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European Union Network for the
Implementation and Enforcement
of Environmental Law

'Environmental' damage in the context of the ELD

Plenary Session 6

How to assess, remediate and compensate for the damage incurred?

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4 Networks Conference, Cooperation in strengthening
environmental enforcement

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CONTENT

1. ELD in a nutshell

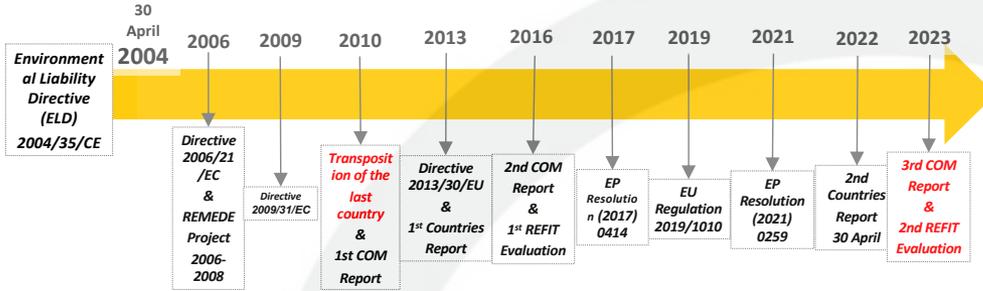
2. ELD, ECD and other Directives approaches, objectives and possible synergies

3. ELD and issues of the damage assessment, remediation and compensation

4. Solutions to improve effectiveness & efficiency

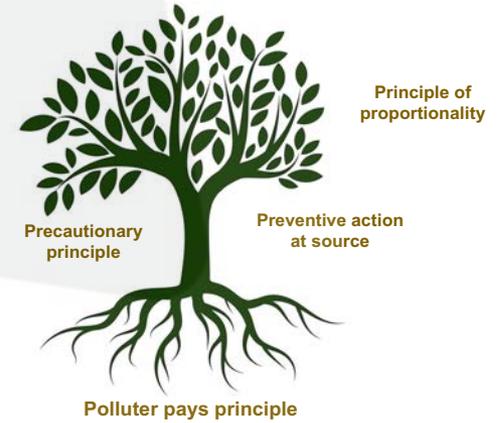


History of ELD



Almost 20 years

Underlying and relevant principles of ELD

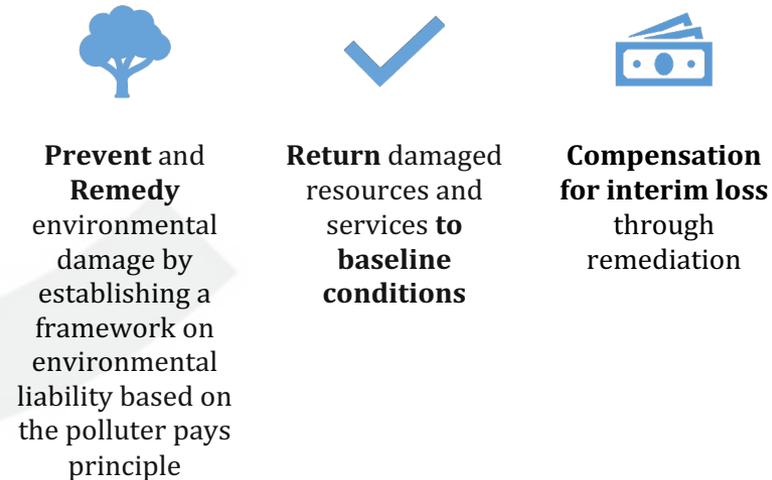


Scope and applicability of ELD



The establishment of a causal link between the activity and the damage is always required!

