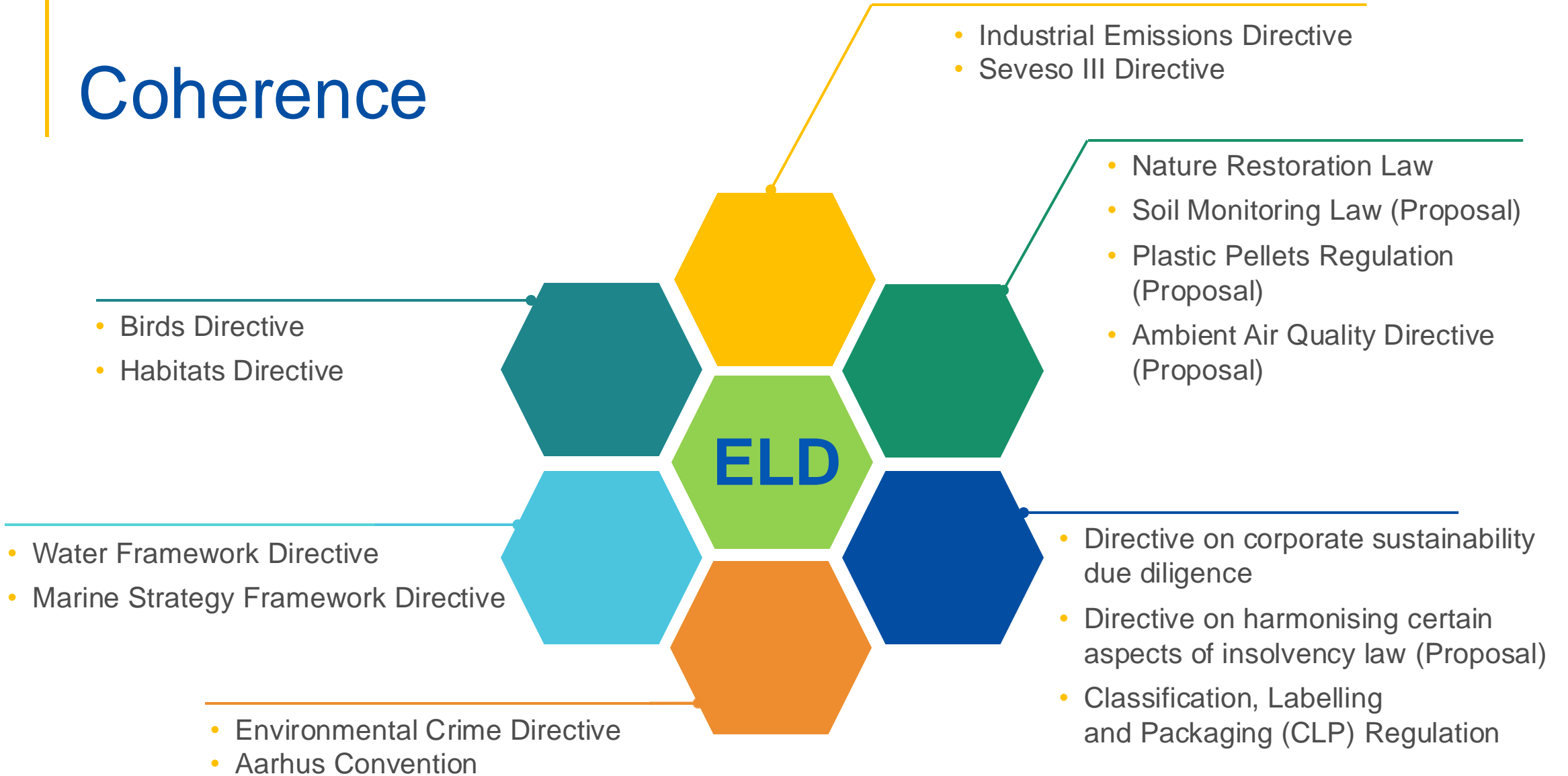
# Efficiency (II): Financial Security Instruments

- Insolvency of liable operators affects the implementation of the ELD (PPP)
- Increased voluntary use of environmental insurance → but limited to some MSs, big companies, not always full ELD coverage
- Some MSs have mandatory financial security instruments (more general or sectorial)
- Positive side effect: financial security instruments indirectly help prevention through the risk management requirements
- Market readiness Issues with EU-wide mandatory financial instruments



# Coherence

# Coherence



# Coherence

- No direct inconsistencies with other EU liability regimes
- Coherency issues at the implementation level:
  - Incoherent implementation with Water and Habitats Directives
  - Overlaps with the IED
  - Potential issue with the new ECD
  - Lack of capacity to support some of the new legislation
- Internal coherence overall positive
  - Allowing ‘more stringent national provisions’ – major source of the ELD underuse - Article 16 (Article 193 of the Treaty)
- Overall coherence of the ex-post environmental liability instruments is further analysed in the PPP Fitness Check



# EU added value

# EU added value

- Establishing a **minimum common standard of environmental liability based on a high standard of remediation and ensuring a level playing field** among the MS
- Promotion of the **PPP** at the EU level
- Facilitation of the **cross-border cooperation** on remediation and prevention of environmental damage
- **Participatory mechanism** in line with Aarhus convention
- **Advantages reduced by the underuse**



# Relevance

# Relevance

- Enhanced relevance of the liability mechanism as regards the need to reduce net loss of environmental resources and the PPP
- The ELD has substantial limitations in the scope of covered damage:
  - land and water damage only in case of hazardous activities (Annex III)
  - significance criterion
  - biodiversity damage scope (only resources protected under EU law)
  - land damage scope (only if it affects human health)
  - air quality damage outside the scope
  - Lack of coverage for human health damage (as opposed to IED, AAQD proposal)

# Study in support of the evaluation of the Environmental Liability Directive and its implementation

Professor Valerie Fogleman, Cardiff University, Stevens & Bolton LLP, RPA Europe

- <https://data.europa.eu/doi/10.2779/034934>



# Next steps



# The 2024 ELD training project

- Update of the written training materials
- Three pilot workshops in three Member States:



Greece, October 2024



Romania, November 2024



Latvia, April 2025

- Cooperation with national authorities and with IMPEL
- E-learning course

# Thank you



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