Purposes of ELD





ELD Definitions

'Damage' means art. 2(2):

A measurable adverse change in a natural resource or measurable impairment of a natural resource service which may occur directly or indirectly

Damage to protected natural habitats and species means, art. 2(1):

Any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. The significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in Annex I, with the exception of previously identified adverse effects authorised under the nature protection legislation

Water damage means any damage that significantly adversely affects, art. 2(1):

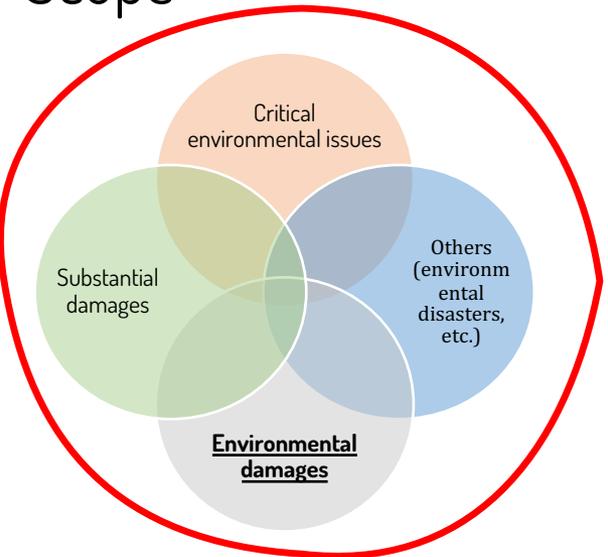
- The ecological, chemical and/or quantitative status and/or ecological potential, as defined in the Water Framework Directive (2000/60/EC), of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies.
- The environmental status of the marine waters concerned, as defined in Directive 2008/56/EC, in so far as particular aspects of the environmental status of the marine environment are not already addressed through Directive 2000/60/EC

Land damage means, art. 2(1):

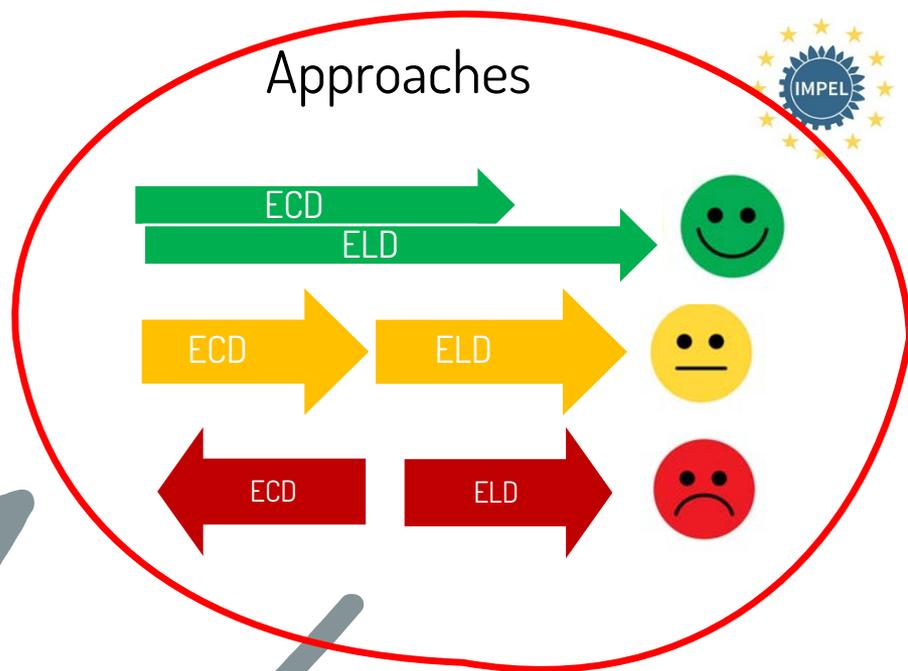
Any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms.

ECD not yet defined:
...substantial damage to the quality of air, soil, water, or to animals or plants ..

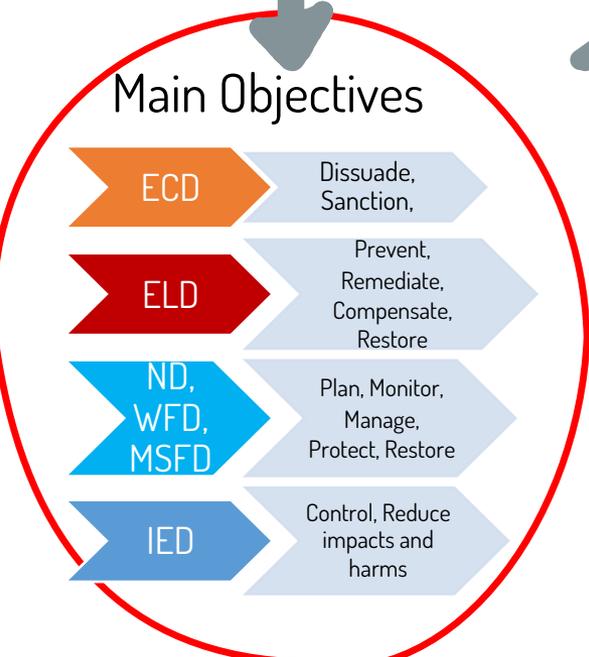
Scope



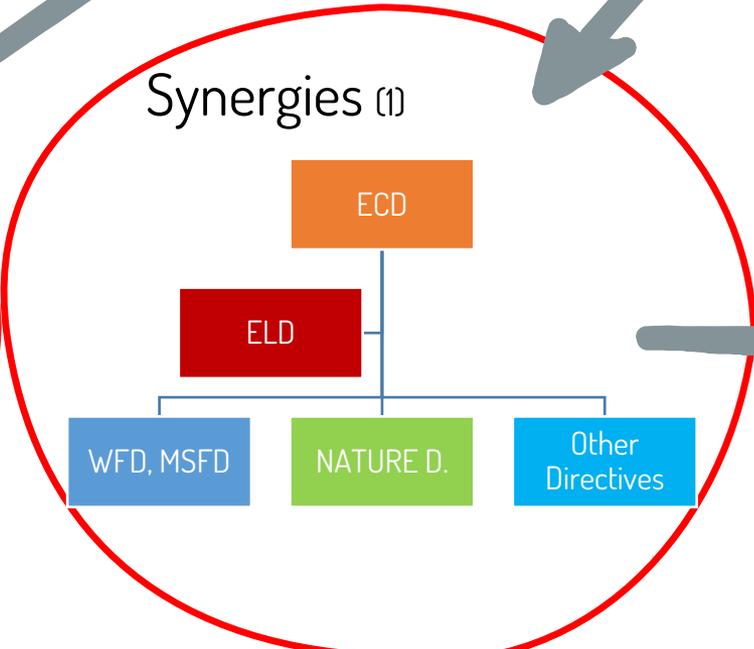
Approaches



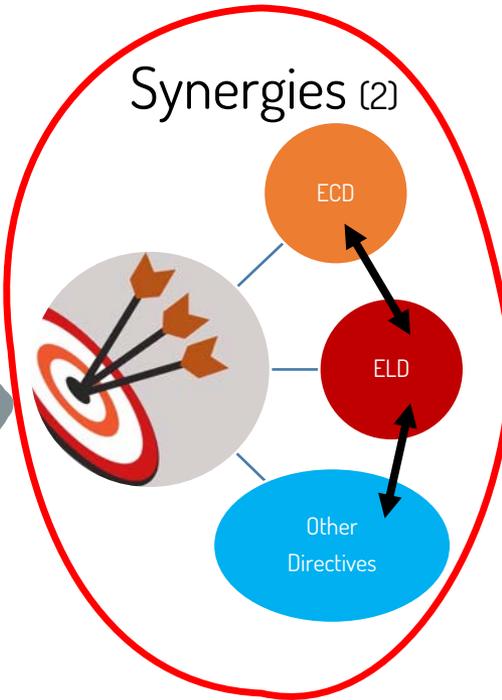
Main Objectives



Synergies (1)



Synergies (2)





Main issues of
ELD
implementation
and enforcement

Lack of harmonisation of ELD with its source and complementary Directives

Implementation & enforcement varies significantly among MSs

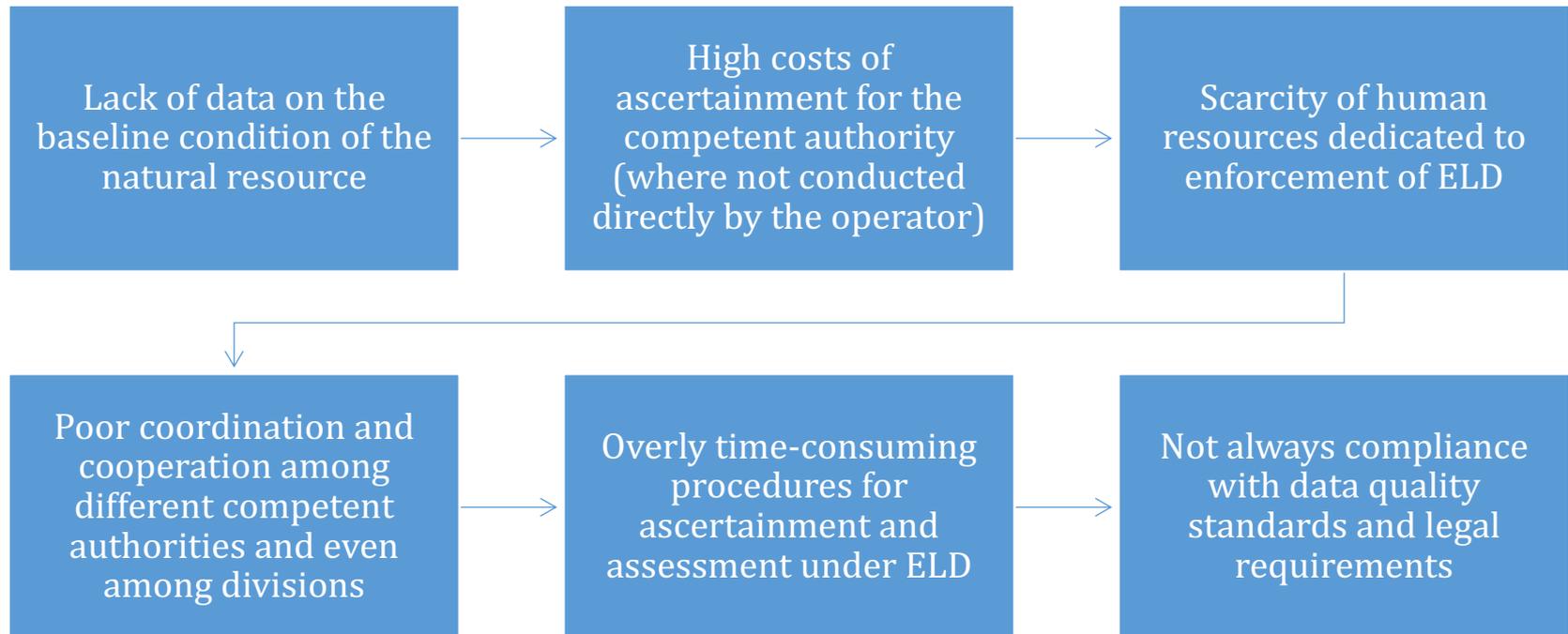
Not always a common interpretation of damage among MSs

Patchwork of environmental remediation in EU

Remediation in most cases still rely on public purse



Main issues of assessment for ELD





Main issues of compensation and remediation for ELD



Too high costs for remediation



Frequent use of insolvency proceedings, including liquidation, by operators for compensation



Burocracy can delay or hamper remediation



Overly time-consuming procedures for completing remediation

Solutions to improve effectiveness and efficiency

- ✓ Establish a system approach and streamlining ECD, ELD, other connected directives procedures
- ✓ For ELD, include legally binding criteria to assess damage to water and land
- ✓ For ELD, provide more use of instruments that provide financial security (why not impose it?)
- ✓ For ELD and ECD, establish a system of common procedures of coordination and incentivise an adequate exchange of knowledge and training among all competent and law-enforcement authorities
- ✓ Commission's guidelines on the definition of the term environmental damage (done) and substantial damage
- ✓ Establish table reference/indexes/threshold values or technical guidelines for all natural resources to simplify the assessments and facilitate the chance for a rapid assessment of significance of adverse effects





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Thanks for your attention!

